

**National Agency
for the Prevention of Torture**

Annual Report 2012

of the Federal Agency
and of the Joint Commission of the States
(*Länder*)

Period under review
1 January 2012 – 31 December 2012

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Foreword

In accordance with the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (OP-CAT)¹, the National Agency for the Prevention of Torture is tasked with implementing regular preventive visits for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention. The National Agency consists of the Federal Agency, which is responsible for facilities of the Federation, and the Joint Commission, which is responsible for facilities of the *Länder*. It is to submit the joint Annual Report of the Federal Agency and the Joint Commission to the Federal Government, the German *Bundestag*, the *Länder* Governments and the *Länder* Parliaments. This Report covers the period from 1 January 2012 to 31 December 2012.

The Report is to be preceded by three core messages:

The National Agency was unable to find any signs of torture, but did identify a number of unacceptable shortcomings. It made many recommendations to the supervisory authorities in order to improve the situation of persons being detained, important parts of which have been implemented.

The National Agency is unable to do justice to its statutory task of implementing regular visits with the resources currently available. It is certainly unable to live up to the standard of taking on a pioneering role in expanding human rights protection as envisioned by the Federal Government with the approval act to the Optional Protocol.² With only five members working on an honorary basis and funds for only three research associates and one administrative assistant, the capacity available is completely inadequate for regular visits to several thousand detention facilities. In 2012, the National Agency visited a total of 45 facilities where people are deprived of their liberty. Nationally, roughly 13,000 facilities are within the remit of the National Agency. 1,300 inspection visits per year would have to be carried out in order to visit each of these facilities at least once every ten years. The Chairman of the Joint Commission approached the Chairman of the Conference of Ministers of Justice by letter dated 10 February 2012 requesting a debate on increasing the budget of the National Agency. On 15 November 2012, the Conference of Ministers of Justice requested the chairing *Land Hesse* to examine, with the involvement of the Federation, whether and if so to what extent an improvement in the resources of the Commission appears to be necessary, as well as how any improvement could be implemented, and to sub-

¹ Resolution of the UN General Assembly A/RES/57/199 of 18 December 2002.

² *Bundestag* printed paper (BT-Drs.) 16/8249, p. 25.

mit a proposal to the 2013 Conference of the Heads of Office, to be held in Freiburg on 24 and 25 April.

The Federal Agency and the Joint Commission operate in a trusting and cooperative manner, collaborating to carry out their shared task. They are submitting the following Report jointly.

The results from 2012 can be summed up as follows:

Standard for inspections

The standard for inspections applied by the National Agency is primarily German law on the protection of human dignity, but also supranational law. By carrying out regular inspections of places where people are – or can be – deprived of their liberty, structures and conditions can be identified which may encourage contraventions. On the basis of its inspection visits, the National Agency issued a large number of recommendations to improve the situation of persons being detained by the supervisory authorities.

The Federal Agency

The Federal Agency reached the positive conclusion on its visits that many of the recommendations from previous Annual Reports (e.g. keeping all common information forms in a large number of languages) have already been taken up and implemented in many offices of the Federal Police and of the Federal Armed Forces. There is nevertheless still room for improvement. The Federal Agency will continue to attach considerable significance to the further training of officers aimed at communicating strategies to deescalate critical situations.

The Joint Commission

The spotlight of the inspection visits made by the Joint Commission so far has been on visits to prisons and police units of the *Länder*. By contrast, it was only possible to visit individual psychiatric clinics; the Joint Commission does not yet have any specialist experts of its own in this field. It has not yet been possible to visit any homes for the elderly or long-term care homes at all.

1. Prisons

Many of the recommendations made by the Joint Commission are linked to the state of construction of the facilities. One striking case is the double occupancy of a cell without a partitioned off toilet. This means that inmates have to use the toilet in the presence of their fellow inmates, a curtain or screen not protecting privacy. This is also not acceptable according to the case-law of the Federal Constitutional Court.

Other problems which were repeatedly found relate to inmates being placed in prolonged solitary confinement to protect themselves or other inmates. This went on for many years in some cases, leading to social isolation. This too can constitute a massive affront to human dignity. The Commission variously suggested in such cases to examine, perhaps consulting external advisors, whether solitary confinement should be maintained or whether its conditions could be improved.

It is also not acceptable that metal handcuffs and footcuffs are used in prisons not only for binding, but also for fixation. This entails a considerable risk of injury. Where fixation is indispensable, it may only be carried out using a suitable bandage system and under constant observation (direct supervision by an officer), as is already practiced in the vast majority of cases.

2. *Land* Police

When visiting a police unit of a *Land*, the Joint Commission came across a security cell containing a stretcher on the ground with iron rings to which persons were fixed using metal cuffs. There was neither a bandage system, nor was there any provision for direct supervision by an officer. The acquisition of a bandage system and the implementation of direct supervision by an officer were ordered on the basis of the recommendation made by the Joint Commission. It should be stressed that the police occasionally do without fixation altogether.

In another police unit of a *Land*, the Joint Commission found an alarm system which did not work, so that the inmates had no way of contacting the officers even in an emergency. This was remedied immediately.



Rainer Dopp
former State Secretary



Klaus Lange-Lehngut
former *Leitender Regierungsdirektor*



Elsava Schöner
former *Leitende Regierungsdirektorin*



Albrecht Rieß
Presiding Judge, Higher Regional Court



Petra Heß
Commissioner for Foreigners of the Free State of Thuringia

List of specific abbreviations

CAT	UN Committee Against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ETS	European Treaty Series
NPM	National Preventive Mechanism
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

I General information about the work of the National Agency

I History and legal foundation of the National Agency

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is already set out in the Universal Declaration of Human Rights from 1948.³ The cornerstone in the active “fight against torture” was however laid by the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984⁴ (UN Anti-Torture Convention). The Convention obliges the States to prevent any act of torture and to make torture offences punishable.

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (OP-CAT) supplements the UN Anti-Torture Convention and applies a preventive method. It is orientated in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which established a system of preventive visits in the States of the Council of Europe in 1987.⁵ The Optional Protocol also provides to strengthen protection against torture and mistreatment by means of a system of visits. To this end, Article 3 OP-CAT entails an obligation to set up national preventive mechanisms which are to supplement the work of the also newly-created Subcommittee on the prevention of torture (SPT).

Germany signed the Optional Protocol on 20 September 2006 and ratified it on 4 December 2008. The Optional Protocol came into force for the Federal Republic of Germany on 3 January 2009 in terms of international law.

As the National Agency, the Federal Agency and the Joint Commission together form the German mechanism for the prevention of torture and inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the UN Anti-Torture Convention. The Federal Agency was established by means of an Administrative Order of the Federal Ministry of Justice of 20 November 2008. It is responsible for all 360 places where people are deprived of their liberty within the remit of the Federation, i.e. detention facilities of the Federal Armed Forces (*Bundeswehr*), of the Federal Police (*Bundespolizei*) and of the customs authorities. The Joint Commission operates on the basis of a State Treaty, which entered into

³ Resolution of the UN General Assembly 217 A (III) of 10 December 1948.

⁴ Resolution of the UN General Assembly 39/46 of 10 December 1984.

⁵ ETS No. 126 of 26 November 1987.

force on 1 September 2010 after being ratified by the Federal *Länder*. Its remit includes the vast majority of places of detention. These are 186 organisationally independent prisons, 1,430 facilities of the *Länder* Police and 326 psychiatric clinics, but also seven facilities for the detention of persons awaiting deportation and 27 closed child and youth welfare facilities. In accordance with the legal definitions, places of detention in this sense also include the roughly 11,000 homes for the elderly and long-term care homes (cf. Article 4 para. 2 OP-CAT).⁶

Klaus Lange-Lehngut (former *Leitender Regierungsdirektor*) was appointed honorary Director of the Federal Agency for a term of four years by the Federal Ministry of Justice in agreement with the Federal Ministries of the Interior and of Defence on 4 December 2008. His term of office was extended by four years by letter of the Federal Ministry of Justice dated 26 November 2012. The four honorary members of the Joint Commission were appointed at the 81st Conference of Ministers of Justice, held in Hamburg on 23 and 24 June 2010. Prof. Dr. Hansjörg Geiger, former State Secretary, was appointed to chair the Joint Commission on 24 September 2010. Dipl.-Psych. Elsava Schöner, Albrecht Rieß, Presiding Judge at Stuttgart Higher Regional Court, and Prof. Dr. Dieter Rössner, University Professor at the University of Marburg were appointed as additional members. Prof. Dr. Hansjörg Geiger and Prof. Dr. Dieter Rössner resigned as per 31 August 2012. By resolution of the 83rd Conference of Ministers of Justice held in June 2012, Rainer Dopp, former State Secretary, was appointed Chairman of the Joint Commission and Petra Heß, Commissioner for Foreigners of the Free State of Thuringia, was appointed as a member of the Joint Commission. Mr Rieß and Ms Schöner were confirmed in their office for another four years at the same time.⁷

2 The foundation created for the work

2.1 Institutional framework and legal nature

In accordance with Article 18 OP-CAT, the States Parties are obliged to guarantee the functional independence of the national preventive mechanism, that is the National Agency, and to also provide it with sufficient funding to carry out its tasks.

The members of the Federal Agency are not subject to any specialist or legal supervision, and are completely free of instructions in the performance of their office. They work on an honorary basis and may resign from office at any time.

⁶ *Bundestag* printed paper 16/8249, p. 27.

⁷ A more detailed description of the history is contained in Annex 2.

However, they may only be removed from office early subject to the prerequisites of sections 21 and 24 of the German Judiciary Act (*Deutsches Richtergesetz*).

In accordance with the administrative agreement, the Federal Agency and the Joint Commission must coordinate the planning and implementation of their projects. Regular working meetings of the entire Agency take place to this end.

2.2 Tasks and powers

The tasks and powers of the National Agency for the Prevention of Torture are set out in the Optional Protocol, which has been transposed into national law, as well as in the Administrative Order of the Federal Ministry of Justice of 20 November 2008 and in the State Treaty of 25 June 2009.

The National Agency visits “places of detention”, draws attention to problems and makes recommendations to the authorities for improvements. In accordance with Article 4 para. 1 OP-CAT, such “places of detention” are any place under the jurisdiction and control of the State where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

The powers of the National Agency with regard to the facilities referred to at item I. 1 accrue from Articles 19 and 20 OP-CAT (read in conjunction with No. 3 of the Administrative Order and Art. 2 of the State Treaty). In accordance with Article 19, the National Agency is hence empowered

- to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4 of the OPCAT, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- to submit proposals and observations concerning existing or draft legislation.

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

- access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4 OP-CAT, 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 torture preventive mechanism believes may supply relevant information;
- the liberty to choose the places they want to visit and the persons they want to interview;
- the right to have contacts with the UN Subcommittee on Prevention, to send it information and to meet with it.

In accordance with Article 21 para. 1 OP-CAT, persons who communicate information to the National Agency are not to be sanctioned or otherwise prejudiced in any way.

2.3 Provision with staff and funding

The inadequate provision of the National Agency for the Prevention of Torture with staff and funding has already been discussed in detail in the previous Annual Reports. As stated in the Foreword, it also continued in the current period under review.

The Federal Agency is funded from the budget of the Federal Ministry of Justice. The Federal Agency has at its disposal EUR 100,000 in funds per year. Euro 200,000 are available for the Joint Commission, provided by the individual Federal *Länder* in proportions determined by the Königstein Key. The budget of the National Agency makes it possible to appoint a maximum of three full-time research associates and one administrative assistant.

II Topics

I Spotlight on solitary confinement

In accordance with section 89 of the Prison Act (*StVollzG*) and corresponding provisions contained in the Prison Acts of the *Länder* (e.g. section 50 subsection (7) of the Hesse Prison Act [*Hessisches Strafvollzugsgesetz*]), solitary confinement is defined as the continuous segregation of an inmate. Even if there is no uniform definition of solitary confinement under international law, it is described in the “Istanbul Statement on the Use and Effects of Solitary Confinement” as the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day.⁸

The Joint Commission addresses this topic in particular since, during its visits, it repeatedly came across problems relating to the ordering and execution of this form of detention. Amongst others, mentally ill inmates were found to be in solitary confinement where the causes of the illness do not appear to have been adequately investigated. Solitary confinement had already been going on for several months in several cases, and even for years in isolated instances. In one prison, it was not possible to clearly recognise the distinction between solitary confinement as a disciplinary measure and as a special security measure, and in another prison the accommodation conditions in solitary confinement were unusually harsh. On the other hand, the Joint Commission also found that solitary confinement was implemented in the inmate’s own cell in some prisons or was no longer used as disciplinary cellular confinement, something which the Joint Commission considers to be positive

In September 2012, the Joint Commission asked the Ministries of Justice of all *Länder* to inform it of cases of prolonged solitary confinement. The numbers indicate that this is dealt with in a wide variety of ways. The evaluation reveals that the proportion of inmates who were held in solitary confinement for more than three months is between 0 and 1.41 per 100 inmates. The order was upheld for up to twenty years in some cases.

The investigations indicate that solitary confinement can have serious consequences. The UN Special Rapporteur on torture⁹ found that the brain activity of those concerned shows signs of stupor or delirium after only a few days in solitary confinement. It can cause “prison psychoses”, but there has so far been a lack

⁸ UN doc. A/66/268 (5 August 2011): Interim report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, No 25.

⁹ UN doc. A/66/268.

of research into the long-term effects of solitary confinement. The European Committee for the Prevention of Torture (CPT) has pointed out that the suicide rate is higher among those in solitary confinement than among other inmates.¹⁰

2 Monitoring of return flights

In accordance with section 71 subsection (3) no. 1d of the Residence Act (*Aufenthaltsgesetz*), the Federal Police is responsible for returning foreigners to other states. In the case of returns by air, it is possible for officers of the Federal Police to accompany the measure as far as the destination airport. A total of 7,188 returns were implemented by air in 2011, 1,261 of which were accompanied. It was however not separately recorded whether those accompanying the returns were staff of the *Länder* authorities or of the Federal Police.¹¹ It can be presumed as a rule that staff of the Federal Police accompany the flights. 382 persons were returned within returns that are organised together with other European States by the European border management agency Frontex.¹²

The Federal Agency explored in detail in 2012 how return flights were to be accompanied from 2013 onwards. To this end, a meeting took place at the Federal Ministry of the Interior with the head of division for Command and operational matters of the Federal Police, in the course of which in particular organisational questions related to the monitoring of the returns were discussed. At the invitation of the Commissioner for Intercultural Affairs of the Diakonisches Werk in Hesse and Nassau e.V. and of the Evangelical Church in Hesse and Nassau, the Federal Agency furthermore attended network meetings on the monitoring of deportations in Frankfurt. These were attended by both representatives of the financing entities of the deportation monitoring agencies, as well as by deportation monitors themselves. There was particular discussion as to the fields in which the exchange and cooperation with the Federal Agency could be sensibly stepped up. This was discussed in greater detail at a meeting that was held with Prelate Dr. Felmberg, the Commissioner of the Council of the Evangelical Church in Germany to the Federal Republic of Germany and the European Union, which took place in Berlin in August 2012.

Additionally, two workshops took place within the NPM project established by the Council of Europe on the topics "The immigration removal process and preventive monitoring" and "Irregular migrants, Frontex and the NPMs".

¹⁰ CPT, 21st *General Report of the CPT*, Strasbourg: Council of Europe, 2011, No. 53.

¹¹ Bundestag printed paper 17/8834, p. 23.

¹² Bundestag printed paper 17/8834, p. 22.

The first of these two topical workshops, which took place in Geneva in March 2012, addressed the following topics: fitness for flying, medical care before, during and after a (failed) return, use of coercion for the successful implementation of a return and particular risks emerging for the returnees from coercive measures, the mandate of the NPMs for the monitoring of the return process, the EU “forced returns” directive and its implementation in the Member States, as well as the demands made of the NPMs for successful monitoring of returns and cooperation with other organisations/institutions in this field.

The second workshop was held in Belgrade in June 2012. The participants’ discussion focussed on the activity of the European border management agency Frontex and discussed interfaces between Frontex and the work of the NPMs, as well as potential forms of cooperation and coordination on returns. To this end, as well as the representatives of Directorate General 1 of the Council of Europe responsible for organisation, of the NPMs, representatives of the CPT and of the SPT, representatives of Frontex, and of the International Organisation for Migration, attended the meeting.

III Implementation of inspection visits

I Basis

The National Agency applies above all valid German law, the case-law of the Federal Constitutional Court and that of the Federal and Higher Regional Courts when carrying out its visits. Furthermore, where appropriate the National Agency considers international agreements relevant to its remit, as well as international case-law including that of the European Court of Human Rights. Equally, it incorporates the recommendations of the SPT and of the CPT in its assessments.

The places to be visited are selected according to a number of criteria. As a matter of principle, the Federal Agency and the Joint Commission, in line with their preventive mandate, visit as many facilities as possible which have a wide range of tasks. Efforts are furthermore made to ensure a suitable geographic spread.

2 Procedure followed in the inspection visits

The visiting procedure varies depending on the type of facility to be visited and the local circumstances. The following section will therefore only provide a general description of the system on which the visits are based.

A visiting delegation generally consists of between two and four persons, the National Agency also calling on the services of external experts for its visits. As a rule, the Joint Commission announces a visit to a facility to the competent supervisory authority roughly 30 minutes prior to the beginning of the visit in order to accelerate entrance to the facility that is to be visited. Visits to police units also took place unannounced, and sometimes at night. The Federal Agency announces inspection visits less than 24 hours in advance in order to ensure that the relevant contacts are on site.

An inspection visit starts as a rule with an initial discussion being held with the head of the facility. This is followed by a tour through the facility or individual parts of the facility, when the constructional circumstances, the treatment of the inmates and the procedure which is followed in the deprivation of liberty are examined. The visiting delegation holds confidential discussions with inmates, officers, including staff members of the specialist services, whom they select, as well as for instance with the staff council. Furthermore, the visiting delegation inspects inmates' files and other documents. Moreover, it requests written information to be compiled on the respective facility and the procedure which is fol-

lowed in the deprivation of liberty. The main results of the visit are to be discussed in a final talk with the head of the facility.

So far, almost all visits by the National Agency have given rise to a number of recommendations for improvements in the accommodation and treatment of the persons held, in some cases against the background of unacceptable shortcomings. A detailed list of the recommendations and of the reactions of the supervisory authorities as to their implementation can be found in Part IV of this report.

3 Regularly recurring recommendations and examples of best practice

The National Agency repeatedly came across a number of critical determinations in its inspections. These are summarised below, and the position of the National Agency on the individual topics is described. Furthermore, particularly successful practical examples of individual facilities are to be put forward in order to help bring about an exchange of such exemplary practice.

3.1 Fixation

Fixation should only be ordered as the last resort and subject to unambiguous, strict preconditions, and should be restricted to the shortest time possible. The use of belt/bandage systems is recommended in order to implement fixation in a way that causes as little damage as possible. Metal devices should always be avoided because of the high risk of injury. In order to respect the sense of shame, any investigation of the individual cases should clarify the question of whether complete or partial re-dressing takes place with suitable clothing which is provided separately for this. Complete undressing and clothing only with provided underpants as a standard measure is undignified and indecent.

In addition to constant, direct observation by officers of the person who has been fixed (direct supervision by an officer), the person concerned should be subjected to regular medical checks. Comprehensible written documentation of the entire fixation procedure must be produced in each instance of fixation.

In the Ochsenzoll North Asklepios Clinic in Hamburg, **further training courses** are offered to staff **within the clinic** on de-escalation measures in which they are trained in appropriate dialogue techniques and on how to deal with fixation sensitively. It is likely that the officers' own experience was particularly helpful here, given that they themselves were bandaged in order to be able to understand the fixation situation. Additionally, the **internal differentiation concept**, which is used in one wing, should be stressed, which helps to considerably reduce the

conflict potential by separating various groups of patients.¹³ Both measures led to a reduction in the number of fixations in this wing.

Furthermore, the approach taken by Diez prison with regard to possible risks of injury and the preservation of human dignity in prisons is for instance regarded as being exemplary: Fixation is carried out using a belt system on a hospital bed that is located in the prison **infirmary**. This ensures that medical care of the persons who have been fixed is guaranteed.¹⁴

3.2 Internal differentiation in prisons

The individual departments in Fuhlsbüttel prison in Hamburg correspond to steps built on top of one another, and these differ amongst other things in terms of cell size, furniture or out-of-cell times. The inmates themselves can contribute to their being transferred to a higher step by keeping to the prison rules and taking an active part in their treatment, thus earning additional privileges.¹⁵ This enables the prison to do without certain restrictions which would emerge from construction-related security measures. The windows in the probation group, for instance, have a large unguarded glass area through which a considerable amount of daylight can enter, and no perforated screens are used here.

3.3 Common showers

Partitions in common showers are well suited to protect the privacy of the persons concerned. One prison has for instance installed a shower partition which does not begin until a height of roughly 30 cm above the ground, so that there is a limited view from the outside. This makes it possible to see what is happening in the shower room. The Commission considers it necessary to install at least one shower area with a partition.

3.4 Name badges

The Joint Commission gained the impression that the atmosphere between inmates or patients and officers was more relaxed and friendly if all the officers of the respective facility wore name badges, as the staff of Diez prison do, and particularly that the possibility of identification led to greater transparency within the facility. This is now customary in many Federal *Länder*.

¹³ cf. III.5.3. below

¹⁴ cf. III.5.1.4. below

¹⁵ cf. III.5.1.3. below

3.5 Information on the rights of children and juveniles

The Joint Commission found that the list of rights of Gauting girls' home constituted a good example of written information that was easily accessible for the children regarding the applicable rules (house rules, group rules, sanctions), as well as on the rights and duties of the children and juveniles accommodated. This list is worded in a manner that is easily understood, friendly and suitable for children, and also provides the children with an example of good manners.

3.6 Communication system for inmates

A new communication system for inmates by the name of "multio" was undergoing testing in Tonna prison in 2012. This is a combination of television (50 TV stations), telephone and Internet access. Inmates are offered this bundle for 14.95 € per month, and it enables them to ring from their cells to telephone numbers which have been checked and approved in advance. E-mails can also be sent to approved addresses once they have been checked. The project aims to enable inmates to access pre-approved websites such as that of the Federal Employment Agency and to familiarise them with using the Internet.

4 Visits by the Federal Agency

The Federal Agency carried out inspection visits in a total of 24 facilities of the Federal Police and the Federal Armed Forces in 2012.

4.1 The Federal Police

20 Federal Police facilities in five different directorates were visited in the period under review.

Federal Police directorate	Facilities
Pirna	<ul style="list-style-type: none">• Leipzig Federal Police District Office• Magdeburg Federal Police District Office• Leipzig/Halle Airport Federal Police Station• Halle Federal Police Station
Sankt Augustin	<ul style="list-style-type: none">• Cologne Federal Police District Office• Cologne/Bonn Airport Federal Police District Office
Berlin	<ul style="list-style-type: none">• Berlin-Brandenburg Airport (BER) Federal Police District Office• Cottbus Federal Police Station• Forst Federal Police District Office

	<ul style="list-style-type: none"> • Berlin Main Station Federal Police District Office
Bad Bramstedt	<ul style="list-style-type: none"> • Lübeck Federal Police Station • Kiel duty room • Harrislee duty room • Flensburg duty room
Hanover	<ul style="list-style-type: none"> • Hanover Federal Police District Office • Hanover Airport Federal Police District Office • Lüneburg Federal Police Station • Hildesheim Federal Police Station • Göttingen Federal Police Station

4.1.1 Cooperation with the Federal Ministry of the Interior

After making inspection visits to facilities of the Federal Police, the Federal Agency had to wait for several months in some cases before receiving the written information which it had requested from the Federal Ministry of the Interior on the facilities which it had visited. This considerably delayed the report on the visit. There were discussions in October 2012 between the Director of the Federal Agency and the head of division for Command and operational matters of the Federal Police in the Federal Ministry of the Interior, amongst other things in order to discuss cooperation going forward.

In order to make optimum use of its limited resources, the Federal Agency furthermore asked to be informed when detention cells are no longer used for a prolonged period, or indeed permanently, as was the case in Leipzig/Halle Airport Federal Police Station and in Magdeburg Federal Police District Office.

4.1.2 Visiting procedure

The customary visiting procedure has already been described in general terms at III.2 above. Since the inspection visits to particular Federal Police facilities are not described, the specific procedure followed in the visits is set out in greater detail below.

The Federal Agency carried out an initial exchange with the head of the facility at the beginning of each inspection visit. It then visited the entire detention area, consisting of detention cells, questioning and search rooms and transport rooms in airport facilities in which returnees are accommodated until they are transferred onto an aircraft. In doing so, the Federal Agency also inspected the detention documents. Furthermore, it discussed workplace-specific questions with the officers on the site. The Federal Agency did not find any persons being detained

at the time of the inspections. The inspection of the newly-established Federal Police District Office at Berlin-Brandenburg Airport was used as an opportunity to inspect the overall constructional situation, the equipment and the organisational procedures. The Federal Agency had wished to gain an impression of them before they were commissioned.

4.1.3 Findings and recommendations of the Federal Agency

The following table provides an overview of the number of detention cells in the visited facilities, as well as of the topics on which the Federal Agency made recommendations.

Federal police unit visited	No. of detention cells	Fire protection	Night lighting	Daylight/ fresh air ventilation	Documentation	Cell temperature	Petty cash box	State of construction	No recommendations
Leipzig/Halle Airport Federal Police Station	2								x
Leipzig Federal Police District Office	2			x					
Magdeburg Federal Police District Office	2								x
Halle Federal Police Station	2			x			x		
Cologne Federal Police District Office	2	x							
Cologne/Bonn Airport Federal Police Station	4			x					
BER Airport Federal Police District Office	9								x

Federal police unit visited	No. of detention cells	Fire protection	Night lighting	Daylight/ fresh air ventilation	Documentation	Cell temperature	Petty cash box	State of construction	No recommendations
Forst Federal Police District Office	2	x	x	x					
Cottbus Federal Police Station	2	x	x	x	x	x	x		
Flensburg Federal Police District Office	2		x						
Harislee duty room	2	x	x	x					
Kiel duty room	1							x	
Lübeck Federal Police Station	2							x	
Lüneburg Federal Police Station	2		x						
Hanover Airport Federal Police District Office	2							x	
Hanover Federal Police District Office	2								
Hildesheim Federal Police Station	2								
Göttingen Federal Police Station	2	x	x		x				
Berlin Main Station Federal Police District Office	2							x	

4.1.4 Positive findings

Implementation of regular recommendations of the Federal Agency

The Federal Agency was pleased to note that the Federal Police accepted and implemented regular recommendations from the Federal Agency. This includes, for instance, keeping all common information forms in a large number of languages. The detention cells of almost all the facilities which were visited were large enough, very clean and in excellent condition.

The Federal Agency would like to particularly mention that many of the recommendations of the most recent Annual Report had already been implemented in several facilities of the Federal Police and Federal Armed Forces although they had not yet been visited at that time. Federal Police Headquarters also forwarded to the Federal Agency the existing space utilisation programme for detention cells and requested an assessment as to whether this also meets the standards set by the Federal Agency when inspecting detention cells. This makes it clear that a system of inspection visits can also lead to better protection of the persons accommodated beyond the facility visited.

Basic and further training for accompanying of return flights

The Federal Agency considers further training of the officers who are deployed in returns with the essential learning content of deployment and situation training courses, practical training as to the application of direct force, and operational communication with de-escalating negotiations to be expedient and important. It is also gratifying that topics related to intercultural skills, as well as medical aspects, are taken into consideration as preparation for deployment, as is the case for the staff of the station at Berlin-Brandenburg Airport.

4.1.5 Recommendations of the Federal Agency and the reaction of the Federal Ministry of the Interior

Fire protection

The Federal Agency considers fire alarms in the detention cells to be necessary in order to guarantee the protection of the persons being detained in the event of a fire.

Reaction: The facilities visited would be post-fitted with fire alarms. Officers would carry out regular checks in addition to the applicable provisions until the construction measures were completed.

Night lighting

The detention cells should be equipped with night lighting, for instance in the shape of a dimmable lamp. Particularly when persons are accommodated there overnight, the room should have sufficient light so that for instance it is possible to find the alarm button without any difficulties, without the source of light preventing the person concerned from sleeping.

Reaction: Appropriate night lighting had already been provided in some cases and would be successively post-fitted in the detention cells.

Daylight and fresh air

The Federal Agency considers daylight and natural ventilation to be necessary in the detention cells. If cells do not have daylight and natural ventilation, persons should be transported to other detention facilities which are so equipped if it is likely that they will remain for longer. Access to daylight and natural ventilation should be considered in new construction projects.

Reaction: As a matter of principle, the detention facilities were only used for short-term accommodation. In the event of longer-term accommodation, inmates were quickly transferred to another facility. With new construction projects for detention areas, the Federal Police consistently implemented the space utilisation programme where constructional constraints allowed this. Access to daylight and natural ventilation was provided for in accordance with the space utilisation programme.

Documentation

Checks on persons being detained should be documented in detail in the cell occupancy sheet by the officers carrying them out. In addition to the precise time of the checks, the name and signature of the officer who visited the person in his/her detention cell should always be included.

Petty cash box

The Federal Agency welcomes the keeping of a petty cash box in Federal Police District Offices. This enables officers to ensure, quickly and unbureaucratically, that persons taken into detention are provided with food where this is necessary. It is however not understandable that Federal Police District Offices have a petty cash box, but Federal Police Stations with detention cells do not. Persons are detained in both types of Federal Police facility. A petty cash box should therefore be introduced in all facilities which have detention cells for the purpose of providing food.

Reaction: The establishment of petty cash boxes in each Federal Police Station with a detention area was not necessary according to their assessment to provide

food at all times: It could be ensured that such persons were provided with food via companies'/caterers' invoices being paid by making advance payments within the stations to the Federal Police Stations. This guaranteed that appropriate funds were available to pay for food should they be needed.

Further training courses

The Federal Agency discussed with the heads of the visited facilities the question of further training courses for officers in the detention area. In the view of the Federal Agency, further training courses should contain, beyond aspects of personal safety, strategies for de-escalation and the teaching of alternative actions and in doing so also take cultural aspects into account. Such further training courses must also enable officers to act in a controlled manner in extreme stress situations and to preserve strict proportionality. In this context, the Federal Agency for instance welcomes obliging all police officers of Forst Station and of Cottbus Station to take part in police training, dealing amongst other things with topics such as "Police and foreigners – protection of national minorities".

When talking with the heads of the facilities, the Federal Agency however gained the impression that the officers do not actually attend such special further training courses in all facilities.

The Federal Agency would furthermore like to propose that further training be used to teach how to recognise the signs of suicidal tendencies among persons in detention, and to also draw up an information sheet on this matter for officers and persons being detained.

Reaction: Police training was intended to retain and expand the basic police skills. The regular training which is required in the plan was to enable the officers to work to a professional standard and to attain a high level of specialist, personal and intercultural skills. Personal safety was said to be an aspect in the implementation of police training. The goal was, furthermore, to prevent policing situations from escalating. This was achieved through targeted communication and conflict management. Both were explicit subjects of training that were covered within the police training plan. The fundamentals of communication and dealing with conflict situations, and thus social and intercultural skills, were said to already be taught in police training for the intermediate and higher intermediate police service. Amongst other things, dealing with unfamiliar groups of individuals – e.g. people from other cultural backgrounds – was covered. Furthermore, the officers were made aware of alternative courses of action, and this was also to help them assess the conduct of these groups of individuals. In the field of questioning psychology, particularities of different cultural backgrounds were also included in role-plays. These topics, which were relevant to the police, were also constantly dealt with in subsequent in-house

further training, covering legal, socio-political as well as psychological aspects. Thus, a social attitude was imparted and used as a basis in special training courses to expand intercultural social skills to which human dignity and the principles of a free democratic fundamental system, increased acceptance and awareness of minorities and foreigners were inherent. Also seminars for education on foreign cultures showed the backgrounds to and causes of migration, created understanding of and tolerance for foreigners and gave ideas for conflict-free management in the everyday police service. The police training plan included annual training for all officers in order to practice standard police measures. In the view of the Federal Police, awareness creation for techniques of de-escalation proposed by the Federal Agency were highly significant for day-by-day police work, and remained important in the basic and further training of the Federal Police. The recognition of abnormal conduct and suicide risks was being imparted within police training. The recommendation of the Federal Agency in this regard to draft an information sheet both for persons being detained and for the staff of the Federal Police had been taken up and was currently being examined by the Federal Police Academy.

4.2 The Federal Armed Forces

The Federal Agency visited five locations of the Federal Armed Forces in 2012. The Federal Agency did not find any persons in cellular confinement at the time of the inspection.

4.2.1 Wahn Air Force Barracks

The Federal Agency for the Prevention of Torture visited Wahn military airfield Air Force Barracks on 27 March 2012, which is a part of military district II. The inspection of Wahn military airfield Air Force Barracks covered the entire cellular confinement area with six cellular confinement cells. The Federal Agency also inspected cell occupancy sheets from 2011. The Federal Agency did not find any persons in cellular confinement at the time of the inspection. The cellular confinement cells that were inspected in the barracks were large enough and appropriately furnished. The cells contained a toilet, which was not visible through the spy-hole, and a washbasin. The windows let sufficient daylight in. The cellular confinement cells had not yet been fitted with fire alarms, but the Federal Agency was assured that they had already been ordered. Since those in cellular confinement take in part in service as a rule, their stay in the cellular confinement cells is mainly restricted to night-time and weekends. If a person in cellular confinement does not take in part in service, an individual daily schedule is drawn up to regulate a sensible activity.

The Federal Agency did not note any points during the visit which it regards as being in need of improvement.

4.2.2 Husum military airfield barracks, Husum Julius Leber barracks, Eckernförde Preußen barracks and Eckernförde military police headquarters

The Federal Agency visited the Husum military airfield barracks, as well as the Julius Leber barracks in Husum, which belong to military district I, on 26 June 2012. Furthermore, on 27 June 2012 it visited the Preußen barracks in Eckernförde and Eckernförde military police headquarters, which are also assigned to military district I. The inspection of the facilities in each case covered the entire cellular confinement area. This includes in the military airfield three cellular confinement cells, including a special cell which is used for instance for sobering up. Four cellular confinement cells were inspected in the Julius Leber barracks, one of which was designed as a particularly secure cellular confinement cell. The Preußen barracks and the military police headquarters had four and three cellular confinement cells, respectively. Cell occupancy sheets were also inspected.

Recommendations of the Federal Agency and the reaction of the Federal Ministry of Defence

The Federal Agency recommended to equip the cellular confinement cells of Husum military airfield barracks, Husum Julius Leber barracks and Eckernförde Preußen barracks with a fire alarm system.

Reaction: The installation of the fire alarm systems had been commissioned and was currently being carried out in the cellular confinement cells.

Furthermore, the Federal Agency found that the toilets in the cellular confinement cells of the Julius Leber barracks, the Preußen barracks and the military police headquarters were completely visible through the wide-angle spy-holes fitted in the door, thus violating the privacy of the accommodated person.

Reaction: The wide-angle spy-holes in the Julius Leber barracks would be moved. Eckernförde Preußen barracks were to be closed in the restructuring process. For economic reasons, the spy-holes in the cellular confinement cells would be modified by applying black paint or a cover that could only be operated by the person in cellular confinement in such a way that the WC area was no longer visible.

The specially-secured cellular confinement cell of the Julius Leber barracks did contain a safe washbasin, but no tap. The Federal Agency recommended that this be retrofitted.

Reaction: The installation of a tap had been commissioned and would be carried out soon.

Finally, the Federal Agency recommended equipping the cellular confinement cells of Husum military airfield barracks, Husum Julius Leber barracks and Eck-

ernförde Preußen barracks with night lighting (e.g. dimmable lighting or night lighting).

Reaction: On the basis of the Construction Supervision Guideline in the Federal Armed Forces, corridor and cellular confinement cell lighting was to be switched via an illuminated impulse switch. The switches for the cell lighting are to be attached on the corridor side in front of the cell doors. Moreover, the Construction Supervision Guideline specified a light intensity (measured on the table) of 200 lux. Installing dimmable lighting or night lighting would, firstly, make it more difficult for the prison staff to see into the cellular confinement cell from outside, and secondly the light intensity of the dimmable light did not satisfy the occupational health requirement. Moreover, nightly rest was to be maintained from 9 p.m. The light was as a rule extinguished at 9:30 p.m. This emerged from the prison instructions, which reflected the activities of the general office staff in this respect. The background to this instruction was the fact that the sentries on sentry duty were also allowed to rest from this time, whilst maintaining their readiness to perform guards duties.

5 Visits by the Joint Commission

The Joint Commission visited a total of 21 facilities in the period under review, including nine prisons, seven *Länder* police facilities, a psychiatric clinic, three child and youth welfare facilities and holding cells at a court house .

Visit reports which had not been sent off by the end of the period under review will be included in the Annual Report for 2013. The same applies to statements received from supervisory authorities which had not yet been received in the short time remaining until the editorial deadline.

5.1 Prisons

At the beginning of each visit, the Joint Commission asks the prison governor to compile large amounts of written information on the facility and the treatment of the persons accommodated. The Commission is pleased to note that it was given all the documents that it had requested by the end of the visit day in most cases.

The table below provides an overview of the prisons visited and the topics on which the Joint Commission made recommendations.

Topic of the recommendation	Cologne prison	Celle prison	Fuhlsbüttel prison	Diez prison	Kassel I prison	Brandenburg a.d. Havel prison	Berlin youth prison	Tonna prison	Goldlauter prison
Out-of-cell time	x				x				
Partition of the WC area	x								x
State of construction	x				x				
Specially-secured cell, temperature						x			
Showers, partitions		x	x	x	x		x		x
Solitary confinement/ segregation	x	x	x	x	x				
Fixation		x					x		
Prisoners' co-responsibility body						x			x
Common rooms					x				
Equipment of the cells	x	x		x	x				
Cell size	x		x						x
Prison rules			x					x	x
Staff shortages	x								
Security measures, documentation			x			x		x	
Sight guards							x	x	
Consulting hours of the prison governor					x				

5.1.1 Cologne prison

The Joint Commission for the Prevention of Torture visited Cologne prison on 25 January 2012. Cologne prison is responsible for the execution of prison sentences imposed on male criminal convicts for up to four years, and on female criminal convicts for up to three years. It is furthermore responsible for female and male remand detainees. The responsibility also covers juvenile criminal and remand detainees. The capacity was 1,171 places. The prison was occupied by 1,109 inmates at the time of the visit (of whom 321 were women).

The Commission particularly inspected the security area, the penal detention wing with sanitary facilities, specially-secured cells containing no dangerous objects and the free-time yards. It held discussions with officers, and with the chaplain, as well as with several inmates of various departments (including inmates in the security area) and with members of the prisoners' co-responsibility body. Furthermore, it inspected files of several inmates who were accommodated in the security area at the time of the inspection.

Positive finding

The prisoners' co-responsibility body made positive comments with regard to the good relationship particularly with the head of department, by whom the inmates feel that they are taken seriously, as they are by the prison governor and the heads of department.

Recommendations by the Joint Commission and the reaction of the Ministry of Justice of the Land North Rhine-Westphalia

When inspecting the security area, the Joint Commission became aware of an inmate as a result of loud shouting who, according to the prison governor, was in solitary confinement because of his unpredictable, aggressive conduct towards officers and was being accommodated in alternating prisons of the *Land* North Rhine-Westphalia.¹⁶

The Commission spoke with the inmate. Because of his conduct showing major psychological peculiarities, more information was requested from the prison doctor. The latter stated that the inmate had been visited by a psychiatrist one week previously. The psychiatrist had diagnosed a schizophrenic disorder. It was not possible to provide any further details as to this diagnosis. According to the prison doctor, no further treatment measures were currently indicated. The inmate was said not to be cooperating. He showed this in particular in his lack of reliability when it came to taking his medicines. The Commission found the assessment

¹⁶ Cf. Annual Report 2010/2011, loc. cit., pp. 52-53.

of the prison doctor unconvincing. It appears to be questionable whether understanding for the **necessity to undergo therapy** and a willingness to cooperate can develop if no treatment is given, and under conditions of solitary confinement. The Commission hence advised that it should be examined whether the inmate could be transferred to a psychiatric facility in order to increase his compliance. Treatment of the inmate was all the more important since the prison had stated that his release was scheduled for as early as September 2012. However, proceedings were still pending and the prison was expecting him to be imprisoned for an additional period of approximately nine months.

Reaction: The criminal convict had been transferred to Aachen prison on 15 February 2012. After a suicide attempt on 13 March 2012, he had been transferred to Fröndenberg prison hospital, from where he had been released to a hospital in Cologne on 23 March 2012. Detention had been interrupted because of unfitness for detention. No suicidal intentions had been evident during the entire time of his detention. It was planned to accommodate him in Essen Land Clinic on 19 March 2012, where an expert report could be carried out as to the question of criminal liability and at the same time the possibility could be examined of committing him in accordance with section 63 of the Criminal Code (StGB).

The Joint Commission requested detailed information on the circumstances of the release and the further development, particularly with regard to the planned drafting of an expert report on the question of criminal liability and the examination of committal to a psychiatric hospital in accordance with section 63 of the Criminal Code. Furthermore, detailed information was requested on the preparations that had been made for release.

Reaction: An interruption of execution of prison sentence in accordance with section 455 of the Code of Criminal Procedure (StPO) until 22 March 2013 had been obtained from Cologne public prosecution office. Against the background of the existing unfitness for detention, the planned drafting of an expert report on the question of criminal liability, as well as the examination of committal to a psychiatric hospital, could not be implemented at present.

The Joint Commission requested to be notified of and informed about the further steps taken as soon as the interruption of execution of prison sentence had been suspended for the person concerned.

Several single cells in Building 15 were doubly occupied. The cells have a floor-space of 8.5 m² and do not have a partitioned toilet area. The hip-high wooden board, which can only be pushed to one side of the toilet area, which is however open on two sides, did not fulfil the purpose of a sight guard; it was possible to look into the toilet area unhindered. There was no protection against noise and smells. According to the prison governor, it was a matter of emergency occupan-

cy because of overcrowding, and the inmates had only been accommodated in these cells for a short time. A female inmate however informed the Joint Commission that she had been living in such a doubly occupied single cell for three months. The cells are unsuited to double occupancy because of the sanitary area and because they are too small. This situation was further exacerbated by the short out-of-cell time. It was strongly recommended to promptly cease the double occupancy of these cells since the human dignity of the women accommodated was not adequately protected.

Reaction: The occupancy situation in the women's prisons of the Land North Rhine-Westphalia was said to be currently tense. It was not always possible to avoid the establishment of cramped joint accommodation. However, attempts were made on the spot to keep cramped joint accommodation as short as possible. Because of the large number of drug addicts and women who were at risk of suicide as a result of withdrawal, joint accommodation could not be entirely avoided because of the ordering of special security measures which this entailed. Moreover, it was currently being examined to create additional accommodation possibilities. In order to ensure a sufficient sight guard in the toilet area, it was planned to attach curtains in place of the screens that were still in use.

The Joint Commission pointed out that curtains were by no means adequate, as emerges from the order of the Federal Constitutional Court of 22 February 2011.¹⁷ The accommodation of two criminal convicts under the conditions described constitutes a violation of human dignity and is not acceptable even for a brief period. A curtain only provides an optical sight guard and is not suited to prevent noise and smell.

Reaction: The occupancy level of the closed women's section had increased considerably in the first half of 2012. Since it had not been possible within this brief period to do justice to developments in occupancy by creating additional detention places, the reallocation of the accommodation that was available, which had so far been used for the men's section and was currently no longer needed for this purpose, had remained the only possibility. It was planned for the beginning of 2013 to make available 49 additional detention places for female inmates in Building 10. Moreover, it was being considered to use a further detention building with approximately 60 detention places for the purposes of women's detention in the medium term once the ongoing basic repair work had been completed. These measures would enable the prison to resolve the problem of cramped joint accommodation (double occupancy of solitary confinement cells) in the foreseeable future. The prison was actively asking for inmates' consent to cramped joint accommodation.

¹⁷ Cf. Federal Constitutional Court (*BVerfG*), order of 22 February 2011, 1 BvR 409/09.

Many inmates were in fact said to prefer this despite the constrained space. It had so far been possible to accommodate all inmates who explicitly so requested singly.

The Joint Commission requested to be told as soon as the 49 new detention places have been set up.

The building structure of Cologne prison, which was opened in 1969, is in urgent need of repair and particularly completely decayed in Building 15. The floor of Building 15, which is fitted with linoleum, has many holes, the plaster is crumbling from the walls in some places, and many of the doorframes are damaged. The prison is making visible efforts to compensate a little for these striking constructional shortcomings through increased cleanliness, albeit this is ultimately doomed to failure. Buildings 17/1 to 3 have already been renovated. The cells are comfortable and friendly, in particular also the kitchen and common rooms. The spatial situation and the longer out-of-cell time evidently promote a relaxed atmosphere and encourage positive contacts between officers and inmates. The prison governor said that it was planned to bring the buildings that had not yet been renovated in line with this standard as soon as possible.

Reaction: The constructional state of the prison, which had been in operation for more than 40 years, was in need of urgent repair in many respects. The total volume of the necessary repair work was currently being calculated, for which specialist external planners were being consulted. It was also being investigated here whether, instead of simply repairing the buildings, it might be more economical to demolish them and successively re-build them. The result of this comprehensive examination procedure would be available in a few months' time. Defects that were merely optical in nature would be remedied in the customary decoration work through the funds and staff that were available to Cologne prison.

There is only one-and-a-half hours' out-of-cell time three times per week in Building 15. There is out-of-cell time three times per day in Building 17/1 and 17/3, but this is always at mealtimes and only for 45 minutes each, during which time the inmates eat their meals. There is only out-of-cell time twice per day for 45 minutes each on Fridays and at the weekend. It emerges from the documents which have been provided that no distinction is made between criminal and remand detainees among the male inmates, but that there are standard out-of-cell times for all inmates. The statement by the Ministry of Justice, by contrast, indicates that no out-of-cell time was planned. Because of the short out-of-cell time in the penal detention wings for women, they spend a very great deal of time in their cells. Moreover, during out-of-cell time in Building 15 there is currently neither a common room nor a shared kitchen available. Members of the prisoners' co-responsibility body also complained about the short out-of-cell time and stated that this meant they were constantly "sitting round in the cells". The ar-

rangement of the different out-of-cell time, which hence placed the women at a disadvantage given that they are generally considered to pose less of a security risk, is a cause for concern.

The Joint Commission suggests to regulate the out-of-cell time clearly and comprehensively in the different buildings. Furthermore, in the view of the Commission, the out-of-cell time is too short in total. The locking up of inmates together that is in operation cannot compensate for this shortcoming. Only an adequate opportunity for meeting within the group under supervision complies with the preconditions for successfully-practiced detention in accommodation groups.

Reaction: There was no provision for out-of-cell time for male remand detainees and criminal convicts, and there were no plans for this in future. The staffing situation in the women's section in detention building 15 did not permit longer out-of-cell times, particularly if one took into account that 77% of the women were drug addicts. Locking up inmates together and the possibility to take part in leisure groups was offered in addition to out-of-cell time. The out-of-cell times in detention buildings 15, 17/1 and 17/3 differed for organisational reasons since the staff requirement was different in each case.

The Joint Commission stressed once more that the resocialisation of inmates could ultimately only be successful if they had a social learning environment at their disposal during the deprivation of liberty. This includes both treatment and sensible leisure groups, as well as out-of-cell time accompanied by staff, that also allows as broad a spectrum of encounters with people as possible. The Commission requested a repeated examination of whether it was also possible to offer this important learning environment to the women accommodated in detention building 15.

Suitable treatment should also be offered to the male criminal convicts which meets the standards of section 143 subsection (2) of the Prison Act.

Reaction: The staffing situation did not permit longer out-of-cell time. Out-of-cell time had been offered to adolescent remand detainees and criminal convicts in detention building 9 since February 2012 from Monday to Friday from 6 p.m. to 7 p.m. With male criminal convicts, moreover, the constructional circumstances in the prison and the staffing situation did not permit accommodation group concepts.

The Joint Commission pointed out that it had already stated in its report of 8 March 2012 regarding the visit to Cologne prison that the out-of-cell time was too short all in all. As has already been stated, locking up inmates together is unsuitable as a resocialisation measure. What is more, staff shortages may not be used as a permanent reason to refuse to provide resocialisation measures.

5.1.2 Celle prison

The Joint Commission visited Celle prison on 2 February 2012. The main facility of Celle prison that was inspected by the Joint Commission is responsible for male adults serving prison sentences over 14 years, life imprisonment and preventive detention.

The Joint Commission inspected the penal detention wing with its sanitary area, the security area with a visiting room, the department for preventive detention, the specially-secured cell containing no dangerous objects, common rooms and free-time yards. The Commission spoke with the prison governor and the deputy prison governor, as well as with other staff members of various departments. The Commission also spoke with several inmates, including two in preventive detention, and with all inmates who were in solitary confinement, as well as with the members of the prisoners' co-responsibility body. The facility had a capacity of 207 places and was occupied with 183 inmates at the time of the inspection visit, including 22 in preventive detention. Four inmates were in solitary confinement on the day of the visit.

Positive findings

Celle prison only uses fixation in very rare cases. No fixation took place in 2010 and 2011. The documentation handed to the Joint Commission, furthermore, permits one to recognise that the specially-secured cells containing no dangerous objects were used only rarely (a total of 15 days in 2010 and 2011). Cellular confinement was only rarely used (according to the documents, four times in the past three years).

What was noticeable was the cleanliness and comfort of Celle prison. The good atmosphere between the inmates and the staff should also be stressed, which was praised by the inmates. The food was also positively assessed by the inmates.

Recommendations by the Joint Commission and the reaction of the Lower Saxony Ministry of Justice

The Joint Commission inspected the security wing and talked with the four inmates accommodated there in **solitary confinement**. The fact that an inmate had been held and continues to be accommodated in solitary confinement for 15 years, and another for 16 years, appears to be extraordinarily serious, and caused great concern among the members of the Commission:

The **inmate who was found in solitary confinement** has been uninterruptedly separated in accordance with section 89 of the Prison Act since 1996 as a result of massive sexual violence against a female officer. The incident took place when the inmate was serving time in Celle Salinenmoor prison, which was still an in-

dependent facility at that time. The Commission cannot understand why the inmate was not transferred to another Federal Land after this serious attack.

According to the psychological service, discussions between a female psychologist and the inmate have been taking place at wide intervals for a certain amount of time. As emerges from the psychiatric expert report of 20 September 2011 on the inmate in question, it had to be presumed that the person concerned had a "mixed personality disorder with schizoid and above all dissocial characteristics, as well as in particular sexual sadism". The "danger emanating from him targets women in particular". The prison governor added to this finding that the inmate was still dangerous, something also made clear by his sexual fantasies. The psychiatric expert stated "that general segregation from female officers must be guaranteed". Against this background, the Commission is convinced that it is not acceptable that the inmate in question was assigned a female psychologist to talk with. According to the officers accompanying the Commission, the inmate takes part neither in leisure activities nor in work or exercise with co-inmates. The Joint Commission considers the very long accommodation in solitary confinement to be objectionable since a change in the personality of the person concerned is not ruled out with such an incisive measure as prolonged solitary confinement.

Reaction: *The inmate in question had been accommodated in the security wing of Celle prison since 26 February 1996. In the context of the continuation of the prison plan, a lower security level had been applied since 1998. He had undertaken regular employment in a work cell of the security wing since 2003. He made sporadic use of the opportunities to spend his leisure time in a cell, also together with another inmate, cooking with him, going for exercise and doing sport. The inmate had also been subjected to repeated external assessments. The assessment of 29 August 2011 had formed the basis for the most recent continuation of the prison plan. Consequently, accommodation of the inmate in the normal prison regime had also not been justifiable at the present time. In particular, contact with women had entailed considerable risks because of the psychological and psychiatric assessments.*

The supervisory authority did not share the Commission's assessment as to the female psychologist. Professional management of inmates and persons in preventive detention was characterised by providing the right kind of therapy. The therapeutic individual appointments with the female prison psychologist had so far been the only treatment measure which the inmate had agreed to undergo. The partition glass had been used during the talks, so that there could be no risk to the psychologist. The governor of Celle prison had nonetheless taken up the recommendation made by the Joint Commission, and had now entrusted a male psychologist with

this task. Whether it would be possible to establish a patient-therapist relationship however remained questionable at the present time.

Celle prison and Salinenmoor prison had been independent facilities at the time in question and linked in neither organisational nor staffing terms. Proper, professional, neutral management of the inmate had been and continued to be guaranteed at all times. The danger emanating from him had been effectively countered by transferring him from Salinenmoor prison to Celle prison. The danger for female officers emanating from the inmate would not have been any different in a prison in another Federal Land. The supervisory authority was therefore unable to share the Commission's assessment.

According to the information available to the Joint Commission, **a former inmate** of Celle prison **who has already been released** was in solitary confinement for 15 years. The Commission inspected the inmate's personal file.

The file showed that the former criminal convict had been placed in solitary confinement in the security wing of Celle prison in 1996. It was not until 11 December 2008 that the Lower Saxony Ministry of Justice stated that an assessment of the question of the continuation of solitary confinement was intended. The inmate was therefore held in solitary confinement for twelve years before his continuing dangerousness was subjected to an expert assessment. The file said nothing about why an expert was not consulted until after twelve years' solitary confinement in order to examine the need to continue his confinement.

The inmate had been in detention since 1979 with brief interruptions, almost 15 years of which had been spent in solitary confinement. On 3 May 2011, he was transferred into the normal prison regime in Rosdorf prison to prepare for his release. His release was scheduled for 22 November 2011, so that there were only roughly six-and-a-half months to prepare for it. It is not possible to suitably prepare for release in this short period, particularly with long-serving convicts and inmates who have been separated for longer periods.

It would also not have been possible to build up trust with a member of the psychological service in this short period, and thus to resolve the causes of the offence. The Joint Commission is aware that it was also not possible to resolve the causes of the offence in Celle prison because of the lack of willingness on the part of the inmate to cooperate. Nonetheless, it should be taken into account that the particular circumstances of his prolonged solitary confinement made it difficult to develop a trusting relationship with the officers around him, which would have been a precondition for intensive treatment.

It could be seen from these documents that Rosdorf prison has made efforts with regard to preparing inmates for a life in liberty in the short time available (includ-

ing by granting accompanied short leave under escort, a range of sports and a computer course). The Joint Commission appreciated that short leave under escort could only be provided when accompanied by two officers, given the seriousness of the crime, the criminal record and the long period in detention. In particular, however, the time that was available to Rosdorf prison was too short as a testing time for a more extensive, gradual opening of the prison regime to the outside, without which careful preparation for release is not possible.

A total of eleven persons were in **solitary confinement** in Celle prison in 2010 and 2011, including the two cases that were described. These included seven inmates from Celle main prison, two from the Salinenmoor department and two more from other prisons. Because of these numbers, the Commission has considerable doubts as to whether the measure of solitary confinement in Celle prison, as also recommended by the Council of Europe, is only applied in very special exceptional cases¹⁸, and whether all possible alternatives have been examined in the preceding period. "In view of the gravity of the incursion, a duration of more than four weeks for the individual measure should be the exception".¹⁹

Persons in preventive detention were in a separate department in solitary confinement cells and accommodated in a very narrow area with a floor-space of only 6.7 m². The layout of the cells is also very impractical. In order for instance to be able to use the television, the inmates needed to move the furniture (table and chair). There was no space on the walls to attach personal items such as pictures or a small board. The sanitary facilities of the cells were also too cramped. The spatial constraints were also complained about by several inmates. The persons in preventive detention will be transferred to Rosdorf prison in May 2013, where the spatial conditions are said to be much better. According to the supervisory authority, the distance principle will be respected there by generous spatial planning. However, the very small cells described in Celle prison should no longer be occupied at all in this form by persons in preventive detention after the move.

5.1.3 Fuhlsbüttel prison in Hamburg

The Joint Commission visited Fuhlsbüttel prison in Hamburg on 1 March 2012. The prison is responsible for confining male criminal convicts who have received a prison sentence of more than three years. It is furthermore responsible – if detention is ordered on a person who is already in detention – for male criminal convicts who have received a prison sentence of more than three years and for male inmates in special cases with the consent of the judicial authority/prison

¹⁸ Cf. *Freiheitsentzug. Die Empfehlungen des Europarates. Europäische Strafvollzugsgrundsätze* 2006. Published by Germany, Austria and Switzerland, Forum Verlag Godesberg, p. 22 et seqq.

¹⁹ Arloth, Frank, *StVollzG*, 3rd ed. 2011, section 89 no. 3.

office. The facility is a prison which a panoptical structure. Only one wing is currently in use. It had a capacity of 299 places at the time of the visit. The prison was occupied with 247 inmates. The Commission inspected the security area (solitary confinement), the arrivals department, various penal detention wings with sanitary facilities, specially-secured cells containing no dangerous objects, the visiting area, as well as free-time yards. It spoke with the prison governor and his representative, as well as with other officers of the general prison service. It spoke with the members of the prisoners' co-responsibility body and with all the inmates who were accommodated in the security area at the time of the inspection, as well as inspecting their files.

Positive findings

The **internal differentiation within the prison regime** in accordance with various (a total of three) accommodation groups should be commended.²⁰ When a convict starts his/her detention, after being received in the arrivals department he/she would initially be transferred to one of the "basic wings". It was discussed at six-monthly intervals in the prison planning whether the inmate was effectively contributing towards his/her treatment and whether a transfer to the next higher wing was indicated. At the same time, however, the specific requirements made of the inmate as to the objective of enforcement of sentence would also increase. This procedure was said to create an incentive to behave according to the rules. At the last stage, the inmates were given a much larger cell by combining two single cells (approx. 16 to 17 m²), which they could furnish and arrange individually. What is more, this group was given longer out-of-cell time and exercise at the weekend. The system also permitted demotions. This was obligatory in case of serious misconduct which was prosecuted by disciplinary or criminal provisions. As a rule, the length of stay in the basic wing was six months, and nine months in the development wing (of which three months on probation) and on the probation level the stay was open-ended as a matter of principle and dependent on the conduct of the inmate (of which three months as a probationary period). There were no differences as to the scheduling of the day between the three levels (basis-development-probation): For instance, the cell doors were open from Monday to Friday from 6:00 to 7:00 a.m., from 11:00 to 12:30 a.m., as well as from 5:30 to 6:30 p.m. The vast majority of the recreation that was offered , and the visiting times, took place during these out-of-cell times, during which food was also distributed and it was possible to take a shower.

²⁰ The security wing (for inmates who are to be accommodated separately), the wing for young inmates, as well as the wing for persons in preventive detention are excepted from this.

The Commission welcomes the fact that all the **windows** in the probation group had a large unguarded glass area, allowing plenty of light to enter.

Recommendations of the Joint Commission and the reaction of the Authority for Justice and Equality, Hamburg

When inspecting the security areas, the Joint Commission became aware of an inmate who, according to the prison governor, had been in **solitary confinement** for five months because of his state of health and of the very high risk of self-injury by his taking up drugs once again. The Commission spoke with the inmate. Because of his highly abnormal psychological conduct, a request was made to the prison governor for detailed information from the files. The governor stated that the inmate had been diagnosed as unfit for detention by the prison psychiatrist on 19 December 2011 and that the prison had unsuccessfully applied for an external report on the fitness for detention of the inmate from Stade public prosecution office.

The Commission was unconvinced by the position of the public prosecution office, given that the inmate's condition can hardly be stabilised under the conditions of solitary confinement without providing treatment for his years of drug problems, as well as the associated psychological and organic consequences. The Commission hence urgently recommended to examine fitness for detention and to transfer the inmate to a psychiatric facility in order to promote his health. Treatment of the inmate's current state was all the more important, given that his sentence was to end on 1 September 2014, and that he would have to be released on this date at the latest.

Reaction: The inmate continued to be accommodated in the security wing since, were he to be transferred back to a normal wing, it still had to be presumed that he would consume drugs or medicines once more.

Relaxations of the prison regime had however been introduced for the inmate and additional daily care by officers of the prison had been largely ensured. Furthermore, repeated talks had taken place between the prison psychologist, the chaplain, the head of the department, the prison management and the prison governor in order to improve the conditions of the accommodation. Since the end of March, the inmate was accompanied on a daily basis to enable him to exercise outdoors at all. He had been offered a work therapy activity in the wing since mid-April.

A transfer to a psychiatric department had however been turned down by the prison governor in the meantime because of his positive attitude towards taking the medicines, and a renewed examination of fitness for detention had been refused by the public prosecution office.

A postponement of sentence for implementation of residential therapy in accordance with section 35 of the Narcotics Act (Betäubungsmittelgesetz – BtMG)

could not take place until 23 July 2012 at the earliest. The inmate was motivated and already had prospects of obtaining a therapy place.

On the basis of the information which the prison had provided, the Joint Commission shared the view that it was not possible to consider transferring him back to a normal wing at present since the anticipated narcotics abuse would still put the inmate's life in danger because of the existing acute health damage. However, particularly because of this highly-serious danger, it did not consider the treatment plan that had been outlined to be convincing, and was concerned as to whether this solution would turn out to be right and beneficial to the inmate. The immediate implementation of in-patient therapy in accordance with section 35 of the Narcotics Act straight from solitary confinement tended to pose a risk that the inmate would not be able to resist the temptations that unfortunately frequently arise in an external therapy facility, that is to quickly come into contact with drugs once more. The Commission would have welcomed this being proceeded by a measure to motivate him to undergo therapy within the prison as against immediate participation in residential, external therapy, in order to guarantee sensible, sustainable preparation for the therapy. The supervisory authority however informed the Commission by letter dated 22 August 2012 that the inmate had been released on 24 July 2012.

The "**security area**" in Fuhlsbüttel prison has 21 cells, four of which were occupied at the time of the visit. Solitary confinement and cellular confinement are executed in the security area. In doing so, a distinction is made between three types of cell which are graded in accordance with various security levels: Observation rooms only differ from normal cells by virtue of the fact that a surveillance camera is installed, that there is a squat toilet and that all items are removed (apart from the bed). The "moderate security cell" differs from the "serious security cell" in the possibility of fixation and the type of clothing for the inmate who is accommodated there.

The various rooms have been used as follows in the last two years:

	2010	2011
Observation room	13	16
Moderate security cell	2	5
Serious security cell	-	2

Metal handcuffs and footcuffs were used as a **fixation device**. This set of tools is not acceptable since excited persons in particular may undergo serious injuries. The Commission recommended the use of a belt system, as is now customary in most prisons and in psychiatric clinics. What is more, the fixed person should

always be directly supervised (direct supervision by an officer). According to the prison governor, the security area was to be completely modernised in the summer of 2012 and the old metal fixation devices replaced by a bandage system.

***Reaction:** With the exception of Fuhlsbüttel prison, the specially-secured cells (with fixation beds) had been equipped with belt systems in all Hamburg's prisons. It was possible to use bandage fixation equipment at any time, although additional metal cuffs and leather belts were available in a small number of areas for initial deployment in addition to the belt system. When the new security wing was opened in Fuhlsbüttel prison – planned for the autumn of 2012 – the belt system would be introduced there too. Nonetheless, the use of metal binding instruments would not be done away with altogether, but metal cuffs would remain available for initial deployment so that binding could be carried out as quickly as possible, depending on the individual's state of excitement. Re-cuffing would take place as soon as possible in each case, that is the metal cuffs would be removed immediately as soon as the belt system had been applied.*

It is known that it is necessary to change the clothes of an inmate who needs to be fixed in order to rule out them having items on their person with which they could injure themselves or others. The Commission is however unable to comprehend that only a kind of loin protection is applied to the fixed person as **clothing**. Such handling may be necessary in exceptional cases, but in the conviction of the Commission should not be practiced as a matter of routine. The Commission is convinced that this procedure is indecent and undignified and should hence be discontinued promptly. It would be preferable to examine in each case whether a complete or partial change of clothes is possible into suitable clothing that is provided separately for this purpose. In order to respect the sense of shame, it is necessary to accept the slight delay which such a change of clothes may entail.

***Reaction:** The nature of the implementation of binding had been discussed intensively, particular attention having been paid to the privacy of the person concerned, both within the Hamburg prison system and in the committee of Hamburg Parliament that was responsible for this. Where binding was needed, there was always an exceptional situation. For clarification: In 2012 to the present-day, with a total prison population of roughly 1,700 a total of three inmates had been cuffed in three different prisons. The duration had been between 20 minutes and two hours and 25 minutes. A total of six inmates had had to be cuffed in three out of six prisons in 2011. The duration of the fixation had been between one hour and 10 minutes and a maximum of three hours and 45 minutes. The safety interests both of the person concerned and of the officers, and the sense of shame, had to be equally considered. Undressing the person concerned was considered indispensable in such cases for security reasons. It had to be effectively ruled out that inmates, who as a rule were*

highly suicidal, had access on the cuffing bed to any dangerous items hidden in their own clothing or to dangerous items with which they could do themselves considerable damage. If binding was indispensable, the person to be cuffed was in most cases in such a highly excited state that it was impossible to change their clothes entirely (under and over garment). Particularly in order to respect the sense of shame, therefore, a special undergarment had been provided. Changing into these underpants was also required in terms of the principle of proportionality. Redressing in underpants as widely available on the market would take an amount of time that could not be justified and would considerably delay or possibly prevent the phase of quiet into which the inmate was to be placed through fixation. A short, superficial inspection of the existing underpants was furthermore inadequate to completely rule out the presence of dangerous items.

There were no partitions between the shower areas in the **common shower rooms**. Constructional measures should be applied to the common showers so that the protection of the inmates' privacy is adequately taken care of.

***Reaction:** Since protection against attacks between inmates is of outstanding importance, particularly when shower rooms are used together, constructional changes restricting the view into these rooms had to be examined with particular care.*

All common showers in the normal wing would now be fitted with partitions during the renovation of a wing (A wing) in Fuhlsbüttel prison. These were walls approximately 100 cm high and 85 cm wide which were fitted between the individual shower heads roughly 60 cm above the upper side of the floor. It was planned for partitions to be fitted when future basic repairs of shower areas were carried out in the normal wing at Fuhlsbüttel prison.

5.1.4 Diez prison

The Joint Commission visited Diez prison on 9 May 2012. Diez prison is responsible for the execution of life prison sentences and prison sentences of more than eight years, and also for shorter prison sentences from three years upwards within certain regional limits. Furthermore, the prison is responsible for the execution of preventive detention for Rhineland-Palatinate and the Saarland. The prison also has an open prison department and a social therapy department. The Joint Commission inspected cells that were occupied singly and doubly, sanitary areas, common rooms and cellular confinement cells in various departments. It furthermore inspected the infirmary, in which there were video-monitored cells containing no dangerous objects, as well as the bed with fixation equipment. The social therapy department and the department for preventive detention, the clothing store as well as the admissions area, and the visiting area, were also inspected. During the visit, the Commission had talks with the prison governor, with representatives of the staff council, and with all the inmates who were in

solitary confinement, as well as with several other inmates and the prisoners' co-responsibility body. It inspected the files of several inmates who were accommodated in solitary confinement. The capacity of the prison was 553 places on the visiting day. It was occupied with 487 inmates in the closed section.

Positive findings

The Commission took note of the gratifyingly low number of **fixations** (2010 none, 2011 one, 2012 one so far). It is exemplary that fixation with a belt system takes place on a hospital bed which is located in the prison infirmary. This guarantees that the fixed persons can be provided with medical care. The Joint Commission gained the impression that the atmosphere between the inmates and the officers was relaxed and friendly, which also became clear in talks both with the inmates and with staff. In this context, the Commission welcomed the fact that all the officers in the prison wear **name badges**. The Commission was also pleased that **solitary confinement** is not implemented in a separate area of the prison, but that inmates are able to remain in their cells in the respective wing.

Recommendations of the Joint Commission and the reaction of the Rhineland-Palatinate Ministry of Justice and for Consumer Protection

Because of the panoptic construction, **out-of-cell time** is only implemented in a more modern department which has separate floors. Out-of-cell time is also to be introduced in the other departments, as is also possible in other similar detention facilities.

Reaction: The recommendation had been examined. Out-of-cell time was however not viable in the departments of the prison mentioned since they had open floors which were not separated. General out-of-cell time would entail considerable risks to security and order. It was furthermore not possible to maintain an overview of where each inmate was in departments with up to 130 inmates. The Rhineland-Palatinate Ministry of Justice stated by letter dated 17 December 2012 that implementation was refused.

In accordance with section 143 subsection (2) of the Prison Act, the penal institutions are to be organised in such a manner that inmates can be formed into groups which can be kept under supervision for care and treatment in order to offer inmates a social learning environment. Several hours' locking up of inmates together per day cannot replace detention in accommodation groups. Locking up inmates together is a measure in which inmates are left to their own devices without supervision, and is hence problematic as a resocialisation measure. The Joint Commission hence recommended to set the stage for detention in accommodation groups.

Reaction: Implementation would necessitate considerable conversion measures. After the preventive detention building had been completed, however, department E would be occupied with criminal convicts, and detention in accommodation groups could be implemented there.

The Commission noticed that a large number of inmates were being held in **solitary confinement**. 13 persons were in solitary confinement on the day of the visit, two of whom had been there for more than three months. There were a total of five cases of solitary confinement totalling more than three months in 2011, whilst there were three cases in 2010. According to the prison governor, solitary confinement was ordered amongst other things if an inmate had been violent, in the event of positive urine checks and if an inmate refused to undergo such tests. Inmates stated in interviews that they had the impression that solitary confinement was used by the prison as a disciplinary measure.

The ordering of solitary confinement was to be handled in such a way that the nature and purpose of the measures was also made clear to the inmates. It is also necessary to examine the maintenance of solitary confinement at much shorter intervals than had previously been the case. The prison governor stated that he would take up and examine the latter suggestion. Furthermore, some quite considerable gaps in documentation were revealed when looking through some of the **files** of the inmates who were being held in solitary confinement.

Reaction: The large number of inmates in solitary confinement was caused by the fact that inmates had been separated from the other inmates because of consuming hard drugs or refusing to submit a urine sample. This practice had now been changed. In cases of the use of violence, it was examined whether solitary confinement was to be ordered, and also whether the inmate could be transferred to another prison or department. Furthermore, the maintenance of the measure was examined after one week at most. Shortcomings in the keeping of the files had been remedied.

The **common showers** which were inspected by the Commission did make a very clean, cared-for overall impression. However, the shower areas were not separated from one another with a sight guard.

Reaction: The order had been given to install partitions.

The **furniture** in the cells that were inspected by the Joint Commission did not meet the requirements in some cases and should be replaced: The beds did not have a slatted frame, but only consisted of a board placed into the bed frame on which the mattress was placed. This is unlikely to meet health requirements. Furthermore, the lockers in the cells that were inspected were dented and worn.

Reaction: *The cell furniture was being gradually replaced, and almost all the cells in one department had been equipped with new furniture.*

33 cells were occupied with two inmates on the day of the visit. Some of the **doubly-occupied cells** only had an area of 8.97 m². The Commission considers that such small cells may at most be doubly occupied by way of exception and only for a short period. Inmates must be enabled to spend a considerable part of the day outside this cell, at least during the week, for instance in a workshop. A floor area of at least 6 to 7 m² per accommodated inmate is generally required as the standard in Germany for multiple occupancy.²¹ Human dignity may be affected in the view of the Joint Commission if fewer than 5 m² are available.²²

Reaction: *The principle of single accommodation was said to apply, albeit exceptions were possible on a temporary basis where this was necessary in order to prevent self-injury or suicide and also took place on a voluntary basis on the part of the incoming inmate. Cells had to be equipped accordingly. Joint accommodation was to be documented and examined within one week as to whether it was necessary.*

After a renewed indication from the Joint Commission as to the necessary minimum size also with voluntary double occupancy, the Rhineland-Palatinate Ministry of Justice stated that the remaining instances of joint detention were being successively done away with.

Information sheets for inmates on the Prison Act were available in several languages. The 2004 **prison rules** were however only given to the Joint Commission in German. The prison governor stated that there was also an edition in English. It should also be kept in the main languages spoken by the inmates. Neither the information sheets nor the prison rules were up-to-date.

Reaction: *The information sheets were to be renewed when the new Land Prison Act was introduced. The Joint Commission had been inadvertently given an out-of-date version of the prison rules when it visited. The latest version was from 22 March 2011. It would be translated into the main languages soon.*

5.1.5 Kassel I prison

The Joint Commission visited Kassel I prison on 22 August 2012. Kassel I prison is responsible for the execution of prison sentences of more than 24 months handed down to adult male criminal convicts, as well as for the execution of remand detention to adult male inmates. Short-term sentences are also executed.

²¹ Cf. the indications in the Order of the Federal Constitutional Court of 13 November 2007, 2 BvR 2201/05, JURIS marginal no. 16

²² Cf. Annual Report 2010/2011, loc. cit., pp. 19 et seqq.

The prison had a capacity of 564 places. It was occupied with 445 inmates on the day of the visit. The Joint Commission inspected the penal detention wing with sanitary areas, the remand detention department, the admission wing, the visiting area, the transport department, specially-secured cells containing no dangerous objects, the fixation facility, other segregation rooms, the control centre, the yard area, the waiting area outside the medical dispensary in the medical department and the clothing store. During the visit, the Joint Commission held discussions with the prison governor, with staff members of various departments and with the staff council. The Commission spoke with several inmates, including two who were in solitary confinement at the time of the visit, and with the inmates' interest group. It also inspected the files of those inmates who were being held in solitary confinement.

Positive finding

Solitary confinement is not executed in a separated area of the prison, but the inmates remain in solitary confinement cells in the respective wing. Cellular confinement was not applied.

Recommendations by the Joint Commission and the reaction of the Hesse Ministry of Justice, for Integration and Europe

After **solitary confinement** has been ended, measures should immediately be taken to re-integrate inmates into community life in the prison. In general terms, the Joint Commission proposed to suitably examine the need to maintain solitary confinement at least monthly.²³ Simply reporting to the supervisory authority is inadequate in the view of the Joint Commission. In order to improve the overview of circumstances of detention, special security measures should be recorded in the statistics.

There were 34 instances of accommodation in the **specially-secured cell containing no dangerous objects** in 2011, and 17 so far in 2012. These figures are comparatively high. The special nature of accommodation in the specially-secured cell containing no dangerous objects is accounted for in some Federal *Länder* by all the officers concerned being made aware of which inmates have been in this measure since when.

Reaction: The recommendations of the Joint Commission were being taken into account by Kassel I prison.

²³ Cf. also Arloth, Frank, *StVollzG*, 3rd ed. 2011, section 90 marginal no. 3 with further references; Annual Report 2010/2011, loc. cit., p. 50.

In one of the security cells which were inspected, which was occupied by an inmate of foreign nationality at the time of the visit, there was a slogan with racist content on the wall. It should be particularly ensured when **the cell is handed over** that comments or drawings with an anti-constitutional content or content which is likely to offend or provoke specific groups of inmates are removed.

***Reaction:** The cell in question had now been re-decorated. Cells would be subject to even more intensive checks before being handed over in future.*

It was not possible to inform the Joint Commission of the number of inmates with regard to whom special security measures were ordered on the day of the visit. One inmate was accommodated in the camera-monitored cell although no camera monitoring had been ordered or indeed took place. Cells which had **camera monitoring** facilities should only be used if such monitoring has been ordered. Otherwise, the inmate is unable to ascertain whether or not he/she is actually being monitored by the camera and must therefore constantly assume that he/she is being monitored.

***Reaction:** Kassel I prison shared the reservations of the Joint Commission that a cell which had camera monitoring facilities should only be used if this has indeed been ordered, and would take this into account.*

There is no **out-of-cell time** in Kassel I prison. It was comprehensible that general out-of-cell time entailed security risks because of the construction. Constructional circumstances may however not be used as an argument to continuously deny inmates from this important facility. Furthermore, inmates were already locked up from 3:50 p.m. from Friday to Sunday. Resocialisation of inmates can ultimately only be successful if they are offered a social learning environment while deprived of liberty. This prerequisite is not satisfied in the case of locking up inmates together.

***Reaction:** The term "out-of-cell time" meant in usage at Kassel I prison the opening of a cell for special reasons. Recreation and sport groups took place from Monday to Thursday for two hours each, and there were additional sports offered on Saturdays. Furthermore, there was the possibility of locking up inmates together. In line with the post occupation plan, the prison only had night-shift strength from 4:00 p.m. onwards on Fridays, Saturdays, Sundays and on holidays which fell on weekdays, so that the locking up of the inmates from 3:45 p.m. was indispensable on these days.*

Modern prison regimes should be implemented in care and treatment groups in **detention in accommodation groups** in order to offer inmates a social learning environment.

Reaction: The establishment of detention in accommodation groups was a question of prison design and had nothing whatever to do with aspects of torture or inappropriate treatment. It was furthermore implemented in suitable areas such as social therapy, youth prisons, women's prisons, special treatment wings and in future also in preventive detention. The prison was making efforts to expand its range of treatments with a treatment wing, which was to additionally include an arrangement similar to an accommodation group and to act as a social learning environment to facilitate treatment.

The impression had arisen among **inmates of the Muslim faith** because of a variety of incidents that the prison staff was harassing them because of their faith. For instance, a delivery of sausage for Ramadan had not been inspected on arrival as to its contents, and had then been destroyed on grounds that it had not been kept sufficiently cool. This was evidently not adequately explained to the inmates concerned. The inmates furthermore complained that there was frequently sausage for the evening meal which they were not permitted to eat for religious reasons. They therefore only received the raw fruit and vegetables with bread that was on the menu. There was no replacement for the sausage. In order to avoid the impression of discrimination, steps should be taken in order to create an awareness among the officers in general for dealing with inmates from various cultural backgrounds. It must be ensured that all inmates were treated equally.

Reaction: The prison was making considerable efforts to do justice to the special needs of inmates of Muslim faith. The prison was particularly keen for no victimisation or "harassment" to take place. Various sides, including the advisory prison council, had confirmed that the prison maintained particularly intensive contact with the Imams in a spirit of partnership, and that the Muslim inmates were taken care of in this respect in an exemplary and highly proactive manner. Seven Imams/prayer leaders were now working in the prison: A prayer meeting offered by them took place once per week. The Imams had been attending the religious celebrations for years, which always took place reliably and without any problems, by attending the celebrations. They spoke to and with the inmates and also funded the meals purchased via the prison. The external delivery of food for Ramadan had been a positive exception to the ban on bringing in food in accordance with section 37 subsection 1 sentence 3 of the Hesse Prison Act (HStVollzG). Unlike as agreed with the mosque associations, it had however not been non-perishable sausage that did not need to be kept cool, but one which had to be kept cool the whole time. The refrigeration chain had already been broken by the supplier, so that it was no longer possible to serve the sausage for food hygiene reasons.

The prison is in a poor **state of construction** all in all. Paint and plaster were crumbling from the walls; the facility made a neglected impression in many places and the furniture looked damaged. There were tiles missing in the shower and some of the ventilation pipes were very rusty. The **common showers** were not partitioned.

Reaction: *Shortcomings in the construction of the showers had been immediately remedied. Offers had been consulted for the partitions and rusty ventilation shafts, and the measures had now been commissioned.*

The term "**anti-rampage cell**" was used in the prison. This is not mentioned or defined in the Act. The "anti-rampage cell" which the Joint Commission inspected in D wing, with sanitary fittings of stainless steel, was extremely dirty. The protection of the taps on the washbasins was rusty, a cigarette end and a cotton bud were floating in the toilet. The fittings and the sanitary facilities had not been cleaned; the floor was covered with stains and the furniture was neglected and damaged. It was possible to see the entire toilet through the spy-hole in the door.

Reaction: *Directly after the visit, the cell in question had been cleaned and re-decorated, and the spy-hole in the door had been blacked out so that it was no longer possible to see into the toilet area.*

All **cell windows** in the prison were fitted with fine-meshed bars to prevent articles being thrown out. However, these bars limit the light coming into the cells. The Commission pointed out that other prisons had developed successful remedies for this.²⁴

Reaction: *Frankfurt Higher Regional Court had already decided in 2007 in response to a complaint by inmates that the bars did not reduce the amount of light to such a degree that the inmates were being accommodated in an undignified manner (ref. 3 Ws 191/07 (StVollz), 7a StVK 444/05). In this sense, the solutions from other prisons that had been mentioned did not need to be considered.*

5.1.6 Brandenburg an der Havel prison

The Joint Commission visited Brandenburg an der Havel prison on 28 August 2012. Brandenburg an der Havel prison is responsible for the execution of prison sentences from one year up to and including three years that have been imposed on adult male convicts, as well as remand detention. It has an open prison department, a social therapeutic department and an infirmary. The capacity of the prison was 407 places. It was occupied with 321 inmates on the day of the visit.

²⁴ cf. e.g. Annual Report 2010/2011, loc. cit., p. 19.

The Commission inspected the penal detention wing with sanitary areas, the remand detention department, the arrivals department, the transport department, the visiting area, the yard area, specially-secured cells containing no dangerous objects, the cellular confinement cell, windowless cells, the “addiction-free life” accommodation group, the clothing store and the control centre. The out-patient department and the infirmary were inspected by an external medical expert who was supporting the Commission. The Joint Commission held meetings with the prison governor, with staff members of various departments and with the staff council. The Commission also spoke to several inmates, including an inmate who was in cellular confinement at the time of the visit.

Positive findings

The constructional concept of the prison is generous. The inmates have several attractively-designed yards for their exercise periods. The level of cleanliness in the entire prison is remarkable, particularly given that construction measures are still ongoing. The colour scheme of the interior helps create a pleasant atmosphere.

Recommendations by the Joint Commission and the reaction of Brandenburg Ministry of Justice

The **cell containing no dangerous objects** was considerably over-heated, at a temperature of over 30 degrees. The prison governor stated that it was no longer possible to regulate the heating system because it was so old, and that this room was therefore no longer in use. If accommodation in a specially-secured cell was necessary, he used the infirmary as an alternative, where the psychiatric beds were used. Because inmates wore their normal prison clothing in this cell, the hinges and edges of the windows, which do not close flush with the wall, constitute a considerable danger for suicidal acts. The prison governor stated that he was considering procuring anti-suicide clothing.

In the control centre, the Joint Commission inspected the camera setting of the specially-secured cell and discovered that it was possible to see the entire **toilet area** via the camera. The Commission recommends to partly pixelate the toilet area.

***Reaction:** The specially-secured cell was now no longer being used. A new specially-secured cell was currently being built in the course of the repairs that were being carried out in the prison, and this would comply with the Commission's recommendations, both as to the prevalent temperature and to the construction. In particular, the room would no longer have window hinges or edges, so that there would also no longer be a risk with regard to suicidal acts. The procurement of sui-*

cide-preventing clothing was hence no longer necessary against this background. The room would be likely to be available from January 2013 onwards. The decision to also be able to see into the toilet area with the camera, and hence not to permit any gaps in observation, which inmates might use to commit unobserved suicidal acts, was based on security considerations. Pixelation was hence necessary for the protection of the inmates in the toilet area too. It should also be considered that monitoring with the camera was only carried out if it had been ordered. This was necessary when no other less incisive, equally effective means was available to avert risks.

The Commission was shown a “**settlement cell**”. It was not possible to completely explain to the Commission the prerequisites for its use and the legal foundation. The “settlement cell” is equipped with sanitary facilities made of stainless steel, as well as with furniture which is fixed to the floor: bed, table and chair. The prison governor explained that no special cells were available for the execution of cellular confinement, and hence the settlement cell was also used for this purpose. Terms that are not listed or clearly defined in the Act or in other provisions lead to legal uncertainty among inmates and also among staff, so that a clear context must be created for the use of the cells.

***Reaction:** The legal situation for the use of the settlement cell was unambiguous. A person was accommodated in such a cell after a special security measure had been ordered in the shape of segregation in accordance with section 88 subsection (1) no. 3 of the Prison Act. The measure was only ordered on the basis of this provision after exercise of discretion if an inmate acted in an aggressive manner towards persons or things. As was already made clear by the equipment, it was a less incisive means in comparison to accommodation in the specially-secured cell, and could as such also be necessary in individual cases. The execution of cellular confinement in this cell was also not problematic since section 103 of the Prison Act of the Federation, which was still valid in Brandenburg, only contained statements on the prerequisites for ordering cellular confinement, but not on the execution or characteristics of a cell in which cellular confinement was carried out.*

Modern prison sentences should be implemented in the context of manageable care and treatment in **detention in accommodation groups** in order to offer inmates a social learning environment. The implementation of section 143 subsection (2) of the Prison Act has not yet been completed. The prison governor stated that an expansion of the distinction made on completion of the new detention building in January 2013 would be carried out. There were plans for instance to establish a care group to prepare for release.

Reaction: *The new Prison Act also provided for accommodation in accommodation groups for adult prisons. The prison governors were hence being called upon to draw up plans for their respective prisons.*

The Commission found that there were no regular consulting hours in Brandenburg an der Havel prison in accordance with section 108 of the Prison Act and also that no prisoners' co-responsibility body had been established in accordance with section 160 of the Prison Act. A good **atmosphere** between staff and inmates is promoted amongst other things by opportunities to speak with the prison governor. The prerequisites for this are favourable, particularly in small to medium-sized prisons such as in Brandenburg an der Havel.

Reaction: *The prison governor had been requested in accordance with section 108 subsection (1) sentence 2 of the Prison Act to establish regular consulting hours and to see to it that a prisoners' co-responsibility body was set up.*

The medical expert particularly praised the **central medical care** provided by the prison after inspecting the infirmary and the out-patient department. The Central Medical Care Department, consisting of the infirmary and the out-patient department, was nice and large, clean and beyond reproach in hygienic terms. Additionally, the atmosphere in the department was good and the staff were friendly. The equipment in the facility was of a very high standard, particularly as a result of the clever networking with external surgeries and hospital facilities, something which was particularly advantageous in the operative care sector. A separate B 1 wing with eight beds in Brandenburg an der Havel clinic should be emphasised in this context. This was staffed with supervisory and care staff from the prison. Inmates were taken in here if and as long as their condition required the resources of a specialist hospital. Medical care there was provided by the relevant specialist physicians from the clinic.

The infirmary was able to cater for 22 somatic and eight psychiatric patients in two-bed rooms and single rooms with partitioned off bathrooms, one of which was accessible for persons with disabilities. Furthermore, it had a video-monitored crisis intervention room with anti-vandalism sanitary fittings and a bed with a Segufix belt fixation system.

Moreover, the psychiatric sub-wing had six beds, the patients who were taken in here not being cared for by the prison doctors, but by specialist doctors from the department for psychiatry and psychotherapy of the neighbouring Asklepios Clinic. The infirmary was responsible for taking in inmates from all prisons of the *Land* Brandenburg, where the occupancy situation permitted.

5.1.7 Follow-up visit to Berlin youth prison

The Joint Commission carried out a follow-up visit to Berlin youth prison on 29 August 2012. It had already visited the facility in the previous year on 7 April 2011, when it became aware of large numbers of problems. The repeat visit was now intended particularly to help determine the degree to which the shortcomings that were discovered had been remedied.

The Commission visited the places which it had complained about on its first visit: the penal detention wing, the admissions area, the visiting area of the specialist drugs area, the social therapeutic department, the specially-secured cells containing no dangerous objects, the cellular confinement cells, the sanitary facilities of the remand detention area and the medical department with its waiting area. The Commission spoke with the prison governor and with other officers. It also spoke with the inmates who were in cellular confinement at the time of the visit.

The Joint Commission found that the majority of the recommendations from their previous inspection visit had not yet been implemented.

Recommendations by the Joint Commission and the reaction by Berlin Senate Administration for Justice and Consumer Protection

The **specially-secured cells containing no dangerous objects** were now clean on the occasion of visit and had been fitted with new mattresses. The sanitary facilities were also in good condition.

However, **fixation** is still being carried out using metal handcuffs and footcuffs. The Commission had emphasised in its report of 16 June 2011 that metal handcuffs and footcuffs are not suitable for fixation as a matter of principle because of the inherent risk of injury, and had hence recommended a belt or bandage system to be used in future. The prison governor stated that he would see to it that they were purchased.

***Reaction:** Where binding is necessary within the narrow statutory preconditions, the existing metal cuffs were preferable. They were much wider than the cuffs that were otherwise used. The proposed belt and bandage system hence appeared to be suited to prolonged fixation in the medical context, and was used as a rule if patients were fixed in bed. This was not the means of choice for the normally short fixation of a highly-excited person, especially since there was no bedframe in the specially-secured cells. The health risks were minimised by the use of direct supervision by an officer during the entire duration of the fixation and the medical supervision that was prescribed by law (section 74 subsection (1) of the Berlin Youth Prison Act [Jugendstrafvollzugsgesetz]).*

The Commission contradicted this assessment and put forward its point of view once more.

Large numbers of windows in the penal detention wing were still fitted with additional **sight guards**. These very considerably prevent both daylight and fresh air coming in. They are fitted not only to windows of cells which are located near the outer wall, but also to those which look onto the inner courtyard. The Commission would like to point in this respect to good alternatives which it found in other prisons and which it described in the previous Annual Report.²⁵

Reaction: It was not possible to meet the demand to remove front mesh wires. These were also not "sight guards". This designation suggested that they were intended to restrict the view. This was not the case. They were rather intended to prevent objects, in particular drugs, being pulled into the cells by inmates using angling devices. Such objects were not only passed on near the outside wall. The bars were hence fitted in areas which were regarded as being at particular risk.

The cells in which cellular confinement is executed or inmates are separated were once more very **uncared-for** on the day of the visit. Particularly the area between the window and the bars in front was very dirty. Dirt and dust, as well as stains on the walls and on the floor, made the cell unsuitable for occupancy in this condition.

There were particular objections to the bars that were fixed to the windows. This prevents it opening more than a narrow gap (roughly 2-3 cm at most). This system does not permit adequate **ventilation**, leading to extremely stuffy air in the cellular confinement cells, which the Commission was able to convince itself of in situ. Even if the cellular confinement cells are thoroughly ventilated during exercise, such intensive ventilation is not sufficient. The windows were also very dirty around the gap.

The cellular confinement cells were furthermore made secure beyond the customary bars on the windows by **wire netting**. This is inappropriate since the inmates accommodated here are in any case unable to reach the windows because of the bars.

Reaction: The hygienic shortcomings in the cellular confinement area had been remedied and a cleaning schedule drawn up. The window bars had been converted to allow more fresh air to enter.

The **common showers** still did not have partitions. The prison governor stated that he would examine ways of fitting partitions.

²⁵ Annual Report 2010/2011, loc. cit., p. 19

Reaction: A partition within the common showers had been registered as a constructional measure. There were plans for sight guards, which covered the pubic area, but not the chest and calf area, so that the supervisory staff could still recognise and prevent attacks.

When inspecting the **waiting rooms of the medical department**, the Joint Commission found that these had now been re-decorated and had now also been cleaned. However, the toilet area in the waiting area, which the Commission had already complained about in its report of 16 June 2011, had still not been fitted with a door or another suitable partition. The use of this toilet exposes both the person concerned and persons waiting to an undignified situation.

Reaction: The construction of the outstanding partition of the toilets in the waiting rooms of the medical department had been commissioned. It had furthermore been ordered to only use the two rooms that were criticised as single waiting rooms.

5.1.8 Tonna prison

The Joint Commission visited Tonna prison on 7 November 2012. Tonna prison is responsible for the initial execution of prison sentences of more than five years and for the standard execution of more than two years and six months to life imprisonment for adult male convicts, as well as remand detention for male persons aged from 21. It also had an open prison department.

The Commission inspected a penal detention wing with sanitary areas, the arrivals department, the visiting area, the yard area, the clothing store, specially-secured cells containing no dangerous objects, "settlement cells" and accommodation groups. The Joint Commission had talks with the prison governor, with his staff from various departments, with representatives of the staff council, with representatives of the prisoners' co-responsibility body and with two inmates.

The prison had a capacity of 589 detention places. The facility was occupied with 522 inmates on the day of the visit. Detention places of the closed section can be found in six detention buildings, which can be occupied with a maximum of 90 persons, broken down into accommodation groups of 17 inmates each. Each accommodation group has a large common room with a kitchen and a television.

Since the visit took place very late in the year, no statement from the Thuringian Ministry of Justice had yet been received by the editorial deadline of this report.

Positive findings

Unchanging officers are allocated to the **accommodation groups**. This promotes a good atmosphere between inmates and officers, which was also confirmed in

talks with inmates and representatives of the prisoners' co-responsibility body, who stressed the pleasant atmosphere.

The long **out-of-cell time** is also noteworthy (for instance on working days for non-workers 6:30-6:50 a.m., 11:45-12:30 a.m., 4:00-8:00 p.m.). This enables the inmates to choose for themselves the time when they shower. The showers in the prison are each equipped with a lockable cabin enabling the inmates to shower shielded from the other inmates if they wish to do so for religious or personal reasons.

A project should be stressed which was in the test phase in Tonna prison at the time of the visit. This is an inmates' **communication system** by the name of "multio", which is a combination of television (50 TV stations), telephone and Internet access. Inmates are offered this bundle for 14.95 € per month, and it enables them to call from their cells with telephone numbers which have been checked and approved in advance. E-mails can also be sent to approved addresses, after being checked. The project aims to enable inmates to gain access to pre-approved websites such as that of the Federal Employment Agency and to familiarise them with the Internet.

Finally, the **clean state** of the entire prison was positively noted.

Recommendations by the Joint Commission

The prison has "settlement cells" with furniture that is fixed to the floor and sanitary facilities made of stainless steel. The windows in the "settlement cells" that were inspected on the ground floor of the detention buildings had a **frosted glass pane**. This makes it impossible to see out, as well as preventing daylight coming in. According to the prison governor, the pane had been fitted because the cells on the ground floor are next to a path. Contact between inmates inside and outside was to be prevented.

The Commission takes the view that an inmate must be able to see out. It is recommended to remove the frosted glass pane. The prison governor intends to replace it with a one-way pane.

For the use of the settlement **cells**, the prison governor stated that they were used to implement both special security measures in accordance with section 88 subsection (2) nos. 1 and 3 of the Prison Act, and measures in accordance with section 17 subsection (3) of the Prison Act. Unlike "cellular confinement cells", the use of settlement cells is not governed by the Act. The Commission hence takes the view that particular care must be paid to accommodation in such cells. Particularly because of the lack of a definition in the Act and of the different measures which have to be implemented in this cell, the prerequisites for its use

must be clearly defined. In order to avoid legal uncertainty among inmates and staff, it must be clear which measures were concerned, so that the statutory foundation on which the measure is based is also comprehensible where appropriate. Furthermore, careful documentation of the use of the cells should be ensured since it has differing prerequisites, and hence must be justified by different means.

The Commission found when looking through the files that the forms for **ordering security measures** do not distinguish between segregation in accordance with section 88 subsection (2) no. 3 of the Prison Act and solitary confinement in accordance with section 89 subsection (1) of the same Act.

The **prison rules** for the various groups of inmates are only available in German. They should be available in the languages most commonly spoken by the inmates.

5.1.9 Goldlauter prison

The Joint Commission visited Goldlauter prison on 8 November 2012. Goldlauter prison is responsible for the execution of criminal sentences of up to one year and six months, remand detention on adult, juvenile and young persons and detention pending removal. It has a capacity of 298 places in closed detention, broken down into 150 single and 148 shared cells. There are an additional 22 open detention places available.

The facility was occupied with 296 inmates at the time of the inspection visit, 16 of whom were in the work release building and 24 in the semi-open detention building. Three inmates were in detention pending removal, and 120 were in remand detention. The Joint Commission particularly inspected the department for criminal convicts, for remand detainees, for persons detained pending removal, the open and semi-open prison departments, the admissions area, the "anti-rampage cells" with camera monitoring, the specially-secured cell containing no dangerous objects and the fixation facility.

It held meetings with the prison governor and with officers of the general prison service as well as of the special service. The Commission also spoke with the three inmates who were accommodated in the windowless cells at the time of the visit, including a person detained pending removal, and six more remand detainees and criminal convicts, some of whom were accommodated in shared cells.

Since the visit took place very late in the year, no statement from the Thuringian Ministry of Justice had yet been received by the editorial deadline of this report.

Positive findings

The accommodation of various groups of inmates requires a considerable degree of organisational differentiation. This **differentiation** according to security concerns was implemented in a convincing manner in the view of the Commission. It is gratifying to note that a **prison plan** is drawn up for all inmates after 90 days. In this context, the Commission would like to mention the informative talk with the specialist services. It particularly stresses that a concept to establish a prisoners' co-responsibility body under the special circumstances of a prison for executing relatively short prison sentences was already developed during the discussion. The Joint Commission also favours the **allocation of unchanging staff** to the various accommodation areas, which promotes the development of an atmosphere between inmates and officers based on mutual understanding.

Recommendations of the Joint Commission

In the **shared cells** which the Joint Commission inspected, the **toilet area** is not constructionally separated from the accommodation area, but only by a shower curtain. There is therefore no protection against either noise or smell. The **floor-space** of the shared cells is furthermore only 10.77 m².

The ordering of **special security measures** is separately documented, but the documents do not reveal when these measures were implemented in the "**anti-rampage cells**". The file only mentions "segregation" or "camera surveillance" in general terms. In order to be able to examine the use of the specially-secured cell better, occupancy and the reason why it was ordered should be recorded separately.

According to the prison governor, it was previously not possible to establish a **prisoners' co-responsibility body** because of a lack of interest on the part of the inmates. It is however an important element of the detention arrangements as a body of collective co-responsibility in the execution process with regard to the goal of imprisonment and the approximation principle.

A good atmosphere between staff and inmates is promoted amongst other things by the possibility of also talking to the prison governor. The prerequisites for this are favourable, particularly in a small to medium-sized prison such as Goldlauter. In accordance with section 108 subsection (1) sentence 2 of the Prison Act, the prison governor must hold regular **consulting hours**.

The **common showers** are not fitted with partitions. The installation of partitions between the showers is desirable to protect the inmates' privacy. Partitions which leave the floor between the showers free do not necessarily make the shower room more difficult to monitor.

The **employment rate** among the inmates in Goldlauter prison is comparatively low. According to the prison governor, this is largely because of the lack of companies in the structurally-weak region. Apart from the out-of-cell and exercise times, unemployed inmates are kept locked in their cells. Furthermore, they do not have the effect offered by work of structuring their days, and hence of helping them to become resocialised. Increasing the number of jobs would be desirable.

The **prison rules** are only available in German. They should be available in the languages most commonly understood by the inmates.

The **accommodation of persons detained pending removal in prisons** is debatable as a matter of principle. The Commission tends to believe that separate deportation facilities should be kept to receive them. As it is the only deportation facility in Thuringia, the situation in Goldlauter prison is made particularly problematic because of the principle of separation, given the small number of persons detained pending removal. It emerges from p. 12 of the reply of the Federal Government to a major interpellation on the situation of German facilities for detention pending removal (Bundestag printed paper 17/10596) that 38 persons detained pending removal were accommodated in Thuringia in all of 2010, whilst there were only 36 in 2009. This frequently entails only small numbers of persons detained pending removal being accommodated in the prison, and increases the danger that unstable inmates, as was described above, have to be singly accommodated and placed under surveillance because it is not possible to place them together with a reliable fellow inmate. In times during which only one single person detained pending removal is accommodated in the prison, the principle of separation of necessity and inadvertently leads to the isolation of the inmate.

5.2 Police units of the *Länder*

The Joint Commission carried out inspection visits in seven police units of the *Länder* in 2012. By the editorial deadline of this Annual Report, no visit reports had yet been sent on the visits to the Police Stations at Mannheim-Oststadt, Mannheim-Innenstadt, Heidelberg-Mitte, Heidelberg-Süd (2 and 3 November 2012) and the Berlin City police detention unit (14 December 2012). They will therefore not appear until the Annual Report 2013.

Topic of the recommendation	Police Station 16 Munich	Complementary Services 6 Police Station, Munich
State of construction	x	
Information form	x	x
Complaint against officers	x	
Checklist for detention		x
Fixation		x
Cell occupancy sheet		x
Cell, equipment	x	
Cell, double occupancy		x
Hygiene	x	
Contact (lawyer, doctor)		x
Controls		x
Name badges		x
Sanitary area	x	
Security measures, documentation		x
Direct supervision by an officer		x

Complementary Services 6 Police Station, Police Station 16 and Specialist Criminal Department 11, Munich

The Joint Commission carried out inspection visits in the Complementary Services 6 Police Station, Police Headquarters Station and Police Station 16 in Munich on 26 and 27 April 2012. In this context, the Commission also visited Specialist Criminal Department 11. The Police Station Complementary Services 6 is a detention facility of the police in Munich Police Headquarters primarily tasked with relieving the burden on the Police Stations and combining detention cases in Munich. Police Station 16 is responsible for Munich Main Station and the surrounding traffic routes, and has two detention cells. It spotlights narcotics crimes, alcoholism and illegal migration.

The Joint Commission carried out an unannounced visit at night for the first time. The visit to the Police Station Complementary Services 6 was nonetheless un-

problematic. The Commission was able to speak on the next day with the head of the station and with other officers, as well as with three inmates.

Positive findings

Despite the age of the building, the Police Station Complementary Services 6 left a very good impression in terms of its state of construction and hygiene. The equipment of this facility with mattresses, beddings and replacement clothing in the station is gratifying. The cooperation with the canteen of the Police Headquarters is also welcome, since this ensures that persons being detained can be fed.

Recommendations of the Joint Commission and the reaction of the Bavarian State Ministry of the Interior

Inmates were regularly accommodated in the Police Station Complementary Services 6 in **collection cells** with an occupancy of up to five persons; according to the officers at the station, this was as a rule in line with the inmates' wishes. This presumption is not comprehensible. One inmate voluntarily told a Commission member that he would like to be held singly. He stated that he had not been told that single accommodation was possible.

***Reaction:** The Police Headquarters had now stipulated that reasons for accommodation in collection cells had to be documented in writing (committal form).*

In the three-person cells inspected by the Joint Commission in the Police Station Complementary Services 6, the **toilet** was inadequately separated from the rest of the cell by a low wooden partition.

***Reaction:** The existing sight guard would be examined by the structural engineering office and changed. Until then, these cells would only be occupied with one person where possible.*

Police Station Complementary Services 6 had a "security cell" which was used for rampaging or shouting inmates. This cell consisted of a stretcher with **fixation rings** and an in-ground toilet. In accordance with the figures that were provided, fixation only takes place once or twice per year. The fixation of the inmates in the cell with handcuffs is however not acceptable under any circumstances. Furthermore, according to the officers on duty, no direct supervision by an officer was ordered in the event of fixation, but the cell was checked about every 15 minutes. Constant observation via direct supervision by an officer is absolutely necessary when fixation is carried out. Also with non-fixed persons, the supervisory patrols should be noted in the diary and a detailed list of special incidents should be drawn up, which should be included in the diary at least.

Reaction: In accordance with Article 65 of the Bavarian Police Tasks Act (Polizeiaufgabengesetz), it was permissible to bind persons. In individual cases (e.g. with particularly dangerous or aggressive persons) it was also permissible to bind the legs or even the entire body. This could also be carried out such that the restraining rings available in the security cell were also used. In the rare cases in which this was applied, Munich Police Headquarters ensured the constant observation of persons who were cuffed in this way so that they were permanently monitored for their protection. It was currently also examining the procurement of a system which would further improve the protection of the person who was to be fixed.

When being taken into the detention facility of Complementary Services 6 Police Station, it should be ensured in each case that the inmate has already been given the opportunity to make use of his/her **rights**. This must be subsequently carried out immediately where necessary. One inmate complained of not having been able to contact his lawyer.

Reaction: Persons were notified of their right to contact a lawyer at the latest when they were accepted in the detention facility. Moreover, Police Headquarters was revising an information board that was available in the entrance area of the detention facility, which amongst other things also provided information on this right in several languages.

Name badges should also be introduced in the detention facility, as is the case in some other Federal *Länder*.

Reaction: Officers must identify themselves on request in accordance with Article 6 of the Bavarian Police Tasks Act. Additionally, the letter of the Interior Ministry of 11 April 2000 had regulated the wearing of name badges. There were no objections against wearing name badges in public relations work, for road safety instructors or contact officers and in similar functions in which conflict situations are virtually ruled out. Bavarian police officers did not wear name badges when on guard or on patrol. The area of the detention facility was not exempted from this.

The diary kept in the station contains a column entitled "particular incidents", without defining what these are. The Joint Commission considers there to be a need for a list of specific incidents to be stipulated which are always to be included in the **diary**. This should include for instance patrols (which moreover are documented at Police Station 16, which was also visited). It was also proposed to re-examine introducing an electronic prison record book in order to make it easier to trace the incidents to an inmate.

Reaction: Patrols, other events and other special incidents were properly and comprehensively recorded. The "written" inclusion of the person took place in the

prison record book, special incidents (e.g. dispensing medicines, injuries, suicide attempts, consultation of a doctor, binding, etc.), as well as documentation of the patrols that were carried out, were also documented in writing in a "diary" which was kept parallel to the prison record book. The current draft of the official regulation for the equipment and use of police cells, which was currently to be revised, included an obligation to document special events that were not listed elsewhere.

The **notice on legal appeals** available at Police Station 16 with measures entailing deprivation of liberty in accordance with the Bavarian Police Tasks Act did not contain any indication of the right to consult legal counsel, to a medical examination and to inform relatives or a person enjoying one's confidence. The information sheet for notices in accordance with the Bavarian Police Tasks Act should be supplemented to include the right to access to a lawyer, to have access to a doctor and to inform relatives, and should be provided in the same number of languages as the information sheet in accordance with the Code of Criminal Procedure.

***Reaction:** The recommendation to include additional indications in the form, as well as to provide the form in several languages, and hence to the same degree as the information sheet in accordance with the Code of Criminal Procedure (German and 46 other languages), would be examined.*

The Joint Commission found when inspecting the detention cells in Police Station 16 that the **two-way intercom** in one of the two cells did not work. It was only possible to operate it in the second cell after several attempts. If there was no officer in the corridor of the detention area, there was therefore no way for a person accommodated in this cell to draw attention to themselves.

***Reaction:** The two-way intercom had been repaired immediately after the visit.*

The **constructional and hygienic condition** of the detention cells discovered in Police Station 16 was not acceptable. Both the two cells themselves and the corridor were in a very dirty, unhygienic condition at the time of the visit. The toilets of both cells were very dirty, as were the washbasin outside the detention cells and the floor. The entire detention area smelled strongly of urine, and there was no way of opening windows or any other means of ventilation. In contradistinction to the practice in the detention facility of Police Station Complementary Services 6, Police Station 16 had neither mattresses nor blankets. The wooden beds which were used as stretchers were badly damaged and worn. The officers could look through the bars which replaced the cell door and see the entire cells, so that the accommodated persons could also be observed when using the toilet. It should be examined what constructional measures can be taken to provide a sight guard for the toilet area.

Reaction: Extensive repairs to the cell area had been commissioned immediately after the Commission's visit. Amongst other things, thorough cleaning, minor repairs to the tiles, replacement washbasins in the corridor, new wooden beds and benches, painting, as well as the procurement of new mattresses had been carried out. The implementation of a separate sight guard for the toilet area had not been possible for constructional reasons, but the cell area had been protected adequately against outsiders looking in by adding a central door. There were considerable difficulties when it came to preventing a mobile sight guard of the daily procedure used when it came to issuing, storing and taking it back, should it be needed. Furthermore, it was expected that Police Station 16 would soon be moving out of the premises as a consequence of the conversion/new building of Munich Main Station. As a matter of principle, the WC area in the single detention cells of the Bavarian police could be seen from the spy-hole. The installation of a sight guard was considered to be objectionable for reasons of the risk of self-injury of the inmate, as well as of the self-protection of the supervisory officer.

The Joint Commission concluded from the statement of the Police Headquarters Munich of 27 June 2012 that **pepper spray** was used in the cell on the occasion of two special incidents on 13 April 2010 and on 1 September 2010. The emergency services had had to be called to rinse and clean the eyes in one such case.

Reaction: Pepper spray was a physical aid within the meaning of Article 61 para. 3 of the Bavarian Police Tasks Act. The ingredients of the pepper spray were not volatile, and it did not disperse in the room. Each police officer had to have been demonstrably trained in using the irritant pepper spray and in its handling. Training was also provided in the use of this aid in closed rooms at regular further training events.

5.3 Psychiatric clinics

5.3.1 Ochsenzoll North Asklepios Clinic in Hamburg

The Joint Commission visited the Asklepios Clinic North, Psychiatric-Psychotherapeutic Clinics – Ochsenzoll on 29 February 2012. The Joint Commission was accompanied by an expert for psychiatry and psychotherapy. With more than 1,000 treatment places (593 of which are residential)²⁶, the Asklepios Clinic is one of the largest psychiatric-psychotherapeutic clinics in Germany, and cares for mentally ill people from Hamburg and the area who are in need of treatment. It is an association of a total of seven specialised individual clinics. A total of 578 patients were accommodated as in-patients at the time of the visit.

²⁶ The information below on the number of in-patient treatment places does not include the Clinic for Forensics (placement of offenders with mental disorders in psychiatric institutions).

The Joint Commission inspected the following three wings, and spoke with each assistant medical officer and with the head of the wing:

- clinic for gerontological psychiatry, Building 6, wing 06C: a total of 24 beds, of which 23 occupied
- clinic for acute psychiatry and psychoses, Building 5, – wing 050A – emergency room: a total of 27 beds occupied
- clinic for acute psychiatry and psychoses, Building 5 wing 050B – acute psychiatry: a total of 25 beds occupied

Positive findings

In the three wings which it visited, the Joint Commission welcomed the compliance with the standards and principles for the **staff requirement** in accordance with the Psychiatry and Staff Ordinance (*Psychiatrie- und Personalverordnung*), as well as the friendly furnishing of the **patients' rooms**, each of which had a modern sanitary room with a shower connected to it.

The considerable, various efforts of the head medic and the head nurse in the emergency wing to keep the measure of the fixation of patients as infrequent and as gentle as possible made a highly positive impression on the Commission. The **range of further training within the clinic** for staff on measures for the de-escalation of patients' sensitivities making them aggressive towards others and themselves deserves particular mention. This training programme is intended to contribute towards fixation being dealt with in an extremely sensitive manner. In this curriculum, those attending further training amongst other things are bandaged up in a self-experience module in order to be able to appreciate the fixation situation. Thanks to this measure, the number of occasions on which **fixation** had been used had considerably fallen on the emergency room. The head nurse is of the opinion that fixation should be restricted to the shortest possible period and that it may only take place with suitable medication accompanying the measure since it is otherwise not ethically justifiable. Direct supervision by an officer was a matter of course. The refining of fixation that was as gentle as possible was the goal of the head nurse. Efforts had been made to develop a system guaranteeing optimum protection against injuries.

By closing a door and separating from the remaining wing area, it is possible to accommodate highly-acute, acute and sub-acute patients in the emergency room separately. The sub-acute area has 20 beds. The acute area contains seven beds for acute patients, as well as a supervision area with four fixation beds for highly-acute patients, which can be constantly visually monitored from the adjoining duty room through the large window pane. This spatial separation ensures considerable minimisation of the conflict potential between the various groups of

patients. This concept also aims to thus minimise the number of fixations. The Commission found the concept of **internal differentiation** to be altogether convincing.

It is also worth mentioning the comprehensible **prison rules** that were displayed in the acute psychiatry corridor, as well as the daily and weekly schedule. This helps to make a stay in the clinic transparent and structured.

Recommendations of the Joint Commission and the reaction of the Hamburg Authority for Health and Consumer Protection

The indications of **possibilities to complain** were inadequate in all three wings that were visited. Corresponding information sheets should be made available in all the wings. The patients only had the internal possibility to use opinion cards to submit their concerns to the responsible complaint manager. The respective wings receive regular feedback on the content of the complaints concerning them. The Commission does not consider this to be sufficient by itself.

Reaction: A circular letter to all wings of the specialist departments for psychiatry and psychotherapy of the hospital would ensure that any such indications are displayed visibly in each wing. Distributing them had been less successful in practice in the view of the specialists since these often got lost during accommodation.

During the inspection of the **gerontological psychiatric wing**, the Commission became aware of a patient who was suffering from frontal lobe dementia, who according to the assistant medical officer had been permanently fixed for ten days (with a two-day interruption) because of causing a risk to himself and to others. This took place at the beginning with the consent of his daughter, and later with a court order. There was no constant and direct supervision by an officer. Instead, the patient was checked by the staff on an hourly basis. The Commission spoke to the daughter, who happened to be present. She appeared to be very concerned, and complained of the **permanent fixation** of her father. She went on to state that no physical physiotherapy activities were being carried and that she therefore feared that her father would suffer irreversible muscle loss. The assistant medical officer, as well as the head nurse, largely justified the permanent fixation by stating that, because of his symptoms, the patient had shown extremely aggressive conduct towards the staff and that there was no other way to ensure that he was taken care of. The Commission urgently recommended to examine the question of the need for fixation very frequently. It particularly considers constant supervision of the patient (direct supervision by an officer) to be indispensable. Until the fixation is ceased, the Commission furthermore considered physiotherapeutic exercise to be necessary in order to compensate for the loss of mobility.

Reaction: *The course of the in-patient treatment had been difficult because of fits of rage due to his misjudging situations. At the beginning, it had only been possible to care for the patient with several nursing staff at once since he had frequently kicked and struck out. Because he was no longer able to control his impulses, it could also be presumed that he posed a danger to other patients. It had been necessary to fix the patient; the attempts that had been made to remove the fixation had initially been unsuccessful, also because the medication had not worked. Constant fixation for a period of several days was necessary, and it had not been possible to provide physiotherapy because of the aggressive resistance put up by the patient. Increasing relaxation had now been achieved under a combination therapy, so that it had been possible to do without fixation to an increasing extent. The patient had been mobilised using physiotherapy. In the context of "activating care", and through attempts to structure his day, the patient had taken part as far as he was able in the therapeutic services offered by the wing. It had been possible to release the patient 14 days after the Commission's visit to a department of a care facility that specialised in dementia.*

Fixation in the clinic was as a rule carried out in a supervision area that was specifically intended for this purpose with four fixation beds in the emergency wing – with the exception of the gerontological psychiatric wing.

Roughly 227 instances of fixation had taken place per year on the emergency room in the past three years. The average duration was 14 hours in 2011. With the most frequent reasons there were virtually no differences in the number of self-endangerment and endangerment of others. 5-point fixation was by far the most frequent type of fixation.

In the gerontological psychiatric wing, by contrast, 902 instances of fixation were carried out in 2010, whilst there were 466 in 2011. The average duration was 39 hours. The most frequent reasons were the danger of falling and personal endangerment of others. Bed bars and 3-point fixation were the most frequent types of fixation here. The nature and extent of fixation appeared to the Commission to be extremely high in comparison to the emergency room. Despite the quality committee in fixation that was uniform within the clinic, it therefore appears to depend on the personal handling of the person respectively ordering and/or on the patient structure. The gerontological psychiatric wing should adopt the standards of the emergency room.

Reaction: *There would be a comparison between the standards of the emergency room and gerontological psychiatry. The patients in the two departments however constituted very different clientele, so that the gerontological psychiatry patients and the younger patients had to be accommodated separately. The reasons for fixation in the two areas differed very widely. Whilst in the emergency room in most*

cases the lack of a possibility to reach agreement with patients and the resultant endangerment to themselves and to others led to fixation, fixation in gerontological psychiatry was more frequently indicated by the danger of falling, in order to ensure infusion therapies, etc. What is more, the progress of the diseases was more difficult and laborious as a rule in the field of gerontological psychiatry, also particularly because it was necessary to proceed much more carefully with regard to the necessary medicine therapy.

In order to prevent patients falling out of their beds, patients in the gerontological psychiatric wing were generally protected using 3-point fixation and bed bars. **Floor beds** can considerably reduce injuries caused by falling. Hence, they are a more suitable means than the type of fixation described above, and should be acquired in a greater number.

Reaction: The floor beds which the Commission had requested had been ordered via the procurement department of the clinic and would be delivered soon.

The separate acute area with a maximum of eleven useable beds in the emergency room has a small, spartanically-equipped, windowless hose-shaped **common room**, which was hence unsuited as a recreation room. The time spent by the patients in 050B wing – acute psychiatry is approx. six weeks to four months. In light of this relatively long stay, the **yard area** available was too small. The wing itself also appeared to be very cramped. It has only one group room. Individual therapy took place in a room that was also put to other purposes. The largest room in the wing was the dining room, which also offered a possibility to make tea, but no kitchenette which was open at all times was available for the patients. The Commission recommended improving the spatial situation. This should particularly include the establishment of separate therapy rooms with the appropriate equipment, as well as enlarging and re-designing the yard area.

Reaction: The clinic had provided an assurance that the spatial circumstances that had been mentioned and in some cases complained of would be examined, and in particular that changes would be made on 050B wing. It was not possible to enlarge the garden area on 050B wing for constructional reasons.

Moreover, participation in the "Werdenfelser Weg" project would take place aiming to reduce measures entailing deprivation of liberty and fixation at court level.

The Commission welcomed participation in this project.

5.4 Child and youth welfare facilities

The Joint Commission carried out inspection visits at three facilities for child and youth welfare in 2012.

5.4.1 Schwarzenbruck Pedagogical-therapeutic intensive area

The Joint Commission visited the Schwarzenbruck Pedagogical-therapeutic intensive area on 9 July 2012. The Pedagogical-therapeutic intensive area is a closed youth welfare facility, and is responsible for male juveniles aged between 12 and 16 for whom consent has been given for closed accommodation in accordance with section 1631b of the Civil Code (*Bürgerliches Gesetzbuch – BGB*). It had a capacity of 19 places at the time of the inspection visit, and was fully occupied.

The Commission inspected rooms, sanitary areas, common rooms (including the dining room and kitchen), segregation rooms (“cool-down rooms”), as well as several therapy rooms. It spoke to the head of the facility, with a psychologist and with other pedagogical staff. The Commission also spoke with the group spokespersons of the three closed accommodation groups and the spokesperson of the semi-open group.

Positive findings

The three closed accommodation groups each had an inviting lounge, as well as a well-equipped kitchen with a dining area.

Recommendations of the Joint Commission and the reaction of the Bavarian State Ministry of Labour and Social Affairs, Families and Women

At the time of the visit, the Pedagogical-therapeutic intensive area had three rooms in which juveniles can be separated.

One of the three rooms was now being converted to a kind of **stabilising room** in which, according to the head of the facility, the juveniles were not locked up. Accommodation in this room was intended to prevent accommodation in one of the two segregation rooms.

The rooms which the facility called “cool-down rooms” are used as **segregation rooms**. It is important for pedagogical and psychological reasons to not give these rooms a harmless-sounding name, but to call a spade a spade. The juveniles themselves call these rooms “isocells” and accommodation in such a room was regarded as a punishment with which they were also threatened.

The accommodation of juveniles in segregation rooms should as a matter of principle only take place as a last resort, not for disciplinary reasons, and only for a very short period (up to two hours). This view is also held by the European Committee for the Prevention of Torture. In the initial period, all efforts have to be made to avoid using these rooms. It emerged from the monthly reports on segregation measures to the supervisory authority that juveniles had been accommodated in a segregation room in 19 cases since November 2011. Only in six

cases did the accommodation only last for a few hours (between one and three). The juveniles concerned were held there for considerably longer in all other cases. One juvenile also reported to the Joint Commission that he had had to spend every night in a segregation room over the period of one week.

The segregation rooms are therefore **used regularly**, including for prolonged periods. This contradicts the statement made by the head of the facility.

Reaction: The supervision of the home had already stated at the end of 2011 that there was a need for improvement in the frequency and duration of the use of the segregation rooms, as well as in their design, and that the documentation of the individual cases, as well as improvements, had been initiated. The establishment of the stabilising room and the conversion of the first of the two segregation rooms had been part of the measures that had been initiated. Unlike the situation that was prevalent at the end of 2011, which was documented in the report book, it was possible to state that the segregation room ("cool-down room") was currently being used within the required narrow limits and only as a measure of last resort.

The Commission would like to express its concern that the juveniles were held in the segregation room without continuous **supervision**.

Continuous supervision (direct supervision by an officer) is urgently required so that they may have the uninterrupted possibility to contact a staff member. The juveniles may not be left to their own devices in such an extreme situation. Suicidal acts could not be ruled out because of the construction and the equipment in the rooms. Continuous supervision furthermore ensures that the segregation measure is ended promptly as soon as the juvenile has calmed down. What is more, it is imperative to install an alarm system or a two-way intercom in the segregation rooms. The Joint Commission requests to be informed as soon as such an alarm system has been installed in the segregation rooms since it considers this to be particularly urgent and important. Alcoholised juveniles may not be held in the segregation rooms in the view of the Joint Commission.

Reaction: The urgent recommendation of the Joint Commission to install an alarm system or a two-way intercom would be additionally discussed with the head of the facility by the home supervision in planned evaluation talks. The measure may not be used with juveniles who were under the influence of alcohol or drugs, and at risk of suicide. The extensive work instruction for the implementation of cool-down measures contained clear instructions on this matter.

According to the head of the facility, the juveniles accommodated in the Pedagogical-therapeutic intensive area have the opportunity to submit complaints both to him and to an ombudsman as an external **complaint body**. It however emerged in the talks with the four group spokespersons that none of the juve-

niles were aware of the existence of an external complaint body. The juveniles should be informed when being received in the Pedagogical-therapeutic intensive area of the existence of the ombudsman and of his contact data, for instance by this being posted on the board.

Reaction: *The juveniles in Schwarzenbruck intensive care department for education and therapy were informed, including by being given a postcard, of the possibility to complain to an independent ombudsperson (in particular with regard to violent acts, sexual harassment or sexual abuse), and were actively called upon to report such incidents. All the juveniles were also handed a comprehensive list of rights which had been worked out together with juveniles as part of the facility's participation concept. The juveniles' statement towards the Joint Commission that they knew nothing about the existence of an external complaint body had led to the recommendation of the Joint Commission for instance to make an additional posting on the blackboard and would, with the assistance of the government's home supervision, be passed on to the head of the facility requesting to accordingly implement this and to inform the juveniles several times of the opportunities open to them to make complaints where necessary.*

The juveniles mentioned that their **relationship with some members of staff** was difficult. They felt that some of the staff treated them aggressively, and they said that they were frequently shouted at. One juvenile reported that a member of staff had thrown an article at him during the morning sports festival because he had not been paying attention. All in all, the juveniles had the impression that the staff behaved itself in a manner for which they themselves would be punished.

Reaction: *The staff member who was said to have thrown a flag at the juvenile was a member of the staff of the school (which belonged to the Pedagogical-therapeutic intensive area), and not of the intensive care department for education and therapy itself. The incident would be taken up and dealt with as part of cooperation with the school. Such acts were not acceptable. Just as shouting at the juveniles, this was not part of the conceptual requirements, nor was this what the head of the facility wanted to see happening.*

The Joint Commission noticed how little the juveniles had settled into their rooms. The **rooms** looked uncomfortable and also very untidy. There were virtually no personal items.

Reaction: *The supervisory authority will be glad to take up the information provided by the Joint Commission with regard to the juveniles' relatively impersonal, untidy rooms, in contrast to the appearance of the facility in other respects, as a suggestion for future talks between the government's home supervision and representatives of the facility. The contradiction that had been found could be caused by the problematic starting situation of the juveniles themselves. Further suggestions*

and support for the juveniles in arranging their rooms might be suitable to have an additional positive influence on the therapeutic process.

5.4.2 Gauting girls' home

The Joint Commission visited Gauting girls' home on 28 November 2012. Gauting girls' home is responsible for girls aged from 12 upwards who have rejected or evaded all previous pedagogical or therapeutic measures. The girls' home has a capacity of 42 closed places and was fully-occupied at the time of the inspection visit.

The Commission inspected the closed wing, including rooms, group rooms and the kitchen, the segregation room (time-out room), the therapy room and the inner courtyard. It spoke with the head of the facility, as well as with a male and a female head of department. The Commission furthermore spoke with the staff of the home council. The head of the facility and the head of the trauma group were available to the Commission during the entire visit as contacts.

Since the visit took place very late in the year, no statement from the Bavarian Ministry of Labour and Social Affairs, Families and Women had yet been received by the editorial deadline of this report.

Positive findings

The Commission would like first of all to positively emphasise the evidently **good relationship** between the residents and the staff.

The **accommodation groups** of Gauting girls' home are very cosy and friendly-looking, and thus help create a pleasant atmosphere within the facility. All the common rooms that were inspected were in a fine condition and were very clean. The residents' rooms were sufficiently large, suitably furnished and personally decorated.

The Joint Commission found it particularly positive that group rules, prison rules and a separate information sheet on the rights of the residents are adapted to suit their age group, and that they are friendly, polite and clearly-worded. This shows a respectful tone when dealing with the girls. What is more, all the information on the residents' rights and duties was available at any time. The Commission particularly considers the **list of rights** to be exemplary.

It is furthermore worth mentioning the differentiated **therapy and treatment concept** which was explained by a psychologist, and which the Commission found to be convincing. Cooperation with the psychiatric clinic works well, according the head of the facility.

Recommendations by the Joint Commission

Gauting girls' home has two **segregation rooms** which are referred to as time-out rooms. Only in exceptional cases is it necessary to use both rooms, which is why only one of the two rooms is constantly ready for use. It has a mattress with an elastic sheet and a blanket. The ceiling light is dimmable and daylight enters through the large window. There is no call system, but a member of the facility staff must be uninterruptedly in the adjacent duty room for as long as a girl is accommodated in the segregation room – also possibly over night. It is however not possible to see into the segregation room from the duty room. It should furthermore be noted that the window of the segregation room does not close flush with the wall. These two findings give rise to concern as to whether it is possible at all times to rule out suicidal acts by a girl accommodated there. The Joint Commission recommends that juveniles accommodated in this room during segregation be supervised uninterruptedly via direct supervision by an officer. The presence of a staff member in the adjacent duty room, possibly resting on the stretcher there, is not sufficient.

Some of the **therapists** of Gauting girls' home simultaneously act as head of department. This means a high workload, particularly when it comes to carrying out a dual role, which may cause problems especially in therapeutic terms. Only two special groups have an additional therapist of their own. In the other groups, because of the limited capacities, the therapists can only offer individual therapy sessions at longer intervals. A therapist for instance stated that she could only offer between 15 and up to a maximum of 45 minutes of individual therapy every two weeks. In order to separate the roles of head of department and therapist, and for a larger supply of individual therapy sessions, the Joint Commission recommends to increase the number of therapeutic staff. It should be possible to offer each girl an hour of individual therapy at least once per week.

The juveniles accommodated in Gauting girls' home can turn to the head of the home or the staff of the facility with concerns, but there is no external complaint facility. The Joint Commission recommends establishing an **external complaint body**, for instance in the shape of an ombudsman. Happily, this is already being discussed according to the head of the facility.

5.4.3 Würzburg Clearing Agency

The Joint Commission visited Würzburg Clearing Agency on 29 November 2012. The Clearing Agency is responsible for children and juveniles aged from 10 to 15 with regard to whom a court order has been issued in accordance with section 1631b of the Civil Code. Furthermore, reception in the closed group can take place as a temporary measure in accordance with sections 42 and 43 of Book

Eight of the Social Code. The Clearing Agency has six closed places and was fully-occupied at the time of the inspection visit.

The Commission inspected the closed wing with rooms, sanitary facilities, group rooms and the kitchen, as well as the segregation room (time-out room). It spoke with the head of the facility, with a psychological psychotherapist and an educationalist. The Commission also spoke to three residents. The head of the facility, as well as a staff member of the specialist educational service, were available to the Commission as contacts during the entire visit.

Since the visit took place very late in the year, no statement from the Bavarian Ministry of Labour and Social Affairs, Families and Women had yet been received by the editorial deadline of this report.

Positive findings

The facility makes a very good overall impression:

The **accommodation groups** were very comfortable and friendly, the children and juveniles' rooms were large enough, and were light and suitably furnished.

It is particularly worth mentioning the highly-structured, clear **pedagogical-therapeutic concept**, which the Joint Commission found convincing overall. The Clearing Agency is also adequately staffed. This facilitates treatment that is specific to disorders. The relatively short stay of the children and juveniles, which is between six and eight months, is obviously well used. Cooperation with the psychiatric out-patient department and the psychiatric clinic works very well according to the convincing description of the head.

The Joint Commission considers it to be particularly positive that the **segregation room** is only used for very short periods in each instance (a few minutes), and that the accommodated child or juvenile is under uninterrupted observation. The very size of the room does not permit accommodation for longer periods or indeed over night. It is too small to lie down in.

Recommendations of the Joint Commission

Information on the applicable rules (prison rules, group rules, sanction measures), as well as the rights and duties of the accommodated children and juveniles, should be put down in writing and easy to reach. What is more, they should be worded in a way that is both clear, friendly and polite, as well as suited to children. The children and juveniles accommodated in Würzburg Clearing Agency were aware of the prison rules and possible sanction measures, but they did not have access to them in written form. The Joint Commission would like to refer here to the good example of a list of rights at Gauting girls' home, which is

exemplary because of its age-friendly design, as well as of its friendly, respectful wording.

Würzburg Clearing Agency has an internal complaints system, but there is no **external complaint body** such as an ombudsman. The Joint Commission recommends setting up such a body to which the accommodated children and juveniles can turn at any time.

5.5 Court holding cells

The Joint Commission visited the holding cells of Berlin-Tiergarten Local Court (Moabit Criminal Court) on 14 December 2012. It will be reporting on the outcome of this visit in the Annual Report 2013.

5.6 Subsequent information regarding visits carried out in 2011

The Joint Commission already carried out the inspection visits noted below in 2011. For various reasons, the correspondence between the Joint Commission and the supervisory authorities continued into 2012, so that it is recounted below. The original Report of the Joint Commission on the visits is contained in the Annual Report 2010/2011.

5.6.1 LWL Lippstadt Centre for Forensic Psychiatry

The Joint Commission visited LWL Lippstadt Centre for Forensic Psychiatry on 18 August 2011, accompanied by a psychiatric expert.²⁷ The Commission received further information from patients immediately after the visit. It therefore added to its visit report a request to pass on information on suicides and self-injuries since 2005 and on the patients who had been placed in an “intensive care room” since 2005, as well as on the design of the accommodation. The recommendations of the Joint Commission and the renewed reaction of the Ministry of Health, Equalities, Care and Ageing of the *Land* North Rhine-Westphalia are recounted below:

The statement did not make it clear whether there had been a reaction to the information provided by the Joint Commission regarding **fire protection regulations**. It was only reported that the wardrobes had been removed from the corridors. The Commission asked to be informed as to what had happened with the other items located in the corridors (clothes horses, boxes, etc.).

***Reaction:** The clothes horses and boxes had been removed from the corridors.*

²⁷ Cf. Annual Report 2010/2011, loc. cit., pp. 55 et seqq.

The supervisory authority did not report anything with regard to the reduction of the **length of stay in the arrivals department**. It must furthermore be noted concerning accommodation in the reception wing that the Commission did not primarily complain that the patients do not receive any therapeutic measures in the admission wing, although this would be welcome. The Commission, rather, complained about the general living and accommodation conditions in the arrivals department, such as the constructional and staffing circumstances, which as a rule led to the patients being locked up during the day.

The Commission shares the opinion of the supervisory authority that – as already stated in the initial report – locking up during the day could not be justified simply by referring to staff shortages. The Commission therefore explicitly welcomes the fact that a part of the 2011 clinic budget is to be used to improve the staffing of Building 16.

Reaction: The duration of the stay in accordance with section 126a of the Code of Criminal Procedure could not be influenced by the Ministry of Health, Equalities, Care and Ageing of the Land North Rhine-Westphalia, but depended on the duration of the criminal proceedings. It was only when the court ordered accommodation in accordance with section 63 or 64 of the Criminal Code in the judgment and the clinic was informed of this ruling that the latter could initiate the transfer to a treatment wing. A transfer then took place within a few days as a rule. The report of November 2011 had for instance already described one case in which, of a stay in the admission wing totalling 101 days, 90 days were accounted for by temporary accommodation. This meant that the patient in question had been transferred ten days after the judgment had become known. 90 days were hence taken up by the duration of the criminal proceedings. Because of the responsibility of the public prosecution offices for investigation and of the independence of the courts, the Ministry was hence unable to exert an influence in the sense that a transfer to a treatment wing would take place from four to six weeks after standard detention.

Contrary to the first statement made by the financing entity²⁸, the Commission had in fact encountered a patient who was locked in his room in the admission wing. This also corresponds to the content of the report of the visit drawn up in situ and the situation as it was found. The patient was locked in his room at the time of the inspection visit. It was only when the Commission asked to speak with the patient that the staff opened the door. When talking with the Commission, the patient stated that he had been held in the arrivals department of the LWL Centre for ten days and that he had been locked up in his room during that period apart from breakfast and his twice-daily outdoor exercise. Staff from the arrivals department confirmed this statement to the Commission. The staff fur-

²⁸ cf. Annual Report 2010/11, loc. cit., p. 56.

thermore pointed out that the patient did not conduct himself in a manner posing a danger to others requiring him to be locked up during the day. Rather, amongst other things the constructional circumstances had been the reason for locking him up. It can be deduced from the reaction of the supervisory authority below that the Commission's findings were correct regarding the locked up patient.

Reaction: The reception wing had been designed to offer accommodation in accordance with the Remand Detention Act (Untersuchungshaftvollzugsgesetz), which applies to accommodation in accordance with section 126a of the Code of Criminal Procedure, where this was compatible with accommodation in a psychiatric hospital. Section 10 subsection (3) of the North Rhine-Westphalia Remand Detention Act therefore also applied in principle, and stipulated that it was possible to spend time outside the cells where this was permitted by the spatial, staffing and organisational conditions in the prison. Locking up during the day was hence only justified by way of exception if it was for the above reasons and the measure was proportionate in the individual case.

This was to be affirmed for the case quoted by the Joint Commission: Directly after being committed to temporary accommodation in accordance with section 126a of the Code of Criminal Procedure, the newly-arrived patient had to be first of all examined as to whether he/she posed any danger. Accommodation in accordance with section 126a of the Code of Criminal Procedure was ordered because the persons concerned were suspected of having committed a criminal offence immediately before this because of a mental disorder and that it could be presumed that they posed a danger. The assessment of whether, because of a mental disorder, a patient actually tended towards conduct that posed a danger to others could not be made only ten days later, during which time the person concerned had acted normally. Particularly in the case of temporary accommodation, it was therefore especially also the safety of the staff that had to be taken into consideration. Locking up during the day was hence justified in individual cases where, because of illness or other situations that could not be planned, there was insufficient staff in the wing to guarantee security and if it was not yet possible to assess the patient with regard to the danger which he/she posed.

According to the research carried out by the supervisory authority, it could be presumed in the case at hand that the level of danger could not be assessed because of the very short stay since the court committal, so that it was not only the staffing situation or constructional conditions in the ward that could be seen as being responsible for locking up.

The supervisory authority nonetheless shared the view of the Joint Commission that locking up should not be the rule as soon as a patient was categorised as not posing a danger, and that he or she could as a matter of principle be permitted to

stay outside of the room. Locking up during the day should by no means be implemented in common practice exclusively because of staff shortages. This was however not in fact the case in Lippstadt.

The assessment of the Joint Commission also concurs overall with the statement of the supervisory authority with regard to the **staff shortages** and to the inadequate therapy that was on offer. The Commission presumes that a remedy will be found for this situation as soon as possible.

In order to correct the impression created, the Joint Commission would like to add to the comment by the supervisory authority as to the positive selection of social therapy that an inmate is taken into a social therapy facility as a matter of principle if a disturbance leading to delinquency appears to be in need of treatment, he or she is able to undergo treatment and the treatment available in normal prisons does not appear to be adequate because of the seriousness of the disorder.

5.6.2 Parsberg II district hospital

The Joint Commission visited Parsberg II district hospital on 24 November 2011.²⁹ A forensic-psychiatric expert accompanied the Joint Commission.

It was not possible to include the reaction of the Bavarian Ministry of Labour and Social Affairs, Families and Women in the visit report of the Joint Commission by the editorial deadline of the Annual Report 2010/2011 because of the late visit date. The State Ministry made a comprehensive statement on the recommendations of the Joint Commission in 2012. The visit report of the Joint Commission from 2011 was already printed in the Annual Report 2010/2011. It is put forward once again below for a better understanding of the entire incident. The Commission furthermore received a new letter from the supervisory authority in September 2012 informing it of the current state of implementation of the recommendations.

Recommendations of the Joint Commission and the reaction of the Bavarian Ministry of Labour and Social Affairs, Families and Women

The Joint Commission complained of the inadequate resources available to the **specialist psychotherapeutic-psychological service** of Parsberg II district hospital. The personnel documents showed four full-time posts for psychologists and educationalists. However, only one of these positions was occupied, namely with two part-time psychologists: A half-time post was occupied with a qualified psychologist who was licensed as a psychological psychotherapist and who however exclusively carried out test diagnoses, according to the medical director. The se-

²⁹ Annual Report 2010/2011, loc. cit., pp. 59 et seqq.

cond half-time post was occupied by a psychologist (who is not licensed) who was said to be employed only in out-patient follow-up care, other than when she deputised. Accordingly, there was no psychologist with clinical training in Parsberg II district hospital continually providing psychotherapy to the patients. Test diagnostic tasks do not require any additional clinical training; out-patient follow-up care is carried out by social educationalists in many comparable facilities. The three psychologist/educationalist posts also apparent from the personnel documents were occupied by two educationalists and one theologian. It was not possible to clarify in the talk with the medical director to what degree the medical staff members have psychotherapeutic training.

It should however be particularly stressed that the long-term care service staff in the sociotherapeutic area had a high level of commitment. However, this group of individuals should receive specialist guidance.

treatment concept, it was true that psychologists did not play a suitable role in the psychotherapeutic work in the wings. The clinic employed two part-time psychologists who the medical director exclusively deployed to carry out test diagnoses and in the out-patient department. Doctors, a theologian who had been trained in behavioural therapy, educationalists and social educationalists were responsible for carrying out addiction therapy and psychotherapy work in the wings. One of the two psychologists had been deployed in the medium term with 30 hours per week in in-patient therapy.

It had already been possible to calm down the situation in the wing, which according to the State Ministry was tense and in some cases threatening, and to offer therapy in proper conditions. The therapy team had been expanded since mid-June to include an experienced qualified psychologist from child and youth psychiatry in Regensburg, who supervised the other therapists under youth psychiatric points of view and was establishing the newly-formed diagnostics in the professional group of the psychologists. Moreover, another qualified psychologist had been recruited from 1 October 2012 onwards. Furthermore, the post of an assistant medical officer had been advertised for the Parsberg clinics in order to expand the therapeutic team, and hence to also improve the management and operating structures.

Because of the expansion of the psychotherapy services for psychologists/psychotherapists, 5.5 posts would be needed in future instead of the previous 4.0. The recruitment procedure for one or more additional psychologists was underway. It would be necessary to decide on other staffing measures after the therapy concept had been decided on. Attempts would be made to realise the new structure of the wings and the wing programmes by 2 November 2012.

The **therapeutic services offered** were inadequate, particularly in the reception phase. According to the clinic management, the patients spend an average of 13

weeks in the reception wing. They work once per week in the clinic's own workshop for four hours during this time. They attend activity therapy for approximately half the day on the other weekdays. This is the entirety of the treatment offered during this phase. The Commission considers there to be a need to review this concept since patients' initial motivation should be taken advantage of particularly and intensively.

Moreover, the communications from the medical director and the documents submitted gave the impression that the **therapeutic plan** of Parsberg II district hospital should be brought in line with the latest state of the research. Major research results for effective therapies have been presented in this field in the last 20 years, in particular for the clientele being discussed here.

Reaction: The current treatment concept was orientated towards drug therapy, and also had a considerable pedagogic emphasis. It broke the course of the treatment into four consecutive sections, corresponded to by four wings (A-D) to be gone through in sequence. The advantage of this was the creation of relatively homogeneous groups of patients in the wings (measured by the state of the development of the therapy and the relaxation of regime). The disadvantage was the caesuras in the constancy of relationships necessitated by changing wings.

The treatment concept should be partially refined. A working party had now developed the new therapy concept. Parallel to this, a transfer group had explored the implementation of the new concept in detail. Inspections had already taken place to develop reconstruction measures on the basis of the new therapy concept, and these were also important from a security point of view. Overall, each proposal of the Anti-Torture Commission had been taken into account.

The psychotherapeutic treatment approach would be more at the centre of the therapy concept in future. Psychotherapy was said to take place in the context of a joint, clinic-wide treatment concept spanning professional groups. In order to compile the therapeutic teams in the form intended, further psychological psychotherapists had to be recruited. Each therapy wing should have two therapists, including a psychologist. Furthermore, there was a need for systematic further training courses (preferably for the whole wings).

Each of the three treatment wings had unchanging therapeutic staff, whilst patients changed wings, and were thus assigned to a new therapist three times during the comparatively short duration of their stay. With regard to the constancy of treatment and the concomitant success of the therapy, **changes of therapist** were problematic and are only justifiable in exceptional cases. Changing therapist several times can endanger the success of the therapy and cost valuable time.

Reaction: The previous sequential ordering of the wings had been given up because of the lack of constancy in relationships which it entailed. What had been retained was a reception wing (2A), where all new patients arrive. It was said to serve at the same time as a crisis intervention wing, particularly for patients where the placement of offenders with mental disorders was to be finished. After a short familiarisation and diagnostic phase, the patients were transferred to one of the three therapy wings (2B, 2C, 2D), where as a rule they remained until their release. These parallel wings providing further therapy had a uniform wing concept in principle, but could also form specific foci of treatment.

According to the prison plan, Parsberg II district hospital is a **mixed-sex facility**. However, according to the medical director, there were only a very small number of female patients accommodated there at any one time. Two women were in the clinic on 24 November 2011. The advantages of mixed-sex therapy disappear quickly, and are even reversed, if the quantitative ratio is so massively unequal, as is the case in this facility. Such a ratio of female patients to male ones (roughly 2:50) is problematic in several respects. The question as to the continuation of mixed-sex work in Parsberg should be re-considered once more.

Reaction: Gender-specific treatment for women could not be maintained since the share of female patients had fallen considerably in recent years and would also remain low in future because of the special services offered in Taufkirchen district hospital. What was more, the scattered treatment of a small number of patients had always caused considerable problems in terms of group dynamics in the past. For these reasons, the clinic for young drug addicts was not to take in any more female patients. The neighbouring Clinic for Forensic Psychiatry and Psychotherapy (Parsberg III) spotlighted the treatment of drug-addicted women whose average age was not much higher than that in the drug clinic. Where necessary, female patients who were allocated could be treated here. The programme took the interests of young drug patients into account.

Because of a shortage of staff, there were some considerable delays in **acute medical care** by external physicians. According to the patients, this also applied to cases of acute pain, such as toothache. With acute pain attacks, treatment should take place on the next working day at the latest. There were also complaints of delayed medical care in other cases. One patient reported to the Joint Commission for instance that he had been waiting for two months for an eye-test to check his poor vision.

Reaction: The senior medical officer stated in this regard that acute medical care was, as a matter of principle, initially provided by the doctors in the clinic and primarily by external doctors only when there was an urgent indication. If the therapy that could be provided in the clinic was not sufficient, an appointment

with a consultant was made within the clinic and waited for in less urgent cases. This procedure was in compliance with the guidelines and with the circular letter of the Bavarian Ministry of Labour and Social Affairs, Families and Women of 30 November 2009. Having said that, there were occasional conflicts with patients who wanted external doctors to be consulted more quickly.

The senior medical officer had now discussed the applicable guidelines for consulting external consultants with the medical team and pointed out once more that where there was a medical necessity (e.g. where someone was in acute pain), external doctors should be consulted within a suitable timeframe.

The **group therapy rooms** available were completely inadequate: According to the information provided, only one single **group therapy room** was available. The latter evidently had inadequate resources as to furniture and technical equipment. What is more, the Joint Commission learned that it had rained into the room and that this room could therefore only be used to a restricted degree. The Joint Commission recommended the establishment and appropriate equipment of further group therapy rooms. One group room per wing for roughly 15 patients would be desirable.

***Reaction:** A separate group room and (for ward groups) the common rooms of the wings were available for the implementation of therapeutic groups at the time of the visit by the Joint Commission. In view of the plans to intensify in-patient psychotherapy, it was desirable to have a further separate group room. The possibility of setting up such a room was currently being examined.*

5.6.3 Police Station 11 in Hamburg

The Joint Commission carried out inspection visits in Police Stations 11, 14 and 16 in Hamburg on 31 March 2011.³⁰ On the occasion of the visit to Police Station 11, the Joint Commission inspected 20 files of Hamburg public prosecution office relating to the investigations against officers. The Joint Commission made statements to the Authority for the Interior and Sport with regard to two incidents.

Indications emerge from one of the files that police officers had ordered a reporting party who had been apprehended on suspicion of a narcotics crime, following a physical search, to undress and to walk up and down in front of the officers in the so-called "waddling gait". The public prosecution office had discontinued the investigation proceedings for coercion since no means of coercion within the meaning of section 240 subsection (1) of the Criminal Code had been used, but had left it open as to whether such an order had been given. The Joint Commission requested a statement from the Authority for the Interior and Sport as to

³⁰ Annual Report 2010/2011, loc. cit., pp. 72 et seqq.

whether such conduct on the part of the officers should be considered a considerable violation of dignity and as a disciplinary offence, the questioning of the reporting party had provided major indications of such a suspicion and hence an investigation under disciplinary law was necessary.

The Authority for the Interior and Sport invoked section 15 of the Hamburg Act to Protect the Public Safety and Order (*Hamburgisches Gesetz zum Schutz der öffentlichen Sicherheit und Ordnung*) and the discontinuation order of the public prosecution office as to the powers of the officers to search an individual. It went on to state that the evaluation under service law after discontinuation of the criminal proceedings had not provided any indication of misconduct under service law that required investigation. No order had been given to the reporting party to walk up and down in the “waddling gait”. In the course of the correspondence, the Authority for the Interior and Sport however stated that the statement of the officers deployed, which contradicted the report to which it had referred, had only been made in informal questioning by the responsible local head of the facility.

The Joint Commission indicated that the procedure that had been selected was inadequate in view of the gravity of the accusation. The very selection of the procedure should have made it clear that the procedure alleged by the reporting party would be undignified and unlawful. The disciplinary superior should therefore not have restricted his investigations to the “informative questioning” of the officers deployed by the local head of the facility and to a presumption arrived at on this basis alone that the reporting party could not be believed. It is indispensable when such accusations are made to at least obtain a written, that is a binding, verifiable declaration on the part of the officers concerned. This serves not only to investigate the accusations, but particularly to also maintain the reputation of the police and of the officers concerned. The Joint Commission requested this to be taken into account in future sets of proceedings.

The Hamburg Interior Authority concurred with the Joint Commission that such a procedure would have been expedient and suitable with hindsight where appropriate to make an additional contribution towards clarifying the facts. For this reason, it had been agreed for the police that binding declarations on the part of the officers would be obtained in comparable cases in future.

IV Further activities of the National Agency

I Specialist associations and public relations work

The National Agency also made efforts in 2012 to expand its specialist connections and to further publicise the activity of the Agency.

In 2012, the Federal Agency spotlighted the topic of the “monitoring of returns by air”. Several meetings took place on this topic, which are detailed at II.2. At the invitation of the Chairman of the Bundestag’s Committee on Human Rights and Humanitarian Aid, Tom Koenigs, the Director of the Federal Agency attended a Committee meeting, where he also explained the Federal Agency’s current situation. This particularly referred to the inadequate staffing and finances.

The members of the Joint Commission continued in 2012 to focus their activities, amongst other things, on networking and exchange with psychiatric visiting commissions of the *Länder*. To this end, meetings took place with the Chairman of the psychiatric visiting commission for Cologne, with the Chairman of the Lower Saxony Psychiatric Committee, as well as with members of the psychiatric visiting commission for Hamburg. Amongst other things, there was a discussion of the potential for cooperation between the bodies.

At the invitation of the German Institute for Human Rights, the National Agency furthermore attended specialist talks on the recommendations of the UN Committee against Torture, the European Committee for the Prevention of Torture and the United Nations Working Group on Arbitrary Detention, which took place in Berlin in May 2012. The recommendations of the CAT, the CPT and the Working Group, as well as their concrete implementation, were discussed at the event. It was attended amongst others by two members of the CPT, representatives of the Federal Government, of individual *Land* Governments, as well as of many non-governmental organisations.

Furthermore, articles in specialist periodicals and lectures continued to form part of the National Agency’s public relations work this year. Worth mentioning here, amongst other things, are an article by the then Chairman of the Joint Commission, Prof. Geiger, together with Ms Schöner in the “Forum Strafvollzug”³¹, as well as a lecture by Ms Schöner at the conference of the Federal Working Party of Doctors and Psychologists in May 2012.

³¹ Geiger, Hansjörg/ Schöner, Elsava (2012), *Präventiver Menschenrecht. Die Nationale Stelle zur Verhütung von Folter*. In: Forum Strafvollzug, 61st year, Vol. 3, pp. 136-140.

2 International cooperation

The National Agency continued its participation in 2012 in the project to improve networking between the national preventive mechanisms (NPM project), as well as between the CPT and the SPT, launched by the Council of Europe and the European Commission. Staff from the secretariat attended two workshops funded by the Council of Europe within the NPM project on the topics of “The immigration removal process and preventive monitoring” and “Irregular migrants, Frontex and the NPMs”.³²

The NPM project in its previous form expired with these two workshops. A follow-up project is under consideration for 2013, but it has not yet been clarified what form it will take.

3 Overview of enquiries by individuals

The National Agency received 84 enquiries from individuals in the period under review, some of which did not relate to places where persons are deprived of their liberty. The other enquiries related exclusively to facilities within the remit of the Joint Commission. Roughly one-third of the enquiries concerned prisons, one-third psychiatric facilities or facilities for the placement of offenders with mental disorders. A considerable increase in the number of complaints was noted after the publication of the Annual Report and the presence of the Agency in the media to which this led. This indicates that the level of awareness of the National Agency increased noticeably, particularly as a result of the Annual Report.

Since the National Agency is not an ombudsman, it is not legally empowered either to remedy individuals' complaints or to give them legal advice. This fact is explicitly referred to in the reply letters to senders, as well as on the Agency's website. This notwithstanding, information on concrete incidents is of great practical relevance for the work of the National Agency. It is available as background information in inspection visits, and can help focus on specific problem areas. Furthermore, concrete information and indications may influence the selection of the facilities to be visited and the priorities consequently set.

If an enquiry suggests that there are any major problems, the National Agency establishes contact with the responsible authorities. This led in one case to a renewed check on fitness for detention being carried out by a physician outside the facility. If an enquiry furthermore provides an indication of suicide or of a risk being posed to others, the National Agency furthermore immediately contacts the head of the facility concerned.

³² More information on this can be found at II.2.

V Annex

I Chronological overview of the visits

Date	Facility visited
4 January 2012	Leipzig-Halle Airport Federal Police Station
4 January 2012	Leipzig Federal Police District Office
5 January 2012	Halle Federal Police Station
5 January 2012	Magdeburg Federal Police District Office
25 January 2012	Cologne prison
2 February 2012	Celle prison
29 February 2012	Ochsenzoll North Asklepios Clinic, Hamburg
1 March 2012	Fuhlsbüttel prison, Hamburg
26 March 2012	Wahn Air Force Barracks, Cologne
26 March 2012	Cologne Federal Police District Office
27 March 2012	Cologne/Bonn Airport Federal Police District Office
26 April 2012	Police Station Complementary Services 6 – Police Station Police Headquarters Munich
27 April 2012	Police Station Munich 16 – Main Station
9 May 2012	Diez prison
15 May 2012	Berlin Brandenburg International Airport Federal Police District Office
16 May 2012	Cottbus Federal Police Station
16 May 2012	Forst Federal Police District Office
26 June 2012	Husum Julius-Leber barracks
26 June 2012	Husum military airfield
27 June 2012	Eckernförde military police headquarters
27 June 2012	Harrislee Federal Police duty room
27 June 2012	Flensburg Federal Police District Office

Date	Facility visited
27 June 2012	Eckernförde Preußen barracks
28 June 2012	Kiel Federal Police duty room
28 June 2012	Lübeck Federal Police Station
10 July 2012	Schwarzenbruck Pedagogical-therapeutic intensive area
22 August 2012	Kassel I prison
28 August 2012	Brandenburg an der Havel prison
29 August 2012	Berlin youth prison
15 October 2012	Lüneburg Federal Police Station
16 October 2012	Hildesheim Federal Police Station
16 October 2012	Hanover Federal Police District Office
16 October 2012	Hanover Airport Federal Police District Office
17 October 2012	Göttingen Federal Police Station
18 October 2012	Berlin-Main Station Federal Police District Office
2 November 2012	Mannheim Innenstadt Police Station
2 November 2012	Mannheim Oststadt Police Station
03 November 2012	Heidelberg Mitte Police Station
3 November 2012	Heidelberg Süd Police Station
7 November 2012	Tonna prison
8 November 2012	Goldlauter prison, Suhl
28 November 2012	Caritas Gauting girls' home
29 November 2012	Würzburg Clearing Agency
14 December 2012	Berlin Tiergarten Local Court
14 December 2012	Berlin City detention facility

2 History and legal basis

10 December 1948	Resolution of the UN General Assembly (Universal Declaration of Human Rights): incl. prohibition of torture and other cruel, inhuman or degrading treatment or punishment
10 December 1984	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Anti-Torture Convention)
26 November 1987	European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
18 December 2002	Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (OP-CAT)
20 September 2006	Signing of the Optional Protocol
26 August 2008	Implementation in domestic law through the approval act of the Bundestag
20 November 2008	Federal Agency created by the Administrative Order of the Federal Ministry of Justice
4 December 2008	Ratification of the Optional Protocol and nomination of the honorary Director of the Federal Agency
1 May 2009	Federal Agency takes up its work at the headquarters of the Centre for Criminology in Wiesbaden
25 June 2009	Signing of the State Treaty to establish the Joint Commission for the Prevention of Torture by State Treaty of all Federal <i>Länder</i>
23/24 June 2010	Nomination of the members the Joint Commission at the 81st conference of Ministers of Justice
1 September 2010	State Treaty to establish the Joint Commission for the Prevention of Torture as well as the administrative agreement between the Federation and the Federal <i>Länder</i> on the National Agency for the Prevention of Torture come into force
24 September 2010	Official inauguration of the Joint Commission by the Hesse Minister of Justice Jörg-Uwe Hahn in Wiesbaden

3 Overview of the national and international activities of the Federal Agency in the period under review

Date	Venue	Attended by	Activity
16-18 January 2012	Nuremberg	Joint Commission	5th specialist conference "Chaplaincy and advice in detention pending deportation"
24 January 2012	Cologne	Joint Commission	Meeting with Dr. Müller, visiting commission of North Rhine-Westphalia
January 2012		Joint Commission	Publication of the article entitled " <i>Ein unabhängiger Blick in Deutschlands Gefängnisse</i> " in the <i>Deutsches Ärzteblatt</i>
1 February 2012	Hanover	Joint Commission	Meeting with Prof. Spengler, Chairman of the Lower Saxony Psychiatry Commission
9-10 February 2012	Wiesbaden	National Agency	1st meeting of the National Agency in 2012
17 February 2012	Potsdam	Federal Agency	Talks with the chief of operations of the Federal Police
28 February 2012	Hamburg	Joint Commission	Meeting with members of Hamburg psychiatric visiting commission
7 March 2012	Berlin	Federal Agency	German Bundestag, annual reception of the Committee on Human Rights and Humanitarian Aid, Tom Koenig, MP
20 March 2012	Berlin	Federal Agency	Annual reception of the League of Expellees
19-21 March 2012	Geneva	National Agency	NPM workshop of the Council of Europe on the Monitoring of return

Date	Venue	Attended by	Activity
			flights
1 May 2012	Wiesbaden	Joint Commission	Press conference with the Hesse Minister of Justice Jörg-Uwe Hahn on the occasion of the presentation of the Annual Report
3 May 2012	Mainz	Joint Commission	Lecture at the Conference of the Federal Working Party of Doctors and Psychologists
8 May 2012	Wiesbaden	National Agency	2nd meeting of the National Agency in 2012
15 May 2012	Frankfurt a.M.	Joint Commission	Network meeting on monitoring of deportation
23 May 2012	Berlin	National Agency	Specialist talks of the German Institute for Human Rights on the recommendations of the UN Subcommittee on Prevention of Torture, of the European Committee for the Prevention of Torture and of the United Nations Working Group on Arbitrary Detention
June 2012		Joint Commission	Publication of the article entitled " <i>Präventiver Menschen schutz – Die Nationale Stelle zur Verhütung von Folter</i> " in the " <i>Forum Strafvollzug</i> " 3/2012
11-13 June 2012	Belgrade	National Agency	NPM workshop of the Council of Europe entitled "Irregular migrants, Frontex and the NPMs"
13 June 2012	Berlin	Federal Agency	Attendance at the session of the Committee on Human Rights of the German Bundestag at the invitation of the Chairman Tom Koenigs, MP

Date	Venue	Attended by	Activity
1 August 2012	Berlin	Federal Agency	Meeting with the Commissioner of the Council of the Evangelical Church in Germany, Prelate Dr. Felmburg
16 August 2012	Alzey	Joint Commission	Further training on the legal foundation in measures entailing the deprivation of liberty in homes and psychiatry, Rheinhessen Specialist Clinic
20 August 2012	Wiesbaden	Joint Commission	Symposium on preventive detention
24 September 2012	Wiesbaden	National Agency	3rd working meeting of the National Agency
18 October 2012	Berlin	Federal Agency	Talks with Mr Hesse, head of division for Command and operational matters of the Federal Police, Federal Ministry of the Interior
6 November 2012	Wiesbaden	National Agency	Meeting with State Secretary Dr. Kriszeleit and the head of the Prisons division of the Hesse Ministry of Justice Dr. Roos
14 November 2012	Munich	Joint Commission	Discussion meeting with Prof. Arloth and Mr Haverkamp, Bavarian State Ministry of Justice and for Consumer Protection
23 November 2012	Wiesbaden	National Agency	4th working meeting of the National Agency
23 November 2012	Wiesbaden	Joint Commission	Inauguration of the new members of the Joint Commission by the Hesse Minister of Justice, Jörg-Uwe Hahn
14 December 2012	Berlin	National Agency	Meeting with Prof. Dr. Pross, Treatment Centre for Victims of Torture

4 General Assembly Resolution 57/199 on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002

The General Assembly

Recalling article 5 of the Universal Declaration of Human Rights³³, article 7 of the International Covenant on Civil and Political Rights³⁴, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁵ and its resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and all its subsequent relevant resolutions,

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

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

Welcoming the adoption of the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Commission on Human Rights in its resolution 2002/33 of 22 April 2002³⁶ and by the Economic and Social Council in its resolution 2002/27 of 24 July 2002, in which the Council recommended to the General Assembly the adoption of the draft optional protocol,

1. *Adopts the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annex to the present resolution, and requests the Secretary-General to open it for signature, ratification and accession at United Nations Headquarters in New York from 1 January 2003;*

³³ Resolution 217 A (III).

³⁴ cf. Resolution 2200 A (XXI), Annex

³⁵ Resolution 3452 (XXX), Annex

³⁶ cf. *Official Records of the Economic and Social Council, 2002, Supplement No. 3 (E/2002/23)*, Ch. II, Part A.

2. *Calls upon* all States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to sign and ratify or accede to the Optional Protocol.

*77th plenary meeting
18 December 2002*

Annex

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

Preamble

The States Parties to the present Protocol,

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

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

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

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

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

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

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

Have agreed as follows:

Part I General principles

Article 1

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

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

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

Article 4

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

Part II Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

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

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. a) The nominees shall have the nationality of a State Party to the present Protocol;

b) At least one of the two candidates shall have the nationality of the nominating State Party;

c) No more than two nationals of a State Party shall be nominated;

d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

- a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol.
- b) The initial election shall be held no later than six months after the entry into force of the present Protocol.
- c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot.
- d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

- a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention.
- b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member.
- c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and

meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d). 95

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, *inter alia*, that:

a) Half the members plus one shall constitute a quorum.

b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present.

c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III Mandate of the Subcommittee on Prevention

Article 11

The Subcommittee on Prevention shall

- a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- b) In regard to the national preventive mechanisms
 - i) Advise and assist States Parties, when necessary, in their establishment;
 - ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- c) Cooperate, for the prevention of torture in general, with the relevant United Nations⁹⁶ organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

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

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

Article 13

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

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it: 97
 - a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
 - b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
 - c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
 - d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee

on Prevention believes may supply relevant information;

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

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

Article 15

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

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after⁹⁸ the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

Part IV National preventive mechanisms

Article 17

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

Article 18

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

Article 19

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

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- c) To submit proposals and observations concerning existing or draft legisla-

tion.

Article 20

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

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

Article 21

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

Article 22

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

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms. 100

Part V Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Part VII Final provisions

Article 27

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

Article 28

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

Article 29

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

Article 30

No reservations shall be made to the present Protocol.

Article 31

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

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

Article 32

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

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the 102 other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and

file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

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

Article 36

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

- a) Respect the laws and regulations of the visited State;
- b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

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

5 Administrative Order of the Federal Ministry of Justice of 20 November 2008

1. A Federal Agency for the Prevention of Torture (Federal Agency) shall be established which is to be designated to the United Nations as the National Preventive Mechanism within the meaning of Article 3 of the Optional Protocol of 18 December 2002 on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (Optional Protocol).

2. The Federal Agency shall have the task of visiting places under federal jurisdiction where people are deprived of their liberty within the meaning of Article 4 of the Optional Protocol in order to prevent torture, draw attention to problems and where appropriate make recommendations for improvements.

3. The Federal Agency shall have the rights and powers designated in Articles 19 and 20 of the Optional Protocol.

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

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

4. The Director of the Federal Agency shall act on an honorary basis. He/she shall be independent and not subject to any instructions. Compensation for expenditure and costs shall be granted in accordance with the provisions contained in the Federal Travel Expenses Act.

5. The Director of the Federal Agency shall be nominated by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence for a period of office of four years. Re-nomination shall be possible.

The Director may renounce his/her office at any time. Prior to expiry of the period of office, dismissal against the will of the Director may only be effected subject to the provisos of section 24 of the German Judiciary Act by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence. In this case, the Federal Ministry of Justice shall nominate a successor for the remaining period of office in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence.

6. The Federal Agency shall have at its disposal a secretariat which shall

perform the ongoing business of the Federal Agency and shall be established with the latter in accordance with the Statutes of the Centre for Criminology.

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

The seat of the Federal Agency shall be Wiesbaden.

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

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

Berlin, 20 November 2008

**6 State Treaty on the establishment of a national mechanism of all
Länder in accordance with Article 3 of the Optional Protocol of 18
December 2002 to the Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment of 25 June 2009**

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

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

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

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

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

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

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

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

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

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

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

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

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

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

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

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

herewith conclude the following State Treaty:

Preamble

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

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

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

The Commission is to use the infrastructure of the Centre for Criminology (Kriminologische Zentralstelle e.V.) as extensively as possible. The necessary secretariat is to be established with the Centre for Criminology.

Article 1 Establishment of the Commission for the Prevention of Torture

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

Article 2 Tasks and powers

- (1) The Commission shall have the task of visiting places of detention within the meaning of Article 4 of the Optional Protocol under the jurisdiction of the *Länder* in order to prevent torture, drawing attention to problems and where appropriate making recommendations for improvements.
- (2) The members of the Commission, individually or together, shall have the powers named in Article 19 of the Optional Protocol. The *Länder* shall grant to them the rights and powers named in Article 20 of the Optional Protocol.
- (3) The Commission may make recommendations to the competent authorities in order to improve the conditions for persons who have been deprived of their liberty. The authorities shall be obliged to carefully examine these recommendations and to make a statement to the Commission within a suitable period.
- (4) The Commission shall draft an Annual Report together with the Federal Agency for the Prevention of Torture, which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Länder* Parliaments.

Article 3 Confidentiality

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

Article 4 Members

- (1) The Commission shall consist of four members who act on an honorary basis. The members shall be independent and not subject to any instructions. The number of the Commission members may be changed by a unanimous resolution of the Conference of Ministers of Justice.
- (2) The members of the Commission shall be nominated by the Conference of Ministers of Justice for a four-year period of office. In derogation therefrom, on nomination of the first four members of the Commission, two members shall be nominated for four years and two members for two years. A renewed nomination shall be possible. They may lay down their office at any time. A member of the Commission may only be dismissed against his/her will prior to expiry of his/her period of office subject to the provisos of sections 21 and 24 of the German Judiciary Act by a unanimous resolution of the Conference of Ministers of Justice. In such cases, the Conference of Ministers of Justice shall nominate a successor for the remaining period of office.

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

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

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

Article 5 Secretariat

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

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

Article 6 Headquarters

The Commission shall be headquartered in Wiesbaden.

Article 7 Modus operandi and rules of procedure

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

Article 8 Cooperation

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

Article 9 Funding

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

(2) The funding shall be effected in the shape of subsidies being provided to the Centre for Criminology³⁷. The pro rata amounts shall become due in the course of each respective accounting year in two instalments on 31 May and 30 November in accordance with the valuations of the budget plan. The staffing and material expenditure shall be advanced by the Hesse Ministry of Justice, for Integration and European Affairs.

Article 10 Term, termination

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

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

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

Article 11 Entry into force

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

Dresden, 25 June 2009

³⁷ The *Länder* agree that the subsidies for the Commission are not counted in the calculation of cuts in the budget valuations based on the resolution of the Conference of Heads of Government of the *Länder* of 30 March 2006.

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

The Federal Republic of Germany, represented by the Federal Ministry of Justice, and

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

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

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

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

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

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

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

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

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

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

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

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

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

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

the *Land* Schleswig-Holstein, represented by the Prime Minister, in turn represented by the Minister for Justice, Equality and Integration and
the Free State of Thuringia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,
conclude the following Administrative Agreement:

Preamble

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

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

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

Section 1 Subject-matter

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

Section 2 Cooperation

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

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

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

Section 3 Headquarters

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

Section 4 Secretariat

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

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

Section 5 Funding

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

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

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

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

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

Section 6 Annual Report

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

Section 7 Term

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

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

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

Section 8 Transitional provision

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

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

Section 9 Entry into force

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

8 Resolution of the 83rd Conference of Ministers of Justice of 13 and 14 June 2012 in Wiesbaden on the nomination of the members of the Joint Commission

Resolution

Nomination of members of the Joint Commission against Torture

Rapporteur: Hesse

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

- a) Elsava Schöner, former *Leitende Regierungsdirektorin*
- b) Albrecht Rieß, Presiding Judge at Stuttgart Higher Regional Court
- c) Petra Heß, former MP
- d) Rainer Dopp, former State Secretary

2. Rainer Dopp, former State Secretary, is herewith appointed as Chairman.

3. The nomination shall become effective on 1 September 2012.

9 Rules of procedure of the Joint Commission for the Prevention of Torture

Preamble

The prohibition of torture and mistreatment is among the most important human rights guarantees. The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Anti-Torture Convention) obliges the States Party to prevent any act of torture and to make torture offences punishable. Article 16 para. 1 of the UN Anti-Torture Convention lends concrete form to this obligation by stipulating that they should also “prevent [...] other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I”.

The Optional Protocol to the UN Anti-Torture Convention, moreover, contains a method for the prevention of torture and mistreatment. To this end, Article 3 of the Optional Protocol stipulates that national preventive mechanisms are to be established. The national preventive mechanism in Germany is composed of the Federal Agency and the Joint Commission. The Joint Commission is hence mandated to use a preventive system of visits to prevent not only torture in the narrow sense of the word, but any kind of mistreatment. This obligation to prevent torture and mistreatment is broad and is not static, but its specific concept can develop further. For the inspection of places where people are deprived of their liberty, this means that the Joint Commission not only draws attention to obvious problems, but also sheds light on circumstances which may favour torture and mistreatment. Further, in accordance with Art. 2 para. 3 of the State Treaty, the Joint Commission’s job is to improve conditions for persons who have been deprived of their liberty and to make recommendations to the competent authorities.

The Joint Commission primarily uses as its basis the valid German law and the concomitant case-law when making its visits. Furthermore, where appropriate the Joint Commission relies on international agreements which are relevant to its mandate, and also includes international case-law as well as recommendations of the corresponding committees of the United Nations and of the Council of Europe in its assessment.

The Joint Commission for the Prevention of Torture (hereinafter: Joint Commission) adopted the following rules of procedure, which were most recently amended on 26 February 2013 , at its session held on 24 September 2010, in accordance with Article 7 of the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of

18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

I. Organisation, structure and mandate of the Joint Commission

Section 1 Tasks of the Joint Commission

The Joint Commission shall form together with the Federal Agency for the Prevention of Torture (hereinafter: Federal Agency) the National Agency for the Prevention of Torture. The Joint Commission shall have the following tasks:

- to regularly visit places where people are deprived of their liberty within the remit of the Federal *Länder*,
- to make recommendations to the competent authorities and facilities in order to improve the treatment and conditions of the persons placed there in accordance with the national and international requirements,
- to make proposals and observations on existing legal provisions or on those in the drafting stage.

Section 2 Competence of the Joint Commission

The Joint Commission shall be competent for all "places where people are deprived of their liberty" within the remit of the *Länder*. These shall include prisons, closed wings in psychiatric hospitals, detention awaiting deportation facilities, detention centres for asylum seekers, police stations of the *Länder*, facilities of youth welfare, closed homes for children and juveniles, as well as senior citizens' homes and long-term care homes.

Section 3 Membership and chair

(1) The Joint Commission shall consist of four members working on an honorary basis. One member of the Joint Commission shall be appointed as the chairperson of the Joint Commission.

(2) The four members of the Commission and the chairperson shall be nominated by the conference of the Ministers of Justice for a period of office of four years. In derogation from this, in nominating the first four members of the Commission, two members shall be nominated for four years and two members for two years.

(3) The chairperson shall represent the Joint Commission externally, as well as vis-à-vis the Federal Agency and the Centre for Criminology (*KrimZ*).

Section 4 Tasks of the full-time secretariat

(1) The secretariat shall support the Joint Commission and the National Agency

in the performance of its statutory tasks.

(2) The tasks of the secretariat shall include the following activities: Preparation for and coordination of the visits, as well as of other activities, support on inspection visits, preparation for national and international correspondence, content preparation and follow-up of sessions and visits, other general secretariat tasks.

(3) The Joint Commission and the National Agency shall coordinate in the planning and implementation of their projects, in particular with the intention of using the resources of the secretariat sensibly. To this end, at the beginning of each period of activity, they shall determine which research associate should mainly report to the Joint Commission and the National Agency.

Section 5 Sessions of the Joint Commission

(1) The sessions of all members of the Joint Commission shall take place as a rule at least twice per year. Additional sessions may be convened by the Chairperson depending on needs, or in response to the mandate of a member. All members of the Joint Commission shall be entitled to attend the sessions. The attendance of members of the Federal Agency shall be at the invitation of the Chairperson.

(2) The agenda shall be drawn up by the Chairperson on the basis of the topics proposed by the individual members of the Joint Commission, and shall be forwarded to the members in advance, with any relevant further documents. It shall be adopted with a simple majority at the beginning by the members in attendance.

(3) A minute-taker shall be determined at the beginning of each session who shall record the resolutions taken during the session in writing. The minutes shall be presented to all members of the Joint Commission soon after the conclusion of the session for their approval.

(4) Each member of the Joint Commission may table motions for a vote on which the Joint Commission can decide with a simple majority of the members in attendance. Motions as well as the outcome of the ballot shall be included in the minutes.

(5) A simple majority of the members in attendance shall be sufficient for all and any resolutions relating to the work of the Joint Commission. Amendments to the rules of procedure can only be adopted with a qualified majority, that is with the majority of the prescribed number of members. Resolutions which do not require any prior deliberation may also be brought about by written or electronic means.

II. Regulations regarding the implementation of inspection visits

Section 6 Procedure for selecting places to be visited

- (1) At the beginning of each period of activity, the Joint Commission shall draw up a provisional list of places which it would like to visit during this period.
- (2) It shall then make a selection using the lists transmitted by the Ministries according to the size and location of the facility, potential problem areas, reports in newspapers or on individual cases. It can also take the reports of other monitoring mechanisms as an orientation here (e.g. psychiatry commissions, ombudsman facilities, CPT/SPT). The Joint Commission shall furthermore take a suitable geographical area into account when selecting the place to be visited.
- (3) The Joint Commission may set a topical focus for each period of activity, and shall hence restrict the selection of the places to be visited to a specific category (e.g. prisons, youth detention, psychiatric facilities, police units, etc.).

Section 7 Preparation for the inspection visits

The secretariat shall compile the following information in order to prepare a visit:

- (1) legal provisions valid in the respective Federal *Land*;
- (2) detailed information on the facility to be visited, such as its size, competence and problem areas;
- (3) information which the Joint Commission received from non-governmental organisations and other facilities or persons working in an area relevant for the Joint Commission;
- (4) a visit plan stating the provisional course of the visit and the selection of the interlocutors;
- (5) a list of information compiled by the management of the facility that is to be visited, as requested by the Joint Commission

Where needed, further information shall be consulted and the Commission shall adjust its preparation for the visits and the course of the visits accordingly.

Section 8 Implementation of the inspection visits

- (1) Visits may take place both announced and unannounced.
- (2) The visits shall as a rule be implemented by at least two members of the Joint Commission, who shall be supported by at least one full-time staff member of the secretariat. The Joint Commission may decide on the consultation of experts or interpreters for individual visits (e.g. psychologists, physicians).

(2a) Members shall not carry out any visits if there is fear of their bias. This shall be deemed to be the case if a reason exists which is likely to justify mistrust as to the impartiality of the member.

(3) In addition to the inspection of the facility, confidential talks with staff and with individuals in custody shall also be carried out during the visit, where the latter are in agreement. Moreover, the Joint Commission may inspect all relevant documents containing information on the visited facility or on the persons located there.

Section 9 Visit reports

(1) After each inspection visit, the members the Joint Commission involved in it shall draw up a written report of the outcome of the visit within four weeks.

(2) The writing of the draft report shall be a matter for the secretariat. The members of the Joint Commission shall pass their observations on to the secretariat, as well as any other knowledge and information.

(3) To draw up the draft report, the secretariat may, as appropriate, also obtain subsequent information from the facility visited.

(4) The draft report shall be forwarded to the participating members of the Joint Commission for their consent.

(5) The Chairperson of the Joint Commission shall then forward the visit report to the competent Ministry with a request for observations. The facility visited shall also receive a duplicate of the report.

Section 10 Annual Report

(1) The Commission shall publish an Annual Report of its activities drawn up together with the Federal Agency for the Prevention of Torture. This Report shall be forwarded to the German Bundestag and the *Land* Parliaments, the *Land* Governments and the Federal Government. The Annual Report shall contain both the outcome of the visits and the reactions of the Ministries regarding the implementation of the recommendations.

(2) The Joint Commission and the Federal Agency shall draft their segments of the Report, each on its own responsibility. The coordination of the contributions, as well as all and any activities in connection with the publication, shall be incumbent on an editorial team determined at the beginning of each period under review.

III. Confidentiality

Section 11 Respect for confidentiality and data protection

- (1) The members of the Joint Commission and the staff members of the secretariat shall be obliged to maintain silence with regard to confidential information which they receive during their activities. This obligation shall also last beyond the active membership of the Joint Commission.
- (2) Documents containing personal and confidential data shall be kept securely and not made accessible to third parties.
- (3) Personal data may only be passed on with the explicit consent of the person in question.

Section 12 Amendments and entry into force

- (1) These rules of procedure shall come into force by resolution of the qualified majority of the statutory number of members of the Joint Commission.
- (2) Amendments of the rules of procedure shall require a qualified majority of the statutory number of members of the Joint Commission.

10 Guidelines for the work of the Federal Agency

Preamble

The present Guidelines shall serve as a basis for the orientation of the work of the Federal Agency for the Prevention of Torture. They are not however legally indispensable. The conduct of the Federal Agency may derogate from the stipulated guidelines where necessary. The Guidelines are to be regularly updated.

No. 1 Tasks of the Federal Agency for the Prevention of Torture

1.1 The objective of the work of the Federal Agency in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

In accordance with OPCAT, the Federal Agency is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. This is a purely preventive approach.

1.2 Implementation of the objectives

As the national mechanism for the prevention of torture within the meaning of OPCAT, the Federal Agency is to carry out the following tasks:

- to visit places where people are deprived of their liberty in the responsibility of the Federation, regularly and unannounced,
- to make recommendations to the relevant authorities and facilities with the aim of improving the treatment and the conditions of the persons deprived of their liberty, taking into consideration national and international requirements,
- to submit proposals and observations concerning existing or draft legislation.

The Federal Agency shall document the implementation of the goals in its Annual Report.

No. 2: Selection of the places to be visited

2.1 Visit planning

An "internal annual visit plan" should be drawn up at the beginning of each year. This plan shall include rough planning of which facilities can be visited within a specific period, taking account of the budget and resources. Moreover, an investigation spotlight can also be decided for the year. In the distribution, the plan should take appropriate account of facilities of the Federal Armed Forces, the Federal Police and other facilities within the responsibility of the Federation.

2.2 Selection criteria

When drawing up the annual plan and making the concomitant selection of the places to be visited, the following criteria may for instance be used as a basis (the list is not exhaustive):

- significance and size of the facility
- geographical spread
- accommodation of special groups (e.g. migrants, asylum-seekers, the homeless)
- special incidents in the recent past
- places which are rarely visited because of their geographical location.

Furthermore, information from third parties (such as individuals, NGOs, the press) may be considered. Places which were visited recently by the CPT, the SPT or national commissions should not be given priority in order to avoid repeated effort.

No. 3 The procedure followed when carrying out a visit

3.1 Announcement of the visit

Visits to detention facilities (depending on the facility) shall either be carried out unannounced or with 12-24 hours' advance notice. To this end, contact shall initially be established with the agreed contact in the Federal Ministry of the Interior or of Defence. Direct contact is then established with the respective head of the facility.

In smaller facilities in particular, an unannounced visit can be carried out with no advance notice. Where possible, several unannounced visits should also be carried out in a period under review. Where visits are announced, initial information should be requested on current occupancy, coming deportations, as well as further details that are necessary for preparation (such as whether an interpreter is needed).

3.2 Duration of the visit

The duration of the visit depends above all on the size of the facility and the visiting programme. It should be suitable in order to offer the opportunity to talk with all the players involved. It should also be taken into account here that operational procedures may hinder or delay the course of the visit. As a rule, a maximum of 1-2 days should be regarded as a customary visiting period.

3.3 Preparation for the visit

All available information relating to the place to be visited is to be compiled in the run-up to the visit. This particularly includes the size and significance of the facility, spotlights of activity, level of occupancy, staff size, indicators related to detention, etc. The information may originate from public agencies, NGOs or the press or other third parties. The preliminary information is used to draw up a list of topics to be used as a particular orientation for the visit. Where possible and sensible, further appointments should be made with persons outside the facility (e.g. NGOs, social services, police trade union, monitoring of deportation, churches, etc.). The appointments may take place both prior to the actual visit and during or after it.

3.4 Procedure followed during the visit

The collaboration of the Director of the Federal Agency is imperative for a visit. A visiting plan is drawn up for each visit. This plan contains information on the preliminary procedure to be followed in the visit (cf. Annex I – Visiting procedure plan) and the contacts with whom talks are to be held.

A visit should as a matter of principle start with a talk with the head of the facility. In this talk, in particular the work of the Federal Agency should be presented and the objective of the visit should be explained (as should further information for methods, length of the visit, etc.). Then, a short tour around the facility takes place so that the visiting team can gain a general impression.

This can be followed by individual discussions, encompassing persons being detained as well as staff and involved third parties (e.g. locally active NGOs, church representatives, relatives). The list of questions (Annex II – List of questions) may be used as the basis. Furthermore, the possibility should be taken up to inspect official documents (cell occupancy sheet, staff duty sheets, etc.).

The visit is to be concluded with a final talk with the head of the facility. This talk should be used to discuss the further procedure and the use of the information that has been collected. There is the further possibility to make an initial assessment and to exchange feedback.

No. 4: Follow-up to the visit

4.1 Visit reports

The information collected during the visit shall be kept in a visit report. When drawing up the report, a report format shall be used which is still to be drafted (Annex III – Report format). The visit report shall be used for the internal documentation of the visit and shall not be published as a rule.

4.2 Recommendations and follow-up

A list containing recommendations shall furthermore be drawn up, which shall be forwarded to the respective responsible superior authority, as well as a copy to the facility visited. Furthermore, a timeframe for the follow-up shall be set out. If the authority does not react to the recommendations within the timeframe set, contact shall be established once more. The manner in which the recommendations of the Federal Agency are dealt with shall be included in the Annual Report.

4.3 Annual Reports

Once the period under review has elapsed, the results of the individual visit reports and the recommendations that were made shall be summed up in the Annual Report. The publication of the Annual Report shall be effected in the first quarter of the following year. A summary should also be drawn up in English and forwarded to international partners. The Report shall be forwarded to the Bundestag and to the Federal Government for information.

No. 5: Political lobby work and publications

5.1 Political lobby work

As the national prevention mechanism according to OPCAT, the Federal Agency can also contribute recommendations to legislative procedures. It may submit proposals and observations concerning existing or draft legislation. To this end, in the long term contacts should also be established with members of the Bundestag from the respective parties and with staff of relevant Ministries.

5.2 Publications

In addition to publishing the Annual Report, the Federal Agency should in future disclose its experience and knowledge in further sources. It would be conceivable to make individual publications in specialist periodicals and others, but also publications of its own on specific topics (such as statements, position papers, etc.).

5.3 Press work

In order to publicise the work of the Federal Agency, regular contacts for the local and national press shall be managed and a corresponding press address list established. Current topics shall be publicised in the shape of regular press releases.

No. 6: Dealing with individual cases

6.1 Dealing with complaints by individuals

The Federal Agency is neither legally nor de facto able to deal with individual cases. It may provide neither (legal/factual) advice nor other guidance. It is none-

theless predictable that individual cases will be submitted to the Federal Agency. In such cases, it should be made clear that the Federal Agency has neither investigational powers nor other possibilities to provide guidance. In individual cases, persons concerned may be referred to a facility (e.g. Weißer Ring or the like) if it can be recognised that they are seeking a contact.

6.2 Documentation and archiving of individual complaints

Individual items of information shall be documented where they appear plausible, and these shall be available as background information in the visiting planning. In cases of doubt, they should be documented, particularly where they contain specific accusations against a named facility.

6.3 Confidentiality of the information received

Personal data that have been received shall always be treated absolutely confidentially. This should also be made clear to the persons concerned (particularly on visits). They may only be passed on to third parties with the prior agreement of the person concerned or in anonymised form.

No. 7: Cooperation with non-governmental organisations, interest associations, etc.

7.1 Non-governmental organisations (NGOs), interest associations, etc.

Cooperation with NGOs and the like (e.g. Amnesty International, Association for the Prevention of Torture – APT) is highly important to the Federal Agency. Reports by NGOs and the like are an additional source of information for official visits. It is advised to contact locally-active groups when preparing visits. This makes it easier to focus, and to highlight problem areas. At the same time, personal meetings with individual representatives on an official visit may also help to complete the picture.

7.2 External presentation towards NGOs and the like

When cooperating with NGOs, it should always be clarified that the Federal Agency is not an NGO, but an independent public institution. The approach and depiction of the Federal Agency is hence quite different than that of an NGO. The Federal Agency should therefore also ensure that it does not become the mouthpiece of an NGO, as this might question its independence and impartiality.

No. 8: Cooperation with international bodies and other national prevention mechanisms (NPMs)

8.1 Cooperation with the Subcommittee on Prevention (SPT) and the Council of Europe's Committee for the Prevention of Torture (CPT)

The SPT and the CPT shall be informed regularly of the activities of the Federal Agency. They shall receive the summary and a copy of the Annual Report in English. The recommendations contained in individual visit reports may also be translated and forwarded on request. An exchange shall take place with the Federal Agency, both in the run-up to visits by both bodies and subsequently.

8.2 Cooperation with other NPMs and NHRIs (National Human Rights Institutions)

Regular contacts shall be maintained with other NPMs/NHRIs (e.g. German Institute for Human Rights). Since the Federal Agency is one of the first newly-created prevention mechanisms in accordance with the OPCAT, bodies which are still nascent may rely on the experience of the Federal Agency. Joint workshops or events are to take place in future in order to further the mutual exchange of experience.

