

# Criminal Detention in the EU: Conditions and Monitoring

Update of FRA's Criminal Detention Database

(FRANET)

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<sup>1</sup> E. Töpfer was the author of the 2021 report, of which many sections were used for this update.

## Table of Contents

Part I: National standards .....	1
Preliminary remarks.....	1
1.    Cells .....	3
a.    Cell space .....	3
b.    Access to natural light and fresh air, cell equipment, furniture, and facilities.....	5
c.    Video-surveillance of cells .....	6
d.    NPM assessment.....	9
2.    Allocation of detainees .....	12
a.    Geographical allocation .....	12
b.    Allocation within detention facilities .....	12
c.    NPM assessment.....	13
3.    Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees) .....	14
a.    Access to toilets .....	14
b.    Access to showers and warm and running water .....	15
c.    Access to sanitary products .....	15
d.    Hygienic conditions in cells.....	16
e.    NPM assessment.....	16
4.    Nutrition.....	18
a.    Quality and quantity of food.....	18
b.    Drinking water.....	18
c.    Dietary requirements.....	19
d.    NPM assessment.....	20
5.    Time spent outside the cell and outdoors .....	20
a.    Time spent outdoors.....	20
b.    Time spent indoors .....	21
c.    Recreational facilities.....	21
d.    Educational activities .....	24
e.    NPM assessment.....	25
6.    Solitary confinement.....	26
a.    Placement in solitary confinement .....	26
b.    Monitoring of detainees .....	27
c.    NPM assessment.....	27

7.	Work and education of detainees to promote social reintegration.....	30
a.	General measures to promote social reintegration .....	30
b.	Access to work .....	32
c.	Access to education .....	33
d.	NPM assessment.....	34
8.	Healthcare (note – section 11 contains specific questions concerning female detainees).....	34
a.	Access to healthcare .....	34
b.	Availability of medical staff.....	35
c.	Medical examination upon admission .....	36
d.	Preventive care .....	36
e.	Specialised care.....	37
f.	Treatment of the detainee’s choosing.....	37
g.	NPM assessment.....	37
9.	Prevention of violence and ill-treatment.....	40
a.	Protection from violence by prison staff .....	40
b.	Protection from violence by other detainees .....	40
c.	NPM assessment.....	41
10.	Contact with the outside world .....	42
a.	Visits .....	42
b.	Correspondence.....	43
c.	Visits with children.....	43
d.	NPM assessment.....	44
11.	Special measures for female detainees .....	45
a.	General conditions of detention for women and girls.....	45
b.	Separation from men .....	46
c.	Hygiene .....	47
d.	Healthcare.....	48
e.	Pregnancy and women with babies or young children.....	50
f.	NPM assessment.....	50
12.	Special measures for foreign nationals.....	51
a.	General measures for foreign nationals .....	51
b.	Interpretation and translation .....	51
c.	NPM assessment.....	52

13.	Special measures relating to detention of children and young adults/juvenile detention regime	53
	a. Age groups .....	53
	b. General measures for detained children and young adults .....	53
	c. Separation from adults .....	53
	d. NPM assessment.....	54
14.	Special measures to protect detainees with disabilities or serious medical conditions .....	54
	a. Care in detention .....	54
	b. Continuity of care.....	55
	c. Reasonable accommodation and accessibility .....	56
	d. NPM assessment.....	56
15.	Specific measures to protect detainees with special needs or other vulnerabilities .....	56
	a. Protection of LGBTI detainees .....	56
	b. Protection of trans detainees .....	56
	c. Protection of other vulnerable detainees.....	57
	d. NPM assessment.....	58
16.	Specific measures to address radicalisation in prisons.....	58
	a. General measures to prevent radicalisation.....	58
	b. Risk assessments.....	60
	c. Training of staff.....	60
	d. Deradicalisation measures.....	60
	e. NPM assessment.....	60
17.	Inspections and monitoring .....	61
	a. Inspections .....	61
	b. Access to detention facilities by national authorities.....	61
	c. Access to detention facilities by international bodies .....	62
	d. NPM assessment.....	62
18.	Access to remedy .....	63
	a. Legal remedies .....	63
	b. Legal assistance.....	64
	c. Request and complaints.....	64
	d. Independent authority.....	66
	e. NPM assessment.....	66
Part II: National case-law .....		67

Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ), 1 BvR 409/09, 22 February 2011.	67
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ), 2 BvR 566/15, 22 March 2016.	68
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) (2015), 1 BvR 1127/14, 14 July 2015	68
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ), 1 BvR 1403/09, 7 November 2011.	69
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) (2015), 2 BvR 1111/13, 18 March 2015.....	70
Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) (2007): 2 BvR 939/07, 13 November 2007.	71
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) (2023), 2 BvR 166/16, 2 BvR 1683/17, 20 June 2023. ....	72
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ), 2 BvR 1673/04, 31 May 2006.	73
Germany, Zweibrücken Higher Regional Court ( <i>Oberlandesgericht Zweibrücken</i> ) (2004), 1 Ws 174/04, 19 May 2004.....	74
Germany, Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) (2008), 2 BvR 1268/07, 29 October 2008. ....	75
Germany, Celle Higher Regional Court ( <i>Oberlandesgericht Celle</i> ) (2013), 1 Ws 375/13, 25 September 2013.	75
Germany, Celle Higher Regional Court ( <i>Oberlandesgericht Celle</i> ) (2012), 1 Ws 458/12, 22 November 2012.	76

## Part I: National standards

### Preliminary remarks

The German criminal justice system knows several forms of detention: pre-trial detention (*Untersuchungshaft*), criminal detention of adults (*Freiheitsstrafe*) and of juveniles (*Jugendstrafe*) in prisons, preventive detention of criminals who are deemed being a risk for the public even after they have served their sentence (*Sicherungsverwahrung*), custodial sanctions as an alternative for the non-recovery of a financial penalty (*Ersatzfreiheitsstrafe*), and detention pending extradition (*Auslieferungshaft*). The execution of all these types of detention is named *Justizvollzug*. Forensic commitment in closed psychiatric facilities (*Maßregelvollzug*) is also part of the criminal justice system but does not fall under the category of *Justizvollzug*. Not part of the criminal justice detention regime is civil confinement (*Zivilhaft*), youth arrest (*Jugendarrest*), military penal detention (*Strafarrest*) and the detention of migrants for return procedures (*Abschiebungshaft*). Though special facilities exist for these latter forms of detention, they are often also executed in the 179 German prisons (*Justizvollzugsanstalten, JVA*).<sup>2</sup>

In 2006, the power to regulate criminal detention was transferred to the Länder in the context of a “federalism reform” (*Föderalismusreform I*). Before this date, criminal detention was solely regulated by the Federal Prison Act (*Strafvollzugsgesetz*) which was adopted in 1976. Meanwhile, all 16 German states (*Länder*) have legislated for their own prison acts. Several of the new prison acts were drafted along a Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*) adopted by the Länder ministers of justice on 23 August 2011. Others are significantly influenced by the old federal act. The federal act is still in force, thus, governing areas of criminal detention that are not regulated by Länder law, such as remedies for prisoners. In addition to their prison acts, most of the Länder have adopted specific acts on criminal detention of youth, pre-trial detention and preventive detention, plus specific acts on data protection in criminal detention. In total, more than 50 Länder acts regulate the conditions of criminal detention along with the Federal Prison Act (*Strafvollzugsgesetz*).

Below the level of legislation, the German prison system is regulated by legal ordinances (*Rechtsverordnungen*), administrative regulations (*Verwaltungsvorschriften*), institution rules (*Hausordnungen*) that exist for each prison and, on a personal level, by the prison plan (*Vollzugsplan*) for each detainee.

Given the diversity and complexity of the regulatory regimes governing detention in the German criminal justice system, we focus in the following on the criminal detention of adults (*Strafvollzug*) regulated by the prison acts and pre-trial detention (*Untersuchungshaftvollzug*). Not covered is preventive detention (*Sicherungsverwahrung*): though it belongs to the overall system of *Justizvollzug* it is not criminal detention but is a special form of forensic commitment (*Maßregelvollzug*). Information on the special case of juvenile detention is only provided in chapter 13.

Though the following report attempts to provide a broad overview, it was necessary to limit the focus in regard to some aspects. In these cases, the report focuses on the regulation of prison conditions in

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<sup>2</sup> Police custody (*Polizeigewahrsam*) in Germany is only meant for preventive purposes and regulated by the police acts of the 16 German states and the Federal Police Act (*Bundespolizeigesetz*). Thus, it is not covered by this report.

two *Länder*, namely North Rhine-Westphalia and Bavaria.<sup>3</sup> We have chosen these two *Länder* for the following reasons. Firstly, they represent two different detention regimes. Whereas Section 1 of the Prison Act in North Rhine-Westphalia states that “[t]he execution of the prison sentence serves the purpose of enabling prisoners to lead a life without criminal offences in the future in a socially responsible manner”, Bavaria prioritises public security over the rights of the prisoners. Article 2 of the Bavarian Prison Act reads as following: “The execution of the prison sentence serves to protect the general public from further criminal offences. It is intended to enable prisoners to lead a socially responsible life without committing a crime in the future.” Secondly, both *Länder* rank first (NRW: 11,044 prisoners) and second (Bavaria 6,465 prisoners) in terms of the number of prisoners. Together, they count almost 40 per cent of the German prison population (around 44,000 prisoners in 2023) and with 33 (NRW) and 34 prisons (Bavaria) about 39 per cent of the total number of prisons in Germany (172).<sup>4</sup>

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<sup>3</sup> Prison conditions are regulated in Bavaria by the Bavarian Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und Jugendstrafe – Bayerisches Strafvollzugsgesetz](#)), 10 December 2007.

and in North Rhine-Westphalia by the Prison Act of North Rhine-Westphalia ([Gesetz zur Regelung des Vollzuges der Freiheitsstrafe in Nordrhein-Westfalen – Strafvollzugsgesetz Nordrhein-Westfalen – Strafvollzugsgesetz Nordrhein-Westfalen](#)), 13 January 2015.

Conditions in pre-trial detention are regulated in Bavaria by the Bavarian Pre-Trial Detention Act ([Gesetz über den Vollzug der Untersuchungshaft – Bayerisches Untersuchungshaftvollzugsgesetz](#)), 20 December 2011.

and in North Rhine-Westphalia by the Pre-Trial Detention Act of North Rhine-Westphalia ([Gesetz zur Regelung des Vollzuges der Untersuchungshaft in Nordrhein-Westfalen – Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)), 27 October 2009.

<sup>4</sup> Germany, Federal Office for Statistics (*Statistisches Bundesamt*) (2024), [Statistischer Bericht: Strafvollzug 2023](#), sheet 24321-02;

Statista Research Department (2024), [Anzahl der Justizvollzugsanstalten in Deutschland nach Bundesländern im Jahr 2023](#).

## 1. Cells

### a. Cell space

Since criminal detention was deleted in 2006 from the catalogue of matters of concurrent legislative powers listed in Article 74 (1) of the Basic Law, the regulation of prison conditions is the sole responsibility of the 16 federal states (*Länder*). Meanwhile all federal states have passed individual prison acts which exist besides the Federal Prison Act (*Strafvollzugsgesetz*) of 16 March 1976 which is still applicable for prison matters that are not regulated by state legislation. All 16 states – some with differences in wording – have adopted Section 144 (1) of the Federal Prison Act (*Strafvollzugsgesetz*) which stipulates:<sup>5</sup>

*“Räume für den Aufenthalt während der Ruhe- und Freizeit sowie Gemeinschafts- und Besuchsräume sind wohnlich oder sonst ihrem Zweck entsprechend auszugestalten. Sie müssen hinreichend Luftinhalt haben und für eine gesunde Lebensführung ausreichend mit Heizung und Lüftung, Boden- und Fensterfläche ausgestattet sein.”*

“Rooms, in which prisoners spend the night and their leisure time, as well as common rooms and visiting rooms, shall be comfortable or otherwise equipped in a manner meeting their purpose. They shall have a **sufficient cubic content of air** and, for reasons of health, shall have **sufficient** heating and ventilation, **floor space** and size of windows.”<sup>6</sup>

Only in the state of **Baden-Württemberg** the cell space is specified by law, providing that new prisons shall be built with single cells sized at least 9 sqm, and multi-person cells sized at least 7 sqm per person; older prisons must provide double cells with at least 4.5 sqm or larger cells with at least 6 sqm space.<sup>7</sup>

Administrative regulations (*Verwaltungsverordnungen*) that detail the cell space are rare.<sup>8</sup> In **Bavaria** an administrative regulation calls on planners to design single cells with a ground size of at least 9 sqm, excluding toilet space.<sup>9</sup> According to the **Thuringian** Ministry of Justice, the size of cells in open

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<sup>5</sup> Pollähne, H. (2022), ‘Teil II § 93 LandesR - Anstalten’ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 3;

Kurth, K. and Grothe, J. (2020), ‘Größe und Ausgestaltung der Räume’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, pp. 1329-1334.

<sup>6</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>7</sup> Section 7 para. 2 and 3 of the Baden-Württemberg Prison Act ([Justizvollzugsgesetzbuch](#)):

*“§ 7 (2) In Justizvollzugsanstalten, mit deren Errichtung vor Inkrafttreten dieses Gesetzes begonnen wurde, haben Gemeinschaftshafräume bei Doppelbelegung eine Nettogrundfläche von mindestens 4,5 Quadratmetern, bei einer höheren Belegung mindestens sechs Quadratmeter je Gefangener oder Gefangenem aufzuweisen. Für An- und Zubauten bei Anstalten nach Satz 1, mit deren Errichtung nach Inkrafttreten dieses Gesetzes begonnen wurde, gilt Absatz 3 entsprechend.*

*§ 7 (3) Bei Justizvollzugsanstalten, mit deren Errichtung nach Inkrafttreten dieses Gesetzes begonnen wurde, ist im geschlossenen Vollzug eine Einzelunterbringung der Gefangenen zur Ruhezeit zugrunde zu legen. Einzelhafräume haben eine Nettogrundfläche von mindestens neun Quadratmetern, Gemeinschaftshafräume von mindestens sieben Quadratmetern je Gefangener oder Gefangenem aufzuweisen.”*

<sup>8</sup> Pollähne, H. (2022), ‘Teil II § 93 LandesR - Anstalten’ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 31.

<sup>9</sup> The Administrative Regulation (*Verwaltungsverordnung*) on Art. 167 BayStVollzG states:

*“Einzelhafräume für den Aufenthalt während des Tags und während der Nacht sollen so geplant werden, dass diese unter Berücksichtigung der WC-Kabine eine Bodenfläche von mindestens neun Quadratmetern haben.”*



detention regimes can be smaller as sanitary facilities are not located in the cells but in the prison hallways.<sup>10</sup>

All German states have adopted their own detailed regulations on the execution and conditions of pre-trial detention. These regulations have been laid down either in specific pre-trial detention acts or in "combined acts" that regulate pre-trial, adult and juvenile detention.<sup>11</sup> However, **the specific pre-trial detention acts do not include standards on cells similar to section 144 of the Federal Prison Act (Strafvollzugsgesetz).**

The **Federal Constitutional Court (Bundesverfassungsgericht)** has decided several complaints on the size of cells but avoided to set a clear standard. Rather, the Court decided that it depends on the overall situation if human dignity is violated, e.g. on factors such as times out of cell, duration of detention in a specific cell and space reserved for sanitary facilities.<sup>12</sup> The court thus held, for example, that a single cell without a separate toilet with a total floor size of 5.25 sqm violates human dignity in the case of an inmate who was locked for an average of 15.5 to 18 hours daily for a period of three months.<sup>13</sup> In another decision, the Court held that a "long-term placement" in a cell sized around 4.5 sqm would violate human dignity.<sup>14</sup>

When deciding a complaint of a prisoner against his **pre-trial detention conditions** in November 2011, the **Federal Constitutional Court (Bundesverfassungsgericht)** held that "the fundamental right of human dignity does not require a distinction between criminal detention and pre-trial detention".<sup>15</sup>

The non-binding minimum standard set up by the **National Agency for the Prevention of Torture (Nationale Stelle zur Verhütung von Folter)**, Germany's National Prevention Mechanism, when visiting prison and pre-trial detention facilities, is 6 sqm per single cell, excluding toilet space, or 7 sqm including toilet space. In cells for more than one person, any additional person needs to be provided with 4 sqm:

"In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least 6 m<sup>2</sup>, excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m<sup>2</sup>. For multiple occupancy, a further 4 m<sup>2</sup> of floor space must be added to this figure for each additional person, excluding the area of the sanitary facilities."<sup>16</sup>

The **National Agency for the Prevention of Torture's** standards are in line with the minimum standards provided in paragraph 34 of the *Commission recommendation of 8.12.2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions*.

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<sup>10</sup> Email from Ministry of Justice of the State of Thuringia, 13 June 2018.

<sup>11</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. XIII.

<sup>12</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2011), 1 BvR 409/09, 22 Februar 2011, paras. 29-31; Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2016), 2 BvR 566/15, 22 March 2016, para. 27.

<sup>13</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2015), 1 BvR 1127/14, 14 July 2015.

<sup>14</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2016), 2 BvR 566/15, 22 March 2016, para. 28.

<sup>15</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2011), 1 BvR 1403/09, 7 November 2011, para. 41.

<sup>16</sup> Germany, National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 33.

Without reference to the CJEU’s Dorobantu decision, German courts and the National Agency for the Prevention of Torture have thus adopted a similar approach for calculating the cell space: the calculation excludes the toilet area while counting in the space occupied by furniture.

**b. Access to natural light and fresh air, cell equipment, furniture, and facilities**

Apart from the state legislation corresponding with the provisions of Section 144 (1) of the **Federal Prison Act** (*Strafvollzugsgesetz*), no national standards on access to natural light, cell equipment, furniture and facilities exist. Thus, cells shall be equipped in a manner meeting their purpose, have **sufficient cubic content of air**, and for reasons of health, shall have sufficient heating and ventilation, and size of windows.<sup>17</sup>

Only **Baden-Württemberg, Bavaria and Schleswig-Holstein** incorporated the requirement that **rooms shall be equipped in a “comfortable” (‘wohnlich’) manner** from the provisions of Section 144 (1) of the Federal Prison Act (*Strafvollzugsgesetz*) to their state legislation.<sup>18</sup>

The **Federal Constitutional Court** (*Bundesverfassungsgericht*) decided that toilets must be separated in multiple-occupancy cells.<sup>19</sup>

With reference to this decision the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) has established the following non-binding standard for both pre-trial and criminal detention:

“According to past decisions of the German Federal Constitutional Court, prison cells accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple-occupancy without such a separation constitutes a violation of human dignity.”<sup>20</sup>

Moreover, the Agency has established the non-binding standard that prison inmates should have daylight in cells:

“In prisons, inmates should have access to **natural, unfiltered light** in their cells. Their view outside may not be obstructed by opaque plexiglass panes, for instance.” [*Comment by the NPM:*] Furthermore, inmates “should have the opportunity to sleep in a darkened room and to assert their right to privacy.”<sup>21</sup>

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<sup>17</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>18</sup> Kurth, K. and Grothe, J. (2020), ‘Größe und Ausgestaltung der Räume’ in: Schwind, H-D., Böhm, A. *et al.* (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1333.

<sup>19</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2011), 1 BvR 1403/09, 7 March 2011.

<sup>20</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 33.

<sup>21</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 33.

### c. Video-surveillance of cells

Section 88 (1) and (2) No. 2 of the **Federal Prison Act** (*Strafvollzugsgesetz*) stipulate for the criminal detention regime:<sup>22</sup>

*“(1) Gegen einen Gefangenen können besondere Sicherungsmaßnahmen angeordnet werden, wenn nach seinem Verhalten oder auf Grund seines seelischen Zustandes in erhöhtem Maße Fluchtgefahr oder die Gefahr von Gewalttätigkeiten gegen Personen oder Sachen oder die Gefahr des Selbstmordes oder der Selbstverletzung besteht.*

*(2) Als besondere Sicherungsmaßnahmen sind zulässig: [...] 2. die Beobachtung auch mit optisch-elektronischen Einrichtungen“*

“(1) Special security measures may be ordered against a prisoner who, in the light of his or her behaviour or on account of his or her mental state, is deemed being at risk to plan to escape, to violently attack persons or objects or to commit suicide or self-injury.

(2) Following special security measures are permitted: [...] 2. observation also with optical-electronic devices”

Correspondingly, most state prison acts explicitly state that observation may be carried out by technical or optical-electronic means, such as video cameras, for security reasons.<sup>23</sup> Most state acts allow for observation around the clock. Only in **Baden-Württemberg** observation is limited to the night-time.<sup>24</sup>

All state acts on pre-trial detention list observation as a special security measure, too, but not all of them explicitly mention video surveillance.<sup>25</sup> The relevant provisions are equal or similar to section 88 of the Federal Prison Act (*Strafvollzugsgesetz*). As for the criminal detention regime, in Baden-Württemberg observation is only allowed during the nighttime.<sup>26</sup>

The following states explicitly stipulate that the privacy of prisoners – both in pre-trial and criminal detention – has to be respected when designing and observing rooms under video surveillance: Berlin, Bremen, Hamburg, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-

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<sup>22</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>23</sup> Baier, H., Grote, J. (2020): ‘I. Besondere Sicherungsmaßnahmen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1067.

<sup>24</sup> Baier, H., Grote, J. (2020): ‘I. Besondere Sicherungsmaßnahmen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1066 f.; section 67 (2) No. 2 of the Third Book of the Baden-Württemberg Prison Act (*Drittes Buch Justizvollzugsgesetzbuch*):

*“Als besondere Sicherungsmaßnahmen sind zulässig  
2. die Beobachtung bei Nacht”.*

<sup>25</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 256.

<sup>26</sup> Section 47 (2) of Book II of the Baden-Württemberg Criminal Detention Code ([Zweites Buch Justizvollzugsgesetzbuch – Untersuchungshaftvollzug](#)) of 10 November 2009.

Anhalt, Schleswig-Holstein.<sup>27</sup> The federal states of Hesse,<sup>28</sup> Lower Saxony<sup>29</sup> and North Rhine-Westphalia<sup>30</sup> stipulate that the detainee's sense of shame must be respected during observation.

In Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt and Schleswig-Holstein, the sanitary facilities are to be excluded from observation; alternatively, the visibility of these areas is to be excluded by technical measures such as "pixilation" of video images. However, in case of an acute risk of self-injury or suicide unrestricted surveillance is permitted in

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<sup>27</sup> Section 32 (4) sentence 1 of the Bremen Prison Data Protection Act ([Bremisches Justizvollzugsdatenschutzgesetz](#)) and section 32 (4) sentence 1 of the Rhineland-Palatinate Prison Data Protection Act ([Landesjustizvollzugsdatenschutzgesetz](#)):

*"Bei der Gestaltung und Beobachtung optisch-elektronisch beobachteter Hafträume und Zimmer ist auf die elementaren Bedürfnisse der Gefangenen nach Wahrung ihrer Intimsphäre angemessen Rücksicht zu nehmen";* with similar formulations: section 21 (3) of the Berlin Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Berlin](#)), section 21 (4) sentence 2 of the Hamburg Prison Data Protection Act ([Hamburgisches Justizvollzugsdatenschutzgesetz](#)), section 25 (7) sentence 1 of the Mecklenburg-Western Pomerania Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Mecklenburg-Vorpommern](#)), section 32 (4) sentence 1 of the Saarland Prison Data Protection Act ([Saarländisches Justizvollzugsdatenschutzgesetz](#)), section 34 (3) sentence 1 of the Saxony Prison Data Protection Act ([Sächsisches Justizvollzugsdatenschutzgesetz](#)), section 27 (5) sentence 1 of the Fourth Book of the Saxony-Anhalt Prison Data Protection Act ([Viertes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt](#)) and section 24 (4) sentence 1 of the Schleswig-Holstein Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Schleswig-Holstein](#)).

<sup>28</sup> Section 50 (6) sentence 4 of the Hesse Prison Act ([Hessisches Strafvollzugsgesetz](#)) and section 35 (6) sentence 4 of the Hesse Pre-trial Detention Act ([Hessisches Untersuchungshaftvollzugsgesetz](#)):

*"The sense of shame is to be respected as much as possible." ["Das Schamgefühl ist soweit wie möglich zu schonen."]*

<sup>29</sup> Section 81a (2) sentence 1 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsgesetz](#)):

*"During observation, the prisoners' sense of shame must be respected." ["Bei der Beobachtung ist das Schamgefühl der oder des Gefangenen zu schonen".].*

This provision is also applicable to pre-trial detention in accordance with section 156 (1) of the Lower Saxony Prison Act.

<sup>30</sup> Section 69 (4) sentence 1 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

*"The prisoners' sense of shame shall be protected during the observation pursuant to section 69 para. 2 no. 4." ["Bei der Beobachtung nach Absatz 2 Nummer 4 ist das Schamgefühl der Gefangenen zu schonen."].*

This provision also applies to pre-trial detention in accordance with section 28 Pre-trial Detention Act of North Rhine-Westphalia.

individual cases in the aforementioned states, with the exception of Saxony-Anhalt.<sup>31</sup> Observation of the toilet area is completely inadmissible in Lower Saxony.<sup>32</sup>

The following states also stipulate in their laws that observation of female prisoners is to be carried out by female staff and of male prisoners by male staff: Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Schleswig-Holstein.<sup>33</sup>

The **Federal Constitutional Court** (*Bundesverfassungsgericht*) decided that the placement of a completely undressed prisoner in a specially secured detention room with permanent video surveillance was not compatible with the general right of personality of the person concerned under Article 2 (1) and Article 1 (1) of the Basic Law (*Grundgesetz*).<sup>34</sup>

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<sup>31</sup> Section 32 (4) sentences 1 and 2 of the Bremen Prison Data Protection Act ([Bremisches Justizvollzugsdatenschutzgesetz](#)), section 32 (4) sentences 1 and 2 of the Rhineland-Palatinate Prison Data Protection Act ([Landesjustizvollzugsdatenschutzgesetz](#)) and section 32 (4) sentences 1 and 2 of the Saarland Prison Data Protection Act ([Saarländisches Justizvollzugsdatenschutzgesetz](#)):

“in particular, sanitary facilities shall be excluded from observation; alternatively, the detectability of these areas shall be excluded by technical measures. In the event of an acute risk of self-harm or suicide, unrestricted surveillance is permissible in individual cases” [*insbesondere sind sanitäre Einrichtungen von der Beobachtung auszunehmen; hilfsweise ist die Erkennbarkeit dieser Bereiche durch technische Maßnahmen auszuschließen. Bei akuter Selbstverletzungs- oder Selbsttötungsgefahr ist im Einzelfall eine uneingeschränkte Überwachung zulässig*];

and with minor textual deviations: section 25 (7) sentences 1, 2 and 3 of the Mecklenburg-Western Pomerania Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Mecklenburg-Vorpommern](#)), section 34 (3) sentences 1, 2 and 3 of the Saxony Prison Data Protection Act ([Sächsisches Justizvollzugsdatenschutzgesetz](#)), and section 24 (4) sentences 1 and 2 of the Schleswig-Holstein Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Schleswig-Holstein](#)); section 27 (5) sentences 1 and 2 of the Fourth Book of the Saxony-Anhalt Prison Data Protection Act ([Viertes Buch Justizvollzugsdatenschutzgesetz Sachsen-Anhalt](#)):

“in particular, sanitary facilities shall be excluded from optical-electronic observation as far as possible. If this is not possible, the detection of these areas shall be excluded by technical measures” [*insbesondere sollen sanitäre Einrichtungen vom optisch-elektronischen Beobachten, soweit möglich, ausgenommen werden. Ist dies nicht möglich, ist das Erkennen dieser Bereiche durch technische Maßnahmen auszuschließen*].

All such provisions also apply to pre-trial detention which falls under the scope of the state acts on data protection in prisons.

<sup>32</sup> Section 81a (2) sentence 2 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsdatenschutzgesetz](#)):

“The monitoring of the toilet area is prohibited.” [*Die Beobachtung des Toilettenbereichs ist unzulässig*].

This provision is also applicable to pre-trial detention in accordance with section 156 (1) of the Lower Saxony Prison Act.

<sup>33</sup> Section 32 (4) sentence 3 of the Bremen Prison Data Protection Act ([Bremisches Justizvollzugsdatenschutzgesetz](#)), section 25 (7) sentence 4 of the Mecklenburg-Western Pomerania Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Mecklenburg-Vorpommern](#)), section 32 (4) sentence 3 of the Rhineland-Palatinate Prison Data Protection Act ([Landesjustizvollzugsdatenschutzgesetz](#)) section 32 (4) sentence 3 of the Saarland Prison Data Protection Act ([Saarländisches Justizvollzugsdatenschutzgesetz](#)), section 34 (3) sentence 4 of the Saxony Prison Data Protection Act ([Sächsisches Justizvollzugsdatenschutzgesetz](#)), and section 24 (4) sentence 3 of the Schleswig-Holstein Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Schleswig-Holstein](#)):

“The observation of female prisoners shall be carried out by female staff, the observation of male prisoners by male staff.” [*Die Beobachtung weiblicher Gefangener soll durch weibliche Bedienstete, die Beobachtung männlicher Gefangener durch männliche Bedienstete erfolgen*].

All these provisions also apply to pre-trial detention which falls under the scope of the state acts on data protection in prisons.

<sup>34</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2015), 2 BVR 1111/13, 18 March 2015, paras. 29-32.

According to the non-binding standard of the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) no video surveillance should take place without the knowledge of the affected detainee:

“CCTV monitoring in prisons should only be conducted in individual cases where this is imperative for the protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.”<sup>35</sup>

#### d. NPM assessment

##### Nationale Stelle zur Verhütung von Folter: Publikationen

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

##### **Occupancy:**

*“In der JVA Bernau (BY) waren die Gemeinschaftsräume mit bis zu acht Gefangenen belegt, in der JVA Untermaßfeld (TH) mit bis zu sechs Gefangenen. [...] In der JVA Konstanz (BW) funktionierten die Kohlefilter der Lüftungsanlagen in mehreren mehrfachbelegten Hafträumen zum Besuchszeitpunkt nicht. Eine natürliche Belüftung wurde erschwert, da die Gefangenen die Fenster in den Hafträumen nicht eigenständig öffnen konnten. [...] Eine vollständige Umsetzung des gesetzlich verankerten Grundsatzes der Einzelunterbringung konnte die Nationale Stelle im Jahr 2022 in den Justizvollzugsanstalten Augsburg-Gablingen (BY), Fuhlsbüttel (HH), Neuruppin-Wulkow (BB), Vechta (NI) und Rockenberg (Jugend, HE) beobachten.“* (p. 64 of the German version of the annual report 2022)

“The multiple-occupancy cells at Bernau Prison (Bavaria) were holding up to eight prisoners and those at Untermaßfeld Prison (Thuringia) up to six. [...] At the time of the National Agency’s visit Prison (Baden-Württemberg), to Konstanz the ventilation system carbon filters were not working in a number of the multiple-occupancy cells. Natural ventilation was hindered by the fact that prisoners were not able to open the windows themselves. [...] On its visits in 2022, the National Agency found that the following prisons had implemented in full the statutory principle of single occupancy: Augsburg-Gablingen (Bavaria), Fuhlsbüttel (Hamburg), Neuruppin-Wulkow (Brandenburg), Vechta (Lower Saxony) and Rockenberg (juvenile prison; Hesse).” (p. 62 of the English version of the annual report 2022)

*„Auch im Jahr 2022 konstatierte die Nationale Stelle eine strukturelle Überbelegung der besuchten ten Justizvollzugsanstalten in Baden-Württemberg. [...] Auch verfügte eine Vielzahl an doppelbelegten Hafträumen in der JVA Ravensburg lediglich über eine Grundfläche von 9 qm. Sie genügten folglich nicht den nach der Nationalen Stelle zu wahrenen Mindeststandards.“* (p. 67 of the German version of the annual report 2022)

“In 2022 once again, the National Agency found overcrowding to be a systemic problem in the prisons it visited in Baden-Württemberg. [...] Moreover, many of the cells with double occupancy at Ravensburg

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<sup>35</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 33.

Prison had a floor space of only 9 m<sup>2</sup>. This does not meet minimum standards in the view of the National Agency.” (p. 64 of the English version of the annual report 2022)

### **Natural light and general building conditions**

*“Trotz erster Baumaßnahmen in der JVA Konstanz konnten die bereits bei dem ersten Besuch festgestellten baulichen Mängel auch neun Jahre später nicht zufriedenstellend behoben werden. So sind weiterhin undurchsichtige Plexiglasscheiben vor den Fenstern aller Hafträume angebracht. Zwar sind diese Scheiben lichtdurchlässig, jedoch verhindern sie, dass die Gefangenen nach draußen schauen können, was – wie es das Justizministerium Baden-Württemberg bereits in seiner Stellungnahme vom 24. September 2013 selbst anerkannte – eine „gravierende Belastung“ für die Betroffenen darstellt. Auch war der Gesamteindruck der Hafträume im nicht renovierten Teil der Anstalt insgesamt höchst unbefriedigend. Einige Holzböden waren beschädigt, wiesen Löcher auf und stellten folglich potenzielle Gefahrenstellen dar.“* (p. 67 of the German version of the annual report 2022)

“Although some work had been done at Konstanz Prison, the structural issues found on the first visit to the facility had still not been satisfactorily dealt with nine years later. For example, there are still opaque sheets of plexiglass in front of the windows in all the cells. Although the plexiglass lets in the light, it prevents prisoners from seeing outside. As the Baden-Württemberg Justice Ministry itself recognised in its statement of 24 September 2013, this places a serious strain on the prisoners concerned. Overall, the condition of the cells in the part of the prison that had not been renovated appeared extremely unsatisfactory. Some of the wooden floors were damaged and had holes in them, posing a hazard.” (p. 64 of the English version of the annual report 2022)

### **Equipment and general material conditions (of specially secured cells)**

*“Die genutzten Räume {in der JVA Bernau} waren allenfalls mit je einer am Boden liegenden Matratze ausgestattet; einige Gefangene erhielten über mehrere Tage bis Wochen keine Matratze. Auch wurden die betroffenen Gefangenen in der JVA Bernau häufig bloß mit einer Papierunterhose ausgestattet, was insbesondere in Verbindung mit einer dauerhaften Kameraüberwachung schamverletzend ist. Eine solche Vorgehensweise ist in jedem Fall dann unzulässig, wenn Zustand und Ausstattung der Räume die Menschenwürde verletzen. Letzteres trifft auf die besonders gesicherten Hafträume in Haus 1 der JVA Bernau zu. Diese gleichen einem „Glaskäfig“. Die dort untergebrachten Gefangenen befinden sich hinter einer Glasfassade, deren Trennscheiben so massiv sind, dass die betroffenen Personen nur schwer akustisch zu verstehen sind. Um sich mit der Besuchsdelegation der Nationalen Stelle verständigen zu können, musste sich ein dort untergebrachter Gefangener auf den Boden legen und durch die sich dort befindende Kostklappe sprechen. Durch eben jene in Fußbodenhöhe angebrachte Kostklappe werden auch die täglichen Essensrationen gereicht.“* (p. 68 of the German version of the annual report 2022)

“The specially secured cells [at Bernau Prison] had, at the most, a mattress on the floor; some prisoners were not even given a mattress for days or even weeks. Often, the only clothing issued to the prisoners concerned was paper underwear; this practice is demeaning, particularly when the prisoner is subject to 24-hour CCTV monitoring. The above approach is, without exception, inadmissible whenever the condition of the cells and the furnishings provided violate human dignity. This last applies to the specially secured cells in block 1 at Bernau Prison, which resemble a glass cage. Prisoners are held behind a glass wall that is so thick that it is difficult to understand anything they say. To communicate with the delegation, a prisoner held in one of the specially secured cells had to lie on the floor and talk through the food hatch – the floor-level hatch through which inmates receive their daily food rations.” (p. 65 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

### **General building conditions:**

*„In der Teilanstalt II der JVA Tegel haben die beim Erstbesuch der Nationalen Stelle geforderten Renovierungen oder Erneuerungen nicht stattgefunden. Der für einen Ersatzbau der Teilanstalt II notwendige Abriss eines anderen Gebäudes auf dem Gelände der JVA Tegel ist erfolgt und die Planung für ein neues, modernes Gebäude abgeschlossen. Allerdings sei die Errichtung des Neubaus seitens der Berliner Senatsverwaltung für Justiz gestoppt worden. Nach Auskünften in der Anstalt habe sich die Unterbringungssituation für die Gefangenen durch den Abriss und durch den nicht erfolgten Neubau noch einmal verschärft. Aufgrund der Gesamtschau der baulich bedingten Missstände, der Hafttraumausstattung, des Fehlens von geeigneten Sport- und Beschäftigungsmöglichkeiten sowie der anhaltenden Personalknappheit im Allgemeinen Vollzugsdienst in der Teilanstalt II der JVA Tegel konnten Zweifel der Nationalen Stelle an der Eignung des Gebäudes für die Unterbringung von Gefangenen nicht ausgeräumt werden.“* (p. 90 of the German version of the annual report 2021)

„At Division II of Tegel Prison, the renovations or replacements called for by the National Agency after its first visit did not take place. The demolition of another building on the grounds of Tegel Prison, which was necessary for a replacement building for Division II, did take place, and the planning for a new, modern building was completed. However, the construction of the new building was stopped by the Berlin Senate Department for Justice. According to information from the prison, the conditions of accommodation have become even worse for the prisoners due to the old building having been demolished and the new building not yet having been constructed. In view of all the structural deficiencies, the current fittings and furnishings of the cells, the lack of suitable sports and recreational opportunities, as well as the continuing shortage of staff in the general prison service in Division II of Tegel Prison, the National Agency’s doubts regarding the suitability of the building for accommodating prisoners could not be dispelled.” (pp. 87f of the English version of the annual report 2021)

### **Over-occupancy:**

*„Die Justizvollzugsanstalten Landsberg am Lech, Schwäbisch-Hall und Karlsruhe (Besuch im Jahr 2020) waren zum Besuchszeitpunkt überbelegt. Dies führt zur Belegung mit zu vielen Gefangenen in auf Grund ihrer Größe und Ausstattung ungeeigneten Hafträumen, die auch Menschenwürdeverletzungen vor Ort begründeten. Zudem mussten Freizeiträume umgenutzt werden, wodurch sich die Unterbringungssituation für alle Gefangenen verschlechterte.“* (p. 91 of the German version of the annual report 2021)

„At the time of the visit (in 2020), the prisons in Landsberg am Lech, Schwäbisch-Hall and Karlsruhe were overcrowded. This results in too many prisoners being accommodated in cells that are unsuitable for such occupancy due to their size and furnishings; this can also violate the human dignity of the prisoners concerned. Moreover, leisure areas had to be repurposed, which led to a deterioration of the conditions of detention for all prisoners.” (p. 89 of the English version of the annual report 2021)

### **Cell size:**

*„In der JVA Landsberg am Lech hat der kleinste Vierbetthaftraum eine Fläche von 16,98 m<sup>2</sup>, die Doppelhafträume im Zugangsgebäude eine Fläche von 9,92 m<sup>2</sup>. In der JVA Schwäbisch-Hall haben die für die Doppelhaft genutzten Hafträume im Altbau eine Fläche von 9,13 m<sup>2</sup>. Aus Sicht der Nationalen Stelle wird in diesen Fällen die absolute Mindestgrenze für eine menschenwürdige Unterbringung unterschritten.“* (p. 91 of the German version of the annual report 2021)

“At Landsberg am Lech Prison, the smallest four-bed cell has a floor space of 16.98 square metres, and the double detention rooms in the entrance building have a floor space of 9.92 square metres. At



Schwäbisch-Hall Prison, the cells used for double occupancy in the old building have a floor space of 9.13 square metres. In the view of the National Agency, the absolute minimum threshold for humane accommodation is not met in these cases.” (p. 89 of the English version of the annual report 2021)

*No comments by the NPM.*

## 2. Allocation of detainees

### a. Geographical allocation

The allocation of detainees is regulated in each state’s execution scheme (*Vollstreckungsplan*). In most states, detainees are placed based on criteria regarding their sentence. Generally, the larger the state (the more prisons), the more criteria are used for the allocation of detainees. Bremen, for example, has only one prison where most detainees are placed in different wards. Special group of detainees, such as female offenders with life sentences, are allocated in other prisons outside of Bremen, based on the execution scheme (*Vollstreckungsplan*) of Lower Saxony. In North Rhine-Westphalia and Bavaria, detainees are allocated based on the responsible district court (*Amtsgericht*), the type of detention (regular detention, first-time detention, pre-trial, detention pending extradition or else) and their sentence duration.<sup>36</sup> Some states use other allocation criteria, such as age during pre-trial detention or nationality (Lower Saxony).<sup>37</sup>

The proximity of the prisoner’s or detainee’s hometown is not mentioned in any execution scheme (*Vollstreckungsplan*). However, according to the **Federal Prison Act** (*Strafvollzugsgesetz*), the allocation may diverge from the enforcement plan and detainees can be transferred to other prisons, if this promotes the prisoner’s treatment of integration after release or, if necessary, for “other important reasons” (*andere wichtige Gründe*).<sup>38</sup> Some state have copied this provision in similar form: in Bavaria, the placement of detainees may diverge if (a) this contributes to the treatment or post-release integration of the detainees or (b) if this is necessary for organisational or other important reasons.<sup>39</sup> The execution scheme of North Rhine-Westphalia (*Vollstreckungsplan*) allows for an allocation of detainees divergent from the execution scheme out of treatment, reintegration, or safety reasons. This requires the assessment and agreement of the responsible supervisory authority and both prisons.<sup>40</sup>

### b. Allocation within detention facilities

Depending on individual characteristics of the person (age, gender, nationality), the type of detention (pre-trial, first-time detention, regular detention etc.) and the duration of sentence, detainees are located in different prisons or, if within the same prison, in different wards. In many states, including North Rhine-Westphalia and Bavaria, detainees who have not served a sentence of more than 3 months

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<sup>36</sup> See the execution scheme and the corresponding placement plan of North Rhine Westphalia ([Vollstreckungsplan für das Land Nordrhein-Westfalen - Einweisungsplan](#)) of 01 July 2023.

<sup>37</sup> See the execution scheme of Lower Saxony, ([Vollstreckungs- und Einweisungsplan für das Land Niedersachsen](#)) of 01 February 2023.

<sup>38</sup> Section 8 (1) of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>39</sup> See part 3, section 9 of the execution scheme of Bavaria ([Vollstreckungsplan für den Freistaat Bayern](#)) of 29 November 2023.

<sup>40</sup> See part I, section 2 (1) or part II, section 2 of the execution scheme of North Rhine Westphalia ([Vollstreckungsplan für das Land Nordrhein-Westfalen](#)) of 01 July 2023.

See, for example, also section 1.2 of the Saarland enforcement scheme ([Vollstreckungsplan für das Saarland](#)).

before (first-time prisoners, *Erstvollzug*) are to be detained separately from regular detention (*Regelvollzug*) and pre-trial detention is generally separate from post-judgment detention.<sup>41</sup>

Female and male prisoners are generally placed separately. Some states conduct individual case assessment for prisoners who do not identify with one of the binary gender categories (e.g. Berlin, Hamburg),<sup>42</sup> other states have regulation on where persons with a “diverse” gender record are allocated (e.g. North Rhine-Westphalia).<sup>43</sup>

According to the **Bavarian and North Rhine-Westphalian State Prison Acts** (*Strafvollzugsgesetze*), the individual prison plan (and its regular updates) stipulates the specific placement of a detainee – be it in a closed or open facility, in a living group, or in facilities for social therapy. The prison plan is based on an individual assessment of the detainee, discussed in a prison conference with the institution’s director and involved staff and reviewed with the person concerned.<sup>44</sup> Several states provide mother-child homes in which female offenders can live with their children (up until school age) under supervision and following an assessment of the Youth Welfare Center.<sup>45</sup>

### c. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports do not contain comprehensive information on the allocation of prisoners, the National Agency for the Prevention of Torture assesses systematically the conditions of contact with the outside world regarding possibilities of visits, phone calls and videotelephony. When complaints occur about the allocation of prisoners, the National Agency will address the issue with the visited facility and the concerned ministry within the frame of its visit reports.*

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<sup>41</sup> See part 1, section I, para. 6 of the execution scheme of North Rhine-Westphalia ([Vollstreckungsplan für das Land Nordrhein-Westfalen](#)) and the corresponding placement plan of North Rhine Westphalia ([Einweisungsplan](#)); see also section III, para. 6 of the Bavarian execution scheme ([Vollstreckungsplan für den Freistaat Bayern](#)) of 29 November 2023.

<sup>42</sup> See section I (B) of the Berlin execution scheme ([Vollstreckungsplan für das Land Berlin](#)) of 25 May 2023. or section VI of the execution scheme of Hamburg ([Vollstreckungsplan](#)) of 26 June 2023.

<sup>43</sup> See part I, section 11, 12 of the execution scheme of North Rhine-Westphalia ([Vollstreckungsplan für das Land Nordrhein-Westfalen](#)) of 01 July 2023.

<sup>44</sup> See section 9 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)) or section 10 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>45</sup> See section 87 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)) or section 86 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)). See also section 14 (1) of the Model State Prison Act ([Musterentwurf zum Landesstrafvollzugsgesetz](#)).

### 3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees)

#### a. Access to toilets

Apart from the general provision that cells should be designed “in a manner meeting their purpose”, copied from Section 144 of the **Federal Prison Act** (*Strafvollzugsgesetz*) to state legislation, no legal standards exist on toilets and sanitary facilities. In practice, all cells are equipped with toilets in closed detention regimes, whereas in open detention community toilets are usually separated and located at the hallways, also accessible during nighttime.

According to decisions of the **Federal Constitutional Court** (*Bundesverfassungsgericht*) toilets in multi-person cells need to be completely separated and extra-ventilated.<sup>46</sup> For single cells the court denied the need for a separated toilet. However, in case of non-separated toilets in single cells, the court decided that prison staff need to respect the privacy of inmates by knocking on the cell door before entering.<sup>47</sup> In Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt and Schleswig-Holstein, the sanitary facilities are to be excluded from observation; alternatively, the visibility of these areas is to be excluded by technical measures such as “pixilation” of video images. However, in case of an acute risk of self-injury or suicide unrestricted surveillance is permitted in individual cases in the aforementioned states, with the exception of Saxony-Anhalt.<sup>48</sup> Observation of the toilet area is completely inadmissible in Lower Saxony.<sup>49</sup>

The **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) applies this standard during its visits of prisons. Moreover, the National Agency recommends that video

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<sup>46</sup> See, for instance, Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2011), 1 BVR 409/09, 22 February 2011.

<sup>47</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2007): 2 BvR 939/07, 13 November 2007, paras. 12 and following.

<sup>48</sup> Section 32 (4) sentences 1 and 2 of the Bremen Prison Data Protection Act ([Bremisches Justizvollzugsdatenschutzgesetz](#)), section 32 (4) sentences 1 and 2 of the Rhineland-Palatinate Prison Data Protection Act ([Landesjustizvollzugsdatenschutzgesetz](#)) and section 32 (4) sentences 1 and 2 of the Saarland Prison Data Protection Act ([Saarländisches Justizvollzugsdatenschutzgesetz](#)):

“in particular, sanitary facilities shall be excluded from observation; alternatively, the detectability of these areas shall be excluded by technical measures. In the event of an acute risk of self-harm or suicide, unrestricted surveillance is permissible in individual cases” [*insbesondere sind sanitäre Einrichtungen von der Beobachtung auszunehmen; hilfsweise ist die Erkennbarkeit dieser Bereiche durch technische Maßnahmen auszuschließen. Bei akuter Selbstverletzung oder Selbsttötungsgefahr ist im Einzelfall eine uneingeschränkte Überwachung zulässig*“]; and with minor textual deviations: section 25 (7) sentences 1, 2 and 3 of the Mecklenburg-Western Pomerania Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Mecklenburg-Vorpommern](#)), section 34 (3) sentences 1, 2 and 3 of the Saxony Prison Data Protection Act ([Sächsisches Justizvollzugsdatenschutzgesetz](#)) and section 24 (4) sentences 1 and 2 of the Schleswig-Holstein Prison Data Protection Act ([Justizvollzugsdatenschutzgesetz Schleswig-Holstein](#)); section 27 (5) sentences 1 and 2 of the Fourth Book of the Saxony-Anhalt Prison Data Protection Act ([Viertes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt](#)):

“in particular, sanitary facilities shall be excluded from optical-electronic monitoring as far as possible. If this is not possible, the detection of these areas shall be excluded by technical measures” [*insbesondere sollen sanitäre Einrichtungen vom optisch-elektronischen Beobachten, soweit möglich, ausgenommen werden. Ist dies nicht möglich, ist das Erkennen dieser Bereiche durch technische Maßnahmen auszuschließen*“].

All these provisions also apply to pre-trial detention which falls under the scope of the state acts on data protection in prisons.

<sup>49</sup> Section 81a (2) sentence 2 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsgesetz](#)):

“The monitoring of the toilet area is prohibited.” [*Die Beobachtung des Toilettenbereichs ist unzulässig*“].

According to section 156 (1) of the Lower Saxony Prison Act, the provision is also applicable to pre-trial detention.

surveillance of toilet facilities – except in the case of so-called “especially secured detention rooms” (*besonders gesicherter Hafträume*) – should use privacy-respecting technologies, such as “pixelation” of video images:

“Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The person in the cell might be using the toilet and should be given the opportunity to indicate this. CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of detainees held in specially secured cells due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, reasoned and clearly documented. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the detainee should carry out the monitoring.”<sup>50</sup>

“According to past decisions of the German Federal Constitutional Court, prison cells accommodating more than one person must have a separate toilet with separate ventilation. Multiple occupancy without such a separation constitutes a violation of human dignity.”<sup>51</sup>

#### b. Access to showers and warm and running water

Legal regulation does only provide for the obligation of prisoners to “support” hygienic measures but this does not mean that daily access to showers is warranted. The Higher Regional Court Hamm decided in 2016 that a prisoner should have the opportunity to wash himself at the washbasin in the cell with warm water at least four times per week if a warm shower is only available two times per week.<sup>52</sup>

According to the non-binding standard of the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) any persons who wish to do so should have the option to shower alone. Moreover, even in communal showers at least one shower should be partially separated:

“Persons who have been deprived of their liberty should be given the opportunity to shower alone if they wish to do so. At least one shower should be partitioned off in communal shower rooms.”<sup>53</sup>

Pre-trial detention laws of the states do not set standards regarding access to showers.<sup>54</sup>

#### c. Access to sanitary products

There are no national standards on access to basic sanitary products. Section 56 of the **Federal Prison Act** (*Strafvollzugsgesetz*) and similar provisions in the state acts (both on prisons and pre-trial detention) only stipulate that it has to be taken care of the physical and mental health of the prisoners, whereas

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<sup>50</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 32.

<sup>51</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 33.

<sup>52</sup> Pollähne, H. (2022), ‘Teil II § 93 LandesR - Anstalten’ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 43.

<sup>53</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 32.

<sup>54</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 188.

prisoners have to take respective measures to protect their health and support their hygiene.<sup>55</sup> Further, prisoners may purchase products for body care and personal hygiene (in pre-trial detention: “items of personal need”, *Gegenstände des persönlichen Bedarfs*) from their pocket money or house money and shall be provided an appropriate offer by the prison.<sup>56</sup>

#### d. Hygienic conditions in cells

Apart from the state legislation corresponding with the provisions of Section 144 (1) of the Federal Prison Act (*Strafvollzugsgesetz*), no detailed national legal standards exist on hygienic conditions in cells.

At the level of administrative regulation, the Duty and Security Instructions for Criminal Detention (*Dienst- und Sicherheitsvorschriften für den Strafvollzug*) of 1976 stipulate that the general penal service (*allgemeiner Vollzugsdienst*) is tasked with taking care of the order and cleanliness of all prison rooms.<sup>57</sup> Details are regulated by the prison management.

#### e. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (Nationale Stelle zur Verhütung von Folter) (2023), [Annual Report 2022](#), Wiesbaden.

*“In elf der besuchten Justizvollzugsanstalten umfasste die dauerhafte Kameraüberwachung in den **besonders gesicherten Hafträumen** auch den Toilettenbereich und bildete diesen vollständig auf dem Monitor ab. [...] Während das Ministerium der Justiz des Landes Nordrhein-Westfalen wie auch das Bayerische Staatsministerium der Justiz eine Verpixelung aus Sicherheitsgründen entschieden ablehnten, beobachtete die Nationale Stelle auch im Jahr 2022 regelmäßig Systeme, die bei Kameraüberwachung eine Verpixelung des Intimbereichs ermöglichen, eine Sichtbarkeit des Oberkörpers der überwachten Personen beim Sitzen auf der Toilette jedoch zulassen.<sup>135</sup> Teilweise ist dies auch gesetzlich verankert.<sup>136</sup> Nach Auskunft der betroffenen Einrichtungen konnten etwaige Sicherheitsbedenken nicht bestätigt werden.“* (p. 62 of the German version of the annual report 2022)

“At eleven [of 17] of the prisons visited, 24-hour CCTV monitoring in the **specialty secured cells** included the toilet area, all of which was visible on the monitoring screen. [...] Both the North Rhine-Westphalia Ministry of Justice and the Bavarian Ministry of Justice firmly rejected the pixelation recommendation on the grounds of safety. However, as in previous years, in 2022 the National Agency observed a number of CCTV systems that allowed pixelation of an individual’s genital area whilst ensuring that their upper body was visible when they were sitting on the toilet.<sup>135</sup> In some cases, there is even a statutory requirement for such an approach. According to information from the facilities in question, any safety

<sup>55</sup> See for example section 58 (1) of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)), section 25 (1) of the Bavarian Pre-trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)), section 43 (1) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)) and section 23 (1) of the Pre-trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>56</sup> See for example section 24 (1) of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)), section 14 (3) of the Bavarian Pre-trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)), section 17 (1) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)) and section 11 (5) of the Pre-trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>57</sup> No. 12 of the Duty and Security Instructions for Criminal Detention ([Dienst- und Sicherheitsvorschriften für den Strafvollzug](#)), 1 July 1976.

or security concerns had not proved to be justified.” (p. 60 of the English version of the annual report 2022)

*„Während das Ministerium der Justiz des Landes Nordrhein-Westfalen wie auch das Bayerische Staatsministerium der Justiz eine Verpixelung aus Sicherheitsgründen entschieden ablehnten, beobachtete die Nationale Stelle auch im Jahr 2022 regelmäßig Systeme, die bei Kameraüberwachung eine Verpixelung des Intimbereichs ermöglichen, eine Sichtbarkeit des Oberkörpers der überwachten Personen beim Sitzen auf der Toilette jedoch zulassen. Teilweise ist dies auch gesetzlich verankert. Nach Auskunft der betroffenen Einrichtungen konnten etwaige Sicherheitsbedenken nicht bestätigt werden.“* (p. 62 of the German version of the annual report 2022)

“Both the North Rhine-Westphalia Ministry of Justice and the Bavarian Ministry of Justice firmly rejected the pixelation recommendation on the grounds of safety. However, as in previous years, in 2022 the National Agency observed a number of CCTV systems that allowed pixelation of an individual’s genital area whilst ensuring that their upper body was visible when they were sitting on the toilet. In some cases, there is even a statutory requirement for such an approach. According to information from the facilities in question, any safety or security concerns had not proved to be justified.” (p. 60 of the English version of the annual report 2022)

*„In 12 besuchten Justizvollzugsanstalten verfügten die Gemeinschaftsduschen nicht über die Intimsphäre wahrende Vorkehrungen wie z.B. Trennwände“* (p. 65 of the German version of the annual report 2022)

„The communal showers at 12 prisons visited had no arrangements in place to protect prisoners’ privacy, for example partitions.” (p. 62 of the English version of the annual report 2022)

*„In der JVA Konstanz wurde eine offene Wohngemeinschaft mit einer Belegungsfähigkeit von 15 Plätzen eingerichtet, in der die Gefangenen einen eigenen Haftraumschlüssel besitzen und einen uneingeschränkten Zugang zu den Gemeinschaftsduschen haben.“* (p. 66 of the German version of the annual report 2022)

„Konstanz Prison had set up an open section with a capacity of 15. Each prisoner in that part of the facility had their own key and unrestricted access to the communal showers.” (p. 63 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*„Die Gemeinschaftsduschen in der JVA Schwäbisch Hall verfügen nicht über die Intimsphäre wahrende Vorkehrungen wie beispielsweise Trennwände. Um die Intimsphäre der Gefangenen ausreichend zu wahren, soll in Gemeinschaftsduschen zumindest eine Dusche partiell abgetrennt sein oder die Möglichkeit gegeben werden, einzeln zu duschen.“* (p. 95 of the German version of the annual report 2021)

„As regards the communal showers at Schwäbisch-Hall Prison, there are no arrangements in place to ensure privacy protection, such as partition walls. In order to sufficiently protect the privacy of prisoners in communal showers, at least one shower should be partially partitioned off. Otherwise, prisoners

should have the opportunity to take showers individually.” (p. 92 of the English version of the annual report 2021)

*Comment by the NPM:*

*The National Agency systemically visits cells and sanitary facilities in different wings and detention areas within a prison, so that hygienic conditions are part of the overall assessment. Any type of dysfunction or disorder (e.g. mould formation) is mentioned in the visit report.*

#### 4. Nutrition

##### a. Quality and quantity of food

According to section 4.1 of the **Ordinance on Meals for Prisons in Bavaria** (*Verpflegungsordnung für die Justizvollzugsanstalten in Bayern, VerpfIO*), the normal daily meals for healthy prisoners (normal diet) and the special diets generally consist of three meals.

Section 21 of the **Federal Prison Act** (*Strafvollzugsgesetz*) stipulates:<sup>58</sup>

*„Zusammensetzung und Nährwert der Anstaltsverpflegung werden ärztlich überwacht. Auf ärztliche Anordnung wird besondere Verpflegung gewährt. Dem Gefangenen ist zu ermöglichen, Speisevorschriften seiner Religionsgemeinschaft zu befolgen.“*

“The composition and nutritional value of the food in the institution shall be monitored by medical officers. Upon a medical officer’s order, special food shall be provided. A prisoner’s compliance with the specific dietary rules of his or her religious community shall be facilitated.”

The Federal state of Bavaria has adopted the wording of the Federal Prison Act (*Strafvollzugsgesetz*) with minor deviations.<sup>59</sup>

There are legal ordinances issued by the federal states that specify the type and quantity of food used in the preparation of meals.<sup>60</sup>

##### b. Drinking water

There are no national standards in respect to access to drinking water in the Federal State Prison Act, the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*), nor the state’s prison acts (*Strafvollzugsgesetze*) or pre-trial detention acts (*Untersuchungshaftvollzugsgesetze*).

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<sup>58</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act (*Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz*), 16 March 1976. [English version](#) dated from 2021.

<sup>59</sup> Art. 23 of the Bavaria Prison Act (*Bayerisches Strafvollzugsgesetz*): “Zusammensetzung und Nährwert der Anstaltsverpflegung werden ärztlich überwacht. Auf ärztliche Anordnung wird besondere Verpflegung gewährt. Den Gefangenen ist zu ermöglichen, Speisevorschriften ihrer Religionsgemeinschaft zu befolgen.”

<sup>60</sup> Nestler, N. (2020): ‘B. Anstaltsverpflegung’ in Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 528. See, for example, the Ordinance on Meals for Prisons in Bavaria (*Verpflegungsordnung für die Justizvollzugsanstalten in Bayern, VerpfIO*), 15 November 2007.

### c. Dietary requirements

Section 21 of the **Federal Prison Act** (*Strafvollzugsgesetz*) stipulates:<sup>61</sup>

*„Zusammensetzung und Nährwert der Anstaltsverpflegung werden ärztlich überwacht. Auf ärztliche Anordnung wird besondere Verpflegung gewährt. Dem Gefangenen ist zu ermöglichen, Speisevorschriften seiner Religionsgemeinschaft zu befolgen.“*

“The composition and nutritional value of the food in the institution shall be monitored by medical officers. Upon a medical officer’s order, special food shall be provided. A prisoner’s compliance with the specific dietary rules of his or her religious community shall be facilitated.”

The following federal states go beyond the wording of section 21 of the Federal Prison Act (*Strafvollzugsgesetz*) in their state laws and even expressly stipulate that the food in the institution must meet the requirements of healthy nutrition: Berlin, Brandenburg, Bremen, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia.<sup>62</sup>

Bavaria, Berlin, Brandenburg, Bremen, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia also mandate in their state laws that special food shall be provided upon orders from a medical officer like it is laid down in the Federal Prison Act (*Strafvollzugsgesetz*).<sup>63</sup>

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<sup>61</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>62</sup> Section 58 sentence 1 of the Berlin Prison Act ([Berliner Strafvollzugsgesetz](#)):

*“Zusammensetzung und Nährwert der Anstaltsverpflegung haben den Anforderungen an eine gesunde Ernährung zu entsprechen“;*

with minor textual deviations: section 63 (1) sentence 1 of the Brandenburg Prison Act ([Brandenburgisches Justizvollzugsgesetz](#)), section 53 (1) sentence 1 of the Bremen Prison Act ([Bremisches Strafvollzugsgesetz](#)), section 22 (1) sentence 2 of the Hesse Prison Act ([Hessisches Strafvollzugsgesetz](#)), section 53 (1) sentence 1 of the Mecklenburg-Western Pomerania Prison Act ([Strafvollzugsgesetz Mecklenburg-Vorpommern](#)), section 62 (1) sentence 1 of the Rhineland-Palatinate Prison Act ([Landesjustizvollzugsgesetz](#)), section 53 (1) sentence 1 of the Saarland Prison Act ([Saarländisches Strafvollzugsgesetz](#)), section 53 (1) sentence 1 of the Saxony Prison Act ([Sächsisches Strafvollzugsgesetz](#)), section 61 (1) sentence 1 of the First Book of Saxony-Anhalt Prison Act ([Erstes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt](#)), section 70 (1) sentence 1 of the Schleswig-Holstein Prison Act ([Landesstrafvollzugsgesetz Schleswig-Holstein](#)) and section 63 (1) sentence 1 of the Thuringia Prison Act ([Thüringer Justizvollzugsgesetzbuch](#)); section 23 sentence 1 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsgesetz](#)):

*“Gefangene sind gesund zu ernähren“.*

<sup>63</sup> Art. 23 sentence 2 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)); section 58 sentence 2 of the Berlin Prison Act ([Berliner Strafvollzugsgesetz](#)); section 63 (1) sentence 2 of the Brandenburg Prison Act ([Brandenburgisches Justizvollzugsgesetz](#)); section 53 (1) sentence 2 of the Bremen Prison Act ([Bremisches Strafvollzugsgesetz](#)); section 22 (1) sentence 3 of the Hesse Prison Act ([Hessisches Strafvollzugsgesetz](#)), section 53 (1) sentence 2 of the Mecklenburg-Western Pomerania Prison Act ([Strafvollzugsgesetz Mecklenburg-Vorpommern](#)); section 23 sentence 2 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsgesetz](#)); section 16 (1) sentence 3 of the North Rhine-Westphalia Prison Act ([Strafvollzugsgesetz Nordrhein-Westfalen](#)); section 62 (1) sentence 2 of the Rhineland-Palatinate Prison Act ([Landesjustizvollzugsgesetz](#)); section 53 (1) sentence 2 of the Saarland Prison Act ([Saarländisches Strafvollzugsgesetz](#)); section 53 (1) sentence 2 of the Saxony



All 16 federal states mandate in their state laws that the possibility is to be provided for a prisoner to obey religious instructions with regard to the consumption of food.<sup>64</sup>

The prison laws of Berlin, Brandenburg and North Rhine-Westphalia explicitly address a meatless/vegetarian diet in their state laws.<sup>65</sup>

#### d. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comments by the National Agency:*

*Whereas annual reports do not make any direct statements on the quality or quantity of meals or the access to drinking water, the National Agency systemically conducts confidential interviews with inmates' spokespersons and inmates themselves, so that nutrition issues are part of the overall assessment. Any type of dysfunction or disorder (e.g. no halal meal) is mentioned in the visit report.*

### 5. Time spent outside the cell and outdoors

#### a. Time spent outdoors

Section 64 of the **Federal Prison Act** (*Strafvollzugsgesetz*) stipulates:

“If a prisoner does not work outdoors, he or she shall be allowed to spend at least one hour a day outdoors, if the weather permits this at the appointed time.”

Most federal states have adopted the one-hour-per-day standard, but only a few have incorporated the weather clause,<sup>66</sup> e.g. Bavaria and North Rhine-Westphalia.<sup>67</sup>

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Prison Act ([Sächsisches Strafvollzugsgesetz](#)); section 61 (2) sentence 1 of the First Book of Saxony Anhalt Prison Act ([Erstes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt](#)), section 70 (1) sentence 2 of the Schleswig-Holstein Prison Act ([Landesstrafvollzugsgesetz Schleswig-Holstein](#)) and section 63 (1) sentence 2 of the Thuringia Prison Act ([Thüringer Justizvollzugsgesetzbuch](#)).

<sup>64</sup> Nestler, N. (2020): ‘B. Anstaltsverpflegung’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 530.

<sup>65</sup> Section 58 sentence 3 of the Berlin Prison Act ([Berliner Strafvollzugsgesetz](#)), section 63 (1) sentence 1 of the Brandenburg Prison Act ([Brandenburgisches Justizvollzugsgesetz](#)), section 16 (1) sentence 4 of the North Rhine-Westphalia Prison Act ([Strafvollzugsgesetz Nordrhein-Westfalen](#)), with minor wording differences:

“Den Gefangenen ist zu ermöglichen, Speisevorschriften ihrer Religionsgemeinschaft zu befolgen sowie sich fleischlos zu ernähren“.

<sup>66</sup> Lesting, W. (2022), ‘Teil II § 65 LandesR – Gesundheitsschutz und Hygiene’ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 24.

<sup>67</sup> See section 66 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)) and section 43 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

Comment by the NPM:

*In most federal states the regulation does not apply for prisoners who are detained under special security measures. During its visits the National Agency observed on several occasions that prisoners were detained in specially secured cells for weeks without the opportunity to get outdoors.*

#### b. Time spent indoors

National standards setting time per day/week spent by prisoners at common areas within the prison building do not exist: Relevant regulation only stipulates that the prison management issues “institution rules” (*Hausordnungen*) by which the times for work, leisure and confinement in cells during night’s rests are determined. As structural conditions in terms of architecture, or staffing differ significantly, the prison management shall be thus brought in a position to respond accordingly by tailored institution rules.<sup>68</sup>

All state laws allow pre-trial detainees to spend at least one hour a day outdoors. In Bavaria and Lower Saxony, however, this is subject to the restriction that pre-trial detainees do not already perform their work outdoors. In Bavaria, on the other hand, pre-trial detainees who do not take part in any employment or educational measures are even granted an additional hour per day, insofar as the spatial, staffing, and organisational conditions of the prison permit. The states of Berlin, Brandenburg, Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia do not make outdoor exercise dependent on weather conditions. In Bavaria, Lower Saxony and Hamburg, on the other hand, the stay outdoors depends on the weather permitting this at the appointed time.<sup>69</sup> Baden-Württemberg, Hesse and North Rhine-Westphalia require that the weather does not necessarily prevent the person from being outdoors.<sup>70</sup>

#### c. Recreational facilities

According to section 67 of the **Federal Prison Act** (*Strafvollzugsgesetz*), detainees are given the opportunity to engage in activities in their free time. In this context, free time is to be understood as the period that represents neither working nor rest time.<sup>71</sup> Section 67 also lists a number of examples of such recreational activities:<sup>72</sup>

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<sup>68</sup> Institution rules on “formation and organisation of the daily prison routine” (Section 100 of the Model State Prison Act, *Musterentwurf zum Landesstrafvollzugsgesetz*).

See also Section 161 (2) of the Federal Prison Act:

„The institution rules shall contain in particular the regulations regarding 1. visiting hours, frequency and duration of visits, 2. working hours, leisure time and night's rest, and 3. the possibilities of making requests and complaints or for applying to a representative of the supervisory authority.“

<sup>69</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 185 f.

<sup>70</sup> See section 25 (2) of the Second Book of the Prison Act of Baden-Württemberg ([Justizvollzugsgesetzbuch Baden-Württemberg, Buch Zwei](#)), section 16 (3) of the Pre-trial Detention Act of Hesse ([Hessisches Untersuchungshaftvollzugsgesetz](#)), and section 23 (2) of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>71</sup> Knauss P. (2021): ‘§ 67’ in: Graf, J. (ed.), *Strafvollzugsrecht Bund*, BeckOK, Munich, para. 9.

<sup>72</sup> Knauss P. (2021): ‘§ 67’ in: Graf, J. (ed.), *Strafvollzugsrecht Bund*, BeckOK, Munich, para. 13.

„Er soll Gelegenheit erhalten, am Unterricht einschließlich Sport, an Fernunterricht, Lehrgängen und sonstigen Veranstaltungen der Weiterbildung, an Freizeitgruppen, Gruppengesprächen sowie an Sportveranstaltungen teilzunehmen und eine Bücherei zu benutzen.“

“He [or she] shall be given an opportunity to participate in classes, including sports, distance learning, courses and to take part in other further training activities, in hobby groups, group discussions, as well as sports events, and to make use of a library.”

Section 54 of the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*) summarizes some of the listed activities with reference to offers for sporting activities as well as educational activities and adds offers for cultural activities.<sup>73</sup> Moreover, it stipulates that detainees are to be motivated and instructed to participate and contribute to recreational opportunities.<sup>74</sup>

Most of the federal states also provide such an exemplary list of recreational activities, with many states largely following the description in the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*), including North Rhine-Westphalia, or, like Bavaria, finding independent formulations based on Section 57 Sentence 2 of the Federal Prison Act (*Strafvollzugsgesetz*).<sup>75</sup> This is also the case for pre-trial detention.<sup>76</sup>

Every detention facility is obliged to guarantee a range of leisure activities that are in line with the law. However, the leisure activities offered ultimately depend on the financial, staffing and spatial resources

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<sup>73</sup> Goldberg, B. (2020): ‘A. Allgemeines’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 423.

<sup>74</sup> Section 54 (2) of the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*):

“Die Gefangenen sind zur Teilnahme und Mitwirkung an Angeboten der Freizeitgestaltung zu motivieren und anzuleiten“.

<sup>75</sup> Goldberg, B. (2020): ‘A. Allgemeines’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 419 and 423; section 69 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)):

“Gefangene erhalten Gelegenheit, sich in ihrer Freizeit sinnvoll zu beschäftigen. Im Rahmen des Behandlungsauftrags sollen die Gefangenen Gelegenheit erhalten, eine Bücherei zu benutzen und an sonstigen Freizeitangeboten der Anstalt teilzunehmen, insbesondere an Unterricht, Lehrgängen, sonstigen Veranstaltungen der Weiterbildung, Sport, Freizeitgruppen, Gruppengesprächen sowie kulturellen Veranstaltungen“;

Section 50 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

„Gefangene erhalten Gelegenheit, ihre Freizeit sinnvoll zu gestalten. Sie sind zur Teilnahme und Mitwirkung anzuregen. Es sind insbesondere Angebote zur kulturellen Betätigung, Bildungs- und Sportangebote sowie Angebote zur kreativen Entfaltung vorzuhalten. Die Benutzung einer bedarfsgerecht ausgestatteten Bibliothek ist zu ermöglichen.“

<sup>76</sup> Section 13 (1) sentence 1 and 2 of the Bavaria Pre-trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)):

“Den Untersuchungsgefangenen ist Gelegenheit zu geben, sich in ihrer Freizeit zu beschäftigen. Insbesondere sollen Sportmöglichkeiten, Freizeitgruppen, Gemeinschaftsveranstaltungen, Veranstaltungen zur Weiterbildung und die Benutzung einer Anstaltsbücherei angeboten werden“;

section 14 (1) of the North Rhine-Westphalia Pre-trial Detention Act ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)):

“Untersuchungsgefangene erhalten Gelegenheit, ihre Freizeit sinnvoll zu gestalten. Es sollen insbesondere Angebote zur kulturellen Betätigung, zur Bildung, zum Sport sowie Angebote zur kreativen Entfaltung vorgehalten werden. Die Benutzung einer bedarfsgerecht ausgestatteten Bibliothek ist zu ermöglichen.“

of the respective facility.<sup>77</sup> Detainees have no claim to participation in specific leisure activities.<sup>78</sup> There is, nevertheless, a right to error-free discretionary decision-making by the prison facility.<sup>79</sup>

Whereas section 69 (1) sentence 1 of the Federal Prison Act (*Strafvollzugsgesetz*) still expressly provided for the possibility of participating in community television reception, today, since all the federal states have been permitting broadcasting equipment in cells as standard practice, there are only isolated provisions in the state laws, such as in Lower Saxony, which expressly provide for community television.<sup>80</sup>

Sport and educational facilities shall be available for prisoners according to Section 67 of the Federal Prison Act (*Strafvollzugsgesetz*) and Section 54 of the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*); and most federal states (*Bundesländer*) have adopted identical or similar provisions. The prison management is responsible for the actual implementation, e.g. the establishment and equipment of gyms or libraries. Federal state (*Bundesländer*) governments have issued non-binding guidelines or recommendations on minimum implementation standards, such as the “Framework Concept for Prisoners’ Sport in Prisons of Baden-Württemberg” (*Rahmenkonzept für den Gefangemensport im baden-württembergischen Justizvollzug*) issued by the Ministry of Justice of Baden-Württemberg. However, what is actually available differs significantly depending on the spatial conditions of each prison. From Rhineland-Palatine it is reported that all prisons employ staff with a sport trainer license (*Sportübungsleiter*). Several prisons use sport also as a means for special therapeutical treatment or in the context of anti-violence training, or they offer sport programmes tailored for older prisoners or obese persons. Moreover, the prisons organise sport festivals or competitions on a regular basis, sometimes even in cooperation with prisons in other federal states (*Bundesländer*).<sup>81</sup>

All state acts on pre-trial detention include provisions that govern recreational activities.<sup>82</sup> In Berlin, Bremen, Hamburg, Mecklenburg-Western Pomerania, Saarland, Saxony and Schleswig-Holstein it is stipulated that “adequate offers” (*angemessene Angebote*) be provided for recreational activities. In Baden-Württemberg and Bavaria, prisoners must have the opportunity to engage in recreational activities. In particular, opportunities for sports or joint events shall be provided.<sup>83</sup> In North Rhine-Westphalia, prisoners in pre-trial detention shall be able to engage in “meaningful” (*sinnvoll*) recreational activities. Offers for cultural activities, education, sports as well as offers for creative development are to be provided.<sup>84</sup> Similar provisions exist in most other states.<sup>85</sup> Only in Rhineland-

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<sup>77</sup> Knauss P. (2021): ‘§ 67’ in: Graf, J. (ed.), *Strafvollzugsrecht Bund*, BeckOK, Munich, para. 17.

<sup>78</sup> Knauss P. (2021): ‘§ 67’ in: Graf, J. (ed.), *Strafvollzugsrecht Bund*, BeckOK, Munich, para. 6.

<sup>79</sup> Goldberg, B. (2020): ‘A. Allgemeines’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 419 f.

<sup>80</sup> Goldberg, B. (2020): ‘C. Hörfunk und Fernsehen, Informations- und Unterhaltungselektronik’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 46

<sup>81</sup> Email from Ministry of Justice of the State of Rhineland-Palatine, 12 June 2018.

<sup>82</sup> Schulze, J. P. (2017), *‘Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich’*, Mönchengladbach, Forum Verlag Godesberg, p. 196.

<sup>83</sup> Schulze, J. P. (2017), *‘Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich’*, Mönchengladbach, Forum Verlag Godesberg, p. 196.

<sup>84</sup> Section 14 of the Pre-trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>85</sup> Schulze, J. P. (2017), *‘Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich’*, Mönchengladbach, Forum Verlag Godesberg, p. 196.

Palatinate the law explicitly mentions that such activities must also be available on weekends and holidays.<sup>86</sup>

#### d. Educational activities

See 5c, as most state acts address provisions on leisure activities and educational measures together.

Section 40 (1) of the **Bavarian Prison Act** (*Bayerisches Strafvollzugsgesetz*) stipulates that suitable prisoners who have not completed secondary general school should receive education in the subjects leading to the secondary general school leaving certificate or education equivalent to that of a special school.<sup>87</sup>

In **North-Rhine Westphalia**, suitable prisoners should have the opportunity to join activities for educational or vocational qualification. They should be supported in their efforts to obtain a recognised qualification or a partial qualification that is relevant to the labour market. Further, illiterate persons should be able to learn to read and write and persons who are not sufficiently proficient in German shall be offered German language courses.<sup>88</sup>

The Bavarian Prison Acts further supports the usage of libraries, lectures, trainings, and other educational events.<sup>89</sup> The North Rhine-Westphalian Prison Act, too, explicitly mentions that an appropriately equipped library should be accessible and that cultural, educational, creative, and sport activities should be available.<sup>90</sup>

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<sup>86</sup> Schulze, J. P. (2017), 'Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich', Mönchengladbach, Forum Verlag Godesberg, p. 197.

<sup>87</sup> Section 40 (1) sentence 1 of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)):

„Für geeignete Gefangene, die den Abschluss der Hauptschule nicht erreicht haben, soll Unterricht in den zum Hauptschulabschluss führenden Fächern oder ein der Förderschule entsprechender Unterricht vorgesehen werden.“

<sup>88</sup> Section 30 (1) (2) (3) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

“(1) Geeignete Gefangene sollen Gelegenheit zur Teilnahme an schulischen und beruflichen Orientierungs-, Aus- und Weiterbildungsmaßnahmen erhalten. Sie sind in dem Bemühen zu unterstützen, einen anerkannten Abschluss oder eine anschlussfähige, für den Arbeitsmarkt relevante Teilqualifikation zu erlangen.

(2) Analphabeten sollen das Lesen und Schreiben erlernen können. Gefangenen, die der deutschen Sprache nicht ausreichend mächtig sind, sollen Deutschkurse angeboten werden.

(3) Zeugnisse und Nachweise über schulische und berufliche Bildung sollen keine Hinweise auf eine Inhaftierung enthalten.“

<sup>89</sup> Section 69 sentence 2 of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)):

“Im Rahmen des Behandlungsauftrags sollen die Gefangenen Gelegenheit erhalten, eine Bücherei zu benutzen und an sonstigen Freizeitangeboten der Anstalt teilzunehmen, insbesondere an Unterricht, Lehrgängen, sonstigen Veranstaltungen der Weiterbildung, Sport, Freizeitgruppen, Gruppengesprächen sowie kulturellen Veranstaltungen.“

<sup>90</sup> Section 50 sentence 3 and 4 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

“Es sind insbesondere Angebote zur kulturellen Betätigung, Bildungs- und Sportangebote sowie Angebote zur kreativen Entfaltung vorzuhalten. Die Benutzung einer bedarfsgerecht ausgestatteten Bibliothek ist zu ermöglichen.“

In pre-trial detention, detainees are to be offered work or other activities that consider their physical and cognitive abilities and interests. They shall be provided offers of educational measures as far as the possibilities of the prison and the special conditions of pre-trial detention allow.<sup>91</sup>

#### e. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

*„Als besonders kritisch schätzte die Nationale Stelle ein, dass die untergebrachten Gefangenen für 23 Stunden täglich in ihrem Zimmer eingeschlossen waren. Sie erhielten lediglich eine Stunde täglichen Hofgang sowie Aufschluss, um zu duschen.“* (p. 73 of the German version of the annual report 2022)

“A particularly problematic aspect in the National Agency view is the fact that prisoners were locked up in their rooms for 23 hours a day. They were only allowed outside for one hour each day and otherwise only let out of their cells to shower.” (p. 69 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*“Eine Erweiterung der Sport- und Freizeitmöglichkeiten in der Teilanstalt II der JVA Tegel ist seit dem Erstbesuch der Nationalen Stelle im Jahr 2017 nicht erfolgt. Nach Auskunft der Berliner Senatsverwaltung für Justiz seien die Gefangenen schwer zur Teilnahme an bestehenden Angeboten zu motivieren. Sport und aktivierende Freizeitangebote sind jedoch ein wichtiger Teil der Gesundheitsvorsorge und der Resozialisierung und können insbesondere im Rahmen der belastenden baulichen Situation der Teilanstalt II zu einer Verbesserung des Wohlbefindens beitragen. Das Angebot der Sport- und Beschäftigungsmöglichkeiten für die Gefangenen der Teilanstalt II soll erweitert werden. Zur aktiven Teilnahme sollen die Gefangenen ermutigt werden.“* (p. 92 of the German version of the annual report 2021)

“The sports and recreational opportunities offered in Division II of Tegel Prison have not been expanded since the first visit of the National Agency in 2017. According to the Berlin Senate Department for Justice, it is difficult to motivate prisoners to participate in the existing offerings. However, sports and activity-based leisure activities are an important part of preventive health care and rehabilitation and can contribute to an improvement in well-being, particularly in view of the burdensome structural conditions in Division II. The range of sports and recreational opportunities available to prisoners at Division II should be expanded. Prisoners should be encouraged to actively participate.” (p. 90 of the English version of the annual report 2021)

*Comment by the NPM:*

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<sup>91</sup> See section 13 (1) (3) of the Pre-trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)) or section 12 (2) (4) of the Bavarian Pre-trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)).

Since all prison laws and regulations foresee resocialisation as a central mission of prison authorities and the main goal of prison sentences, the National Agency assesses during its visits the adequacy and meaningfulness of the time spent outside the cell. Lack of goal-oriented activities, among others due to a lack of staff, is mentioned in visit reports.

## 6. Solitary confinement

### a. Placement in solitary confinement

Both the **Federal Prison Act** (Sections 88 and 89) and the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*, (Section 78) offer standards on solitary confinement (*Absonderung*), according to which solitary confinement is only admissible if necessary to avert threats inherent in the prisoner's person, which could mean the risk of jailbreak, violence against themselves, violence against other persons or objects or suicidal tendencies. Corresponding provisions were adopted by all *Länder*, except Hamburg and Hesse, where solitary confinement can also be ordered to maintain the institutional order of the prison or to prevent release operations by external supporters.<sup>92</sup>

Usually, solitary confinement is to be ordered by the prison director and the prison doctor needs to be consulted in advance. The necessity of the measure has to be assessed on a regular basis; prisoners in solitary confinement have to be observed with special attention; more than three days of confinement need to be reported to the supervisory authority, i.e. the justice ministry (*Justizministerium*) of the Land, and more than a certain duration of confinement per year (from 20 days up to 3 months, depending on the state) need to be approved by the justice ministry.<sup>93</sup>

Apart from this, neither a maximum duration nor the actual arrangements of solitary confinement are detailed by the states' prison acts.

Besides solitary confinement as a special security measure (*besondere Sicherungsmaßnahme*), the isolation of prisoners can also be ordered to enforce discipline (so-called 'Arrest') as outlined by sections 86 (2) and 87 (3) of the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*). Arrest must only be ordered in cases of serious or repeated misconduct. The maximum duration is four weeks; sequential re-ordering is not possible. Before an arrest is executed a doctor needs to be consulted and arrested prisoners are to be under medical supervision. 14 states have adopted provisions in line with the Model State Prison Act, whereas the *Länder* of Brandenburg have abandoned solitary confinement by arrest (after abandoning it, Saxony reintroduced a comparable measure called "disciplinary separation", "*disziplinarische Trennung*" in 2019).<sup>94</sup>

The **National Agency for the Prevention of Torture** recommends the following non-binding standard on solitary confinement:

"To mitigate the negative impact of solitary confinement on mental and physical health, detainees should be provided with sufficient opportunities for human contact (e.g. extended visiting times) and to

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<sup>92</sup> Goerdeler, J. (2022), 'Teil II § 78 LandesR – Besondere Sicherungsmaßnahmen' in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 31.

<sup>93</sup> Goerdeler, J. (2022), 'Teil II § 78 LandesR – Besondere Sicherungsmaßnahmen' in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 37.

<sup>94</sup> Walter, J., Lindemann, M. (2022), 'Teil II § 86 LandesR - Disziplinarmaßnahmen' in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 45.

engage in meaningful activities. Those placed in solitary confinement are also to be seen regularly by a psychiatrist or psychologist. This should take place in a suitable and confidential environment.”<sup>95</sup>

With regard to pre-trial detention, there is also a provision in all states that authorizes the ordering of solitary confinement (*unausgesetzte Absonderung*).<sup>96</sup>

None of the state acts on pre-trial detention includes regulations on the maximum duration of solitary confinement. The duration of solitary confinement which require approval by the supervising ministries of justice vary in length, ranging from 20 days total time within 12 months (Brandenburg) to three months (Bavaria, Baden-Württemberg and Lower Saxony). The prison management thus has very wide-ranging powers for particularly intrusive measures.<sup>97</sup>

#### b. Monitoring of detainees

Section 92 of the **Federal Prison Act** stipulates that prisoners who are detained in solitary confinement in special security cells have to be checked “soon” (*alsbald*) by a prison doctor and thereafter on a “preferably” (*möglichst*) daily basis. Identical or similar provisions have been adopted by the states after 2006. In Bavaria, for example, section 100 of the Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*) provides for prisoners to be checked “soon” and thereafter “preferably” on a daily basis. According to section 71 of the Prison Act of North Rhine-Westphalia, the same applies in this state, where, in addition, also the psychological service might check and monitor prisoners in solitary confinement “soon” and “preferably” on a daily basis, “if necessary” (*im Bedarfsfall*).

For pre-trial detention the relevant legislation in most states stipulates that a prison doctor has to check the medical state of persons who are detained in solitary confinement in special security cells “soon” (*alsbald*) and thereafter “preferably” (*möglichst*) on a daily basis. In Brandenburg, Hesse, Rhineland-Palatinate, and Saxony-Anhalt daily monitoring is mandatory.<sup>98</sup> In Hamburg the law provides for an “immediate” medical check and also for mandatory daily monitoring.<sup>99</sup>

#### c. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

*“Bei den Besuchen mehrerer Justizvollzugsanstalten und der damit verbundenen Einsicht in die Dokumentationen fielen der Nationalen Stelle unausgesetzte Absonderungen auf, die über Monate oder – wie es in den Justizvollzugsanstalten Ravensburg und Dresden der Fall war – in einzelnen Fällen sogar über Jahre hinweg andauerten. Im Rahmen einer unausgesetzten Absonderung verfügen die Gefangenen*

<sup>95</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden, p. 32.

<sup>96</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 256.

<sup>97</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Vorwort, Mönchengladbach, Forum Verlag Godesberg, pp. 256.

<sup>98</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 257.

<sup>99</sup> Schulze, J. P. (2017), *Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich*, Mönchengladbach, Forum Verlag Godesberg, p. 257.



*häufig lediglich über die Gelegenheit eines einstündigen Hofgangs täglich und müssen die übrigen 23 Stunden in den jeweiligen Haft- bzw. Absonderungsräumen verbringen. Aus Sicht der Nationalen Stelle sind derart lange Absonderungen, ohne verstärkte Bemühungen, diese zu vermeiden, menschenrechtlich nicht vertretbar.“* (p. 60 of the German/English version of the annual report 2022)

“At a number of prisons, the National Agency found cases of continuous segregation lasting months or in some instances – in Ravensburg and Dresden prisons – even years when it visited and inspected the records. Often, prisoners in continuous segregation are only allowed outside for one hour each day and spend the remaining 23 hours confined in cells or segregation units. It is the view of the National Agency that long periods of segregation without significant efforts to find effective alternatives are not acceptable from a human rights perspective.” (p. 58 of the English version of the annual report 2022)

*“Die Nationale Stelle erfasste wiederholt unzureichende Beschäftigungsangebote sowie eine mangelnde Betreuung von Gefangenen in unausgesetzter Absonderung. Die Maßnahme soll dazu dienen, den Kontakt zu anderen Gefangenen zu unterbinden und spezifischen Gefahrensituationen vorzubeugen, darf aber nicht zu einer umfassenden Isolierung der Betroffenen führen.“* (p. 60f. of the German version of the annual report 2022)

“The National Agency repeatedly found instances of a lack of support for prisoners in continuous segregation and a failure to offer sufficient activities. Segregation is designed to prevent contact with other prisoners and avoid specific risks, but must not lead to the complete isolation of the individuals concerned.” (p. 58 of the English version of the annual report 2022)

*„In elf der besuchten Justizvollzugsanstalten umfasste die dauerhafte Kameraüberwachung in den besonders gesicherten Hafträumen auch den Toilettenbereich und bildete diesen vollständig auf dem Monitor ab. Eine Unterbringung mit permanenter Kameraüberwachung stellt bereits einen erheblichen Eingriff in grundrechtlich geschützte Rechtspositionen dar; die Beobachtung einer Person während der Benutzung der Toilette einen schweren Eingriff in deren Persönlichkeitsrechte.“* (p. 62 of the German version of the annual report 2022)

„At eleven of the prisons visited, 24-hour CCTV monitoring in the specially secured cells included the toilet area, all of which was visible on the monitoring screen. Constant CCTV monitoring in itself constitutes a significant infringement of constitutionally protected rights, and observing an individual while they use the toilet a serious infringement of their rights of personality.” (p. 60 of the English version of the annual report 2022)

*“Gefangene, die im besonders gesicherten Haftraum untergebracht wurden, erhielten in mehreren besuchten Justizvollzugsanstalten eine Bekleidung, durch die ihr Intimbereich erkennbar war. Dies ist nach Überzeugung der Nationalen Stelle schamverletzend, insbesondere in Verbindung mit einer dauerhaften Kameraüberwachung. So wurde den Gefangenen jeweils lediglich ein Überzug, welcher in bestimmten Sitz- und Hockpositionen, den Intimbereich der betroffenen Person nicht bedeckte, eine Papierunterhose bzw. Kleidung aus durchsichtigem Stoff, durch den der Intimbereich erkennbar war, ausgehändigt.“* (p. 62f. of the German version of the annual report 2022)

“In a number of the prisons visited, prisoners held in specially secured cells were issued with clothing that did not properly conceal their genital area. This is in the view of the National Agency demeaning, in particular in cases in which there is also 24-hour CCTV monitoring. The prisoners were issued only

with a gown that did not always cover their genital area when they sat down or crouched, with paper underwear, or with clothing made from see-through material through which their genital area was visible.” (p. 60 of the English version of the annual report 2022)

*“In nahezu allen besuchten Justizvollzugsanstalten waren die besonders gesicherten Hafträume lediglich mit einer am Boden liegenden Matratze ausgestattet. Eine Sitzgelegenheit in geeigneter Höhe stand nicht zur Verfügung. Bei einer nicht nur kurzzeitigen Unterbringungsdauer ist ein Verweilen im Stehen oder am Boden sitzend menschenunwürdig.“* (p. 63 of the German version of the annual report 2022)

“In nearly all the prisons visited, the specially secured cells had only a mattress on the floor. There was no seating at normal seating height. If an individual is to spend more than just a brief period in a specially secured cell, it is inhumane to force them to stand or sit on the floor.” (p. 61 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*“In der JVA Tegel besteht eine sogenannte Abschirmstation für Gefangene, die in der Justizvollzugsanstalt mit Drogen gehandelt haben. Für den Aufenthalt und die Dauer des Aufenthalts bestehen jedoch weiterhin, wie beim Erstbesuch der Nationalen Stelle im Jahr 2017, keine einheitlichen Kriterien. Der Besuchsdelegation wurde mitgeteilt, dass über Aufenthalt und Dauer nach den Umständen des Einzelfalls bestimmt würde; Voraussetzung für eine Entlassung aus der Abschirmstation sei eine Distanzierung, die Annahme von Hilfe und die Mitwirkung an der Aufklärung. Die Dauer des Aufenthalts auf der Abschirmstation sowie die Unterbringung dort sollen an klare Kriterien gebunden sein, die den Gefangenen schriftlich mitgeteilt werden. Um sicherzustellen, dass diese jederzeit einheitlich und verhältnismäßig angewandt werden, sind eine schriftliche Formulierung und eine Überprüfung der angewandten Kriterien nötig.“* (p. 89f. of the German version of the annual report 2021)

„At Tegel Prison, there is an isolation unit for prisoners who dealt with drugs inside the prison. However, as during the initial visit of the National Agency in 2017, there are still no uniform criteria for prisoners’ placement in this unit and the duration of their stay. The visiting delegation was informed that the placement and its duration were determined based on the circumstances of the individual case; in order to be released from this unit, prisoners had to distance themselves from their actions, accept help and cooperate in clarifying the facts. The duration of the stay in the isolation unit as well as the placement there should be subject to clear criteria that are communicated to the prisoners in writing. In order to ensure that these are applied consistently and proportionately at all times, a written formulation and review of the criteria applied are necessary.” (p. 87 of the English version of the annual report 2021)

*“In der JVA Landsberg am Lech werden besonders gesicherte Hafträume mit einer niedrigeren Deckenhöhe als „besonders gesicherter Haftraum light“ bezeichnet. Funktion, Nutzung und Ausstattung unterscheiden sich jedoch kaum von den besonders gesicherten Hafträumen. Die Bezeichnung „besonders gesicherter Haftraum light“ siedelt diesen Haftraum sprachlich gesehen niedriger an als „besonders gesicherter Haftraum“ und kann damit die Schwelle, eine Person dort unterzubringen, senken. Dadurch besteht die Gefahr, dass dieser häufiger benutzt wird.“* (p. 90 of the German version of the annual report 2021)

“At Landsberg am Lech Prison, specially secured cells with lower ceilings are called “specially secured cells light”. However, the function, use and furnishings of these cells hardly differ from those of specially secured cells. Linguistically, the designation “specially secured cells light” places this cell at a lower level than “specially secured cell” and could therefore lower the threshold for placing a person there. There is therefore a risk of these cells being used more frequently.” (p. 88 of the English version of the annual report 2021)

“Aus der Dokumentation der Sicherungsmaßnahmen der JVA Tegel wurde ersichtlich, dass in den Jahren 2020 und 2021 mehrere Gefangene teils deutlich länger als 100 Tage in Einzelhaft untergebracht waren.” (p. 90 of the German version of the annual report 2021)

“The documentation of the security measures carried out at Tegel Prison shows that, in 2020 and 2021, several prisoners were placed in solitary confinement, sometimes for considerably longer than 100 days.” (p. 88 of the English version of the annual report 2021)

*No additional comments by the NPM.*

## 7. Work and education of detainees to promote social reintegration

### a. General measures to promote social reintegration

The **Federal Prison Act** (*Strafvollzugsgesetz*), the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*) and the federal state’s prison acts all stipulate that it is the objective of criminal detention to enable the prisoner to lead a life without criminal offences in a socially responsible manner in the future.<sup>100</sup> The Bavarian prison act continues that the treatment in prison comprises all measures that are appropriate to promote a life without delinquency. This treatment shall, in particular, include educational and vocational training, work, psychological and social-pedagogical measures, pastoral care and recreational time.<sup>101</sup> The prison act of North Rhine-Westphalia stipulates that the treatment of the prisoner should include activities to promote social skills, therapeutic measures, education, vocational training and qualifications, and motivational and counselling sessions for

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<sup>100</sup> See Art. 2 of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976, and Section 2 of the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*):

„By serving his prison sentence the prisoner shall be enabled in future to lead a life in social responsibility without committing criminal offences (objective of treatment).“

See also section 1 of the of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)): „Der Vollzug der Freiheitsstrafe dient dem Ziel, Gefangene zu befähigen, künftig in sozialer Verantwortung ein Leben ohne Straftaten zu führen.“,

section 2 of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)): „Er soll die Gefangenen befähigen, künftig in sozialer Verantwortung ein Leben ohne Straftaten zu führen (Behandlungsauftrag).“

<sup>101</sup> See section 3 sentence 1 and 3 of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)):

“Die Behandlung umfasst alle Maßnahmen, die geeignet sind, auf eine künftige deliktfreie Lebensführung hinzuwirken. [...] Die Behandlung beinhaltet insbesondere schulische und berufliche Bildung, Arbeit, psychologische und sozialpädagogische Maßnahmen, seelsorgerische Betreuung und Freizeitgestaltung.“

prisoners with addiction or debt problems. Prisoners should be able to complete educational or vocational qualifications during incarceration or continue after release.<sup>102</sup>

According to the Federal Prison Act and several state acts, the prisoner should receive support and counselling in respect to his personal, economic and social matters before release. This counselling should include information on the responsible social services and they should be supported in finding work, housing and personal support after release. The prisoner should further receive an allowance from the prison for travel expenses and to bridge the first time after release, should the prisoner's financial means not suffice.<sup>103</sup>

Several prison acts stipulate that the institution and the prisoner should prepare for their release by supporting the prison in finding work, housing, taking care of necessary paperwork, preparing for a stable social network and other support structures.<sup>104</sup> The Hamburg Prison Act (*Strafvollzugsgesetz Hamburg*) explicitly mentions that prisoners should be encouraged to take care of their matters themselves, to the extent possible.<sup>105</sup> The Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*) does not address the institution's support for the release of the prisoner, but requests to continuously ease the restrictions within prison (*Vollzugslockerungen*) and, if possible, prepare the release by transferring the prisoner to an open detention facility (*offener Vollzug*) prior to their release.<sup>106</sup> Many other prison acts,

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<sup>102</sup> See also section 3 (2) (3) of the of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

*“(2) Die Behandlung [...] umfasst namentlich Maßnahmen zum Erwerb sozialer Kompetenzen, therapeutische Angebote, schulische Förderung, die Vermittlung beruflicher Fähigkeiten und Qualifikationen, Motivations- und Beratungsangebote für Suchtkranke sowie Schuldnerberatung.*

*(3) Den Gefangenen soll ermöglicht werden, schulische und berufliche Qualifizierungsmaßnahmen sowie therapeutische und suchtbetragene Maßnahmen während des Vollzuges der Freiheitsstrafe abzuschließen oder nach der Entlassung fortzusetzen. Geeignete Fördermaßnahmen öffentlicher Stellen, freier Träger sowie anderer Organisationen und Personen außerhalb des Vollzuges sind frühzeitig in die Vollzugsplanung und die Behandlung einzubeziehen.“*

<sup>103</sup> See section 74, 75 (1) of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976:

*„§ 74 Um die Entlassung vorzubereiten, ist der Gefangene bei der Ordnung seiner persönlichen, wirtschaftlichen und sozialen Angelegenheiten zu beraten. Die Beratung erstreckt sich auch auf die Benennung der für Sozialleistungen zuständigen Stellen. Dem Gefangenen ist zu helfen, Arbeit, Unterkunft und persönlichen Beistand für die Zeit nach der Entlassung zu finden.*

*§ 75 (1) Der Gefangene erhält, soweit seine eigenen Mittel nicht ausreichen, von der Anstalt eine Beihilfe zu den Reisekosten sowie eine Überbrückungsbeihilfe und erforderlichenfalls ausreichende Kleidung.“*

And similar provisions, for example: section 49, 50 (4) of the Prison Act of Rhineland-Palatine ([Landesjustizvollzugsgesetz](#)), section 16 of the Hamburg Prison Act ([Hamburgisches Strafvollzugsgesetz](#)).

<sup>104</sup> See, for example, section 58 of the Prison Act of North Rhine Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)), section 49 (1) (2) of the Prison Act Rhineland-Palatine ([Landesjustizvollzugsgesetz](#)), or section 49(1) (2) of the Prison Act of Saxony Anhalt ([Erstes Buch Justizvollzugsgesetz Sachsen-Anhalt](#)).

<sup>105</sup> Section 16 sentence 2 of the Hamburg Prison Act ([Hamburgisches Strafvollzugsgesetz](#)):

*“Die Bereitschaft der Gefangenen, ihre Angelegenheiten dabei soweit wie möglich selbstständig zu regeln, ist zu wecken und zu fördern.“*

<sup>106</sup> Section 17 (1) (2) of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)).

too, stipulate that privileges (*Vollzugslockerungen*), visits of extramural authorities and irregular prison vacations are possible in the months prior to release to facilitate the transition.<sup>107</sup>

#### b. Access to work

According to Section 17 (1) of the **Federal Prison Act**, “prisoners work together” and the same goes for vocational training, educational measures, work therapy and other activities during work hours. It further stipulates:<sup>108</sup>

“Work, work-therapeutical activities, vocational training and education primarily aim to transfer, maintain or promote skills for a work placement after release.”

In Baden-Württemberg, Bavaria, Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Saxony-Anhalt, Schleswig-Holstein and Thuringia, prisoners are obliged to perform work assigned to them (*Arbeitspflicht*). Only Brandenburg, Rhineland-Palatine and Saxony provide that employment will be assigned to prisoners on request or after their consent. Legislation in Schleswig-Holstein does not stipulate an obligation to work but states that prisoners should be urged to perform work assigned to them. Bremen and Mecklenburg-Western Pomerania declare work to be obligatory if it is essential for the achievement of the treatment objective.<sup>109</sup>

Baden-Württemberg, Bavaria, Hamburg, Lower Saxony and North Rhine-Westphalia explicitly state that the work obligation (*Arbeitspflicht*) should, in particular, serve the purpose of transferring skills for an employment after release.<sup>110</sup> For example, Section 29 (1) of the **Prison Act of North-Rhine Westphalia**, stipulates that the work assigned to prisoners, occupational therapy measures, education and vocational training aim, in particular, to teach, promote and maintain skills and abilities for regular gainful employment to secure a livelihood after release.<sup>111</sup> In **Bavaria**, prisoners above the age of 65 and expectant or nursing mothers are excluded from the work obligation.<sup>112</sup>

If prisoners work or engage in work-therapeutical activities, prisoners have a right to remuneration (*Arbeitsentgelt, Vergütung*) which amounts to 9% of the reference figure according to Book IV of the

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<sup>107</sup> See, for example, section 49 (3) (4) of the Prison Act of Saxony Anhalt ([Erstes Buch Justizvollzugsgesetz Sachsen-Anhalt](#)), section 49 (3) (4) of the Prison Act of Rhineland-Palatine ([Landesjustizvollzugsgesetz](#)) or section 17 (1) of the Prison Act of Lower Saxony ([Niedersächsisches Justizvollzugsgesetz](#)).

<sup>108</sup> Section 37 (1) of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßnahmen der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976.

<sup>109</sup> Galli, T. (2022). ‚§ 22 LandesR – Arbeit‘ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

<sup>110</sup> Galli, T. (2022). ‚§ 22 LandesR – Arbeit‘ in: Feest J., Lesting, W., & Lindemann, M. (eds.), *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 4.

<sup>111</sup> Section 29 (1) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)): „Arbeit, arbeitstherapeutische Maßnahmen, schulische und berufliche Bildung sowie sonstige Tätigkeiten (Beschäftigung) dienen insbesondere dem Ziel, Fähigkeiten und Fertigkeiten für eine regelmäßige Erwerbstätigkeit zur Sicherung des Lebensunterhaltes nach der Entlassung zu vermitteln, zu fördern und zu erhalten. Gefangene sind verpflichtet, eine ihnen zugewiesene Beschäftigung auszuüben.“

<sup>112</sup> Section 43 of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)): „Gefangene sind verpflichtet, eine ihnen zugewiesene, ihren Fähigkeiten angemessene Arbeit oder arbeitstherapeutische Beschäftigung auszuüben, soweit sie dazu körperlich und geistig in der Lage sind.“

Social Code (§ 18 *Sozialgesetzbuch IV*) (the average wage of pension-insured persons).<sup>113</sup> In 2023, the **Federal Constitutional Court** (*Bundesverfassungsgericht*) found this wage to be unconstitutional for two prisoners in Bavaria and North Rhine-Westphalia. According to the Federal Constitutional Court, remunerated work can only be an effective tool for resocialisation, if the accomplished work finds appropriate recognition (“*angemessene Anerkennung*”) as the prisoner then experiences respect and self-respect. This was not the case.<sup>114</sup> The two states (*Länder*) must now develop regulations for appropriate remuneration of prisoners until 2025.

Detainees in pre-trial detention do not have an obligation to work, but shall be offered employment opportunities and work placement, if requested. Their payment is calculated to be 5% of the average extramural wage.<sup>115</sup> In addition, the Bavarian Pre-Trial Detention Act explicitly states:<sup>116</sup>

“Detainees in pre-trial detention are not obliged to work or engage in any other occupation.”

### c. Access to education

State legislation does not explicitly define the meaning of educational or vocational measures and the possibilities provided differ greatly between the prisons. States are obliged to offer school qualification measures, in particular, teaching in preparation of the degree of general secondary school. Other programs may include language courses, writing courses, special needs schooling, higher secondary education or even university courses via distance learning. While some prisons cooperate with external educational institutions, others have initiated centralized facilities for vocational training (e.g. Schleswig-Holstein and North Rhine-Westphalia). Some states legislation hinges the educational and vocational measures on the suitability of the prisoners.<sup>117</sup>

If the participation in distance learning was granted by the prison, the institution is obliged to arrange the necessary organisational structures, such as implementing WI-FI, in order for the prisoner to be able to complete the courses.<sup>118</sup>

Generally, prisoners have no claim for educational or vocational training, the assignment of such is within the discretion of the prison. However, this discretion is limited if state legislation stipulates that prisons should enable prisoners this opportunity.<sup>119</sup>

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<sup>113</sup> Galli, T. (2022), ‘§ 55 LandesR – Vergütung’ in: Feest, J., Lesting, W. & Lindemann, M.). *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 12;

section 200 of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßnahmen der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976.

<sup>114</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2023), 2 BvR 166/16, 2 BvR 1683/17, 20 June 2023, paras. 169, 194.

<sup>115</sup> Section 13 (1) (2) of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>116</sup> Section 12 (2) of the Bavarian Pre-Trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)): “Die Untersuchungsgefangenen sind nicht zur Arbeit oder zu einer sonstigen Beschäftigung verpflichtet.”

<sup>117</sup> Galli, T. (2022), ‘§ 21 LandesR – Schulische und berufliche Qualifizierungsmaßnahmen’ in: Feest, J., Lesting, W. & Lindemann, M.). *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, paras. 5, 6.

<sup>118</sup> Galli, T. (2022), ‘§ 21 LandesR – Schulische und berufliche Qualifizierungsmaßnahmen’ in: Feest, J., Lesting, W. & Lindemann, M.). *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, paras. 7, 8.

<sup>119</sup> Galli, T. (2022), ‘§ 21 LandesR – Schulische und berufliche Qualifizierungsmaßnahmen’ in: Feest, J., Lesting, W. & Lindemann, M.). *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 9.

See also chapter 5d and 7a.

#### d. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports don't contain comprehensive information on access to work or education of prisoners, the National Agency assesses systematically these issues during its visits. When complaints occur about one of them, the National Agency will address the issue with the visited facility and the concerned ministry in the frame of its visit report.*

### 8. Healthcare (note – section 11 contains specific questions concerning female detainees)

#### a. Access to healthcare

Whereas the **Federal Prison Act** (Sections 56 to 66) regulated prisoners' access to healthcare services quite detailed, the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*, Section 62) simply states that prisoners are entitled to access „necessary, adequate and appropriate medical services“, considering the principle of efficiency and in line with the general standards of the German public health insurance system (*gesetzliche Krankenversicherung*) in accordance with Book V of the Social Code (*Sozialgesetzbuch V*). No differences exist between closed and open detention regimes in this regard.

The prison acts of most federal states (*Bundesländer*) follow this model: in all states except for Baden-Württemberg, Hesse and Hamburg, legislation stipulates an obligation of the institution in respect to the health care of the prisoners.<sup>120</sup> Thus, prisoners enjoy, in theory, the same access to healthcare as the majority of citizens who are covered by public health insurance. This includes both, medical screenings and medical treatment. Just as citizens who are not deprived of their liberty, prisoners have to contribute to the costs of medical screenings and treatments in accordance with Book V of the Social Code, although they earn less money by their mandatory work.

Some exceptions exist due to specific legal regulations: In North Rhine-Westphalia, for instance, such healthcare access is only warranted, if not in conflict with the “characteristics of the criminal detention regime” (section 45 (1) of the Prison Act North Rhine Westphalia), without specifying circumstances, in

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<sup>120</sup> Lesting, W. (2022), § 65 LandesR – Gesundheitsschutz und Hygiene' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 2.

which access to healthcare can be restricted; and in Bavaria and Lower Saxony the prison acts explicitly regulate access to dental services.<sup>121</sup>

The Federal Prison Act (*Strafvollzugsgesetz*) did not distinguish between preventive care, normal cases of illness, and emergency or urgent cases. Most state prison laws therefore do not provide for any special rules in this regard either.<sup>122</sup>

In the annual report of 2022, the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) does not provide any standards in regard to the access to healthcare within prisons, except for the non-binding provision that confidentiality must be assured for medical consultations.<sup>123</sup>

“In the event of communication difficulties, an interpreter must be called upon to assist. Translation by fellow inmates or any of the facility's non-medical staff is not appropriate.” (p. 33)

The Agency suggests that “using (video) interpreters can help to avoid communication problems and comprehension issues and allow prisoners to discuss private matters or matters subject to medical confidentiality. Professional interpreting also ensures that technical terms and complex subjects are correctly communicated in the other language.”<sup>124</sup>

#### b. Availability of medical staff

Medical service is usually provided in prisons by prison doctors (*Anstaltsärzt\_innen*) or in special prison hospitals (*Vollzugskrankenhäuser*). Apart from general provisions that medical care has to be warranted, no further details are regulated by law, except in Bavaria, Lower Saxony, Saxony-Anhalt and Schleswig-Holstein, where the prison acts stipulate that prisons must usually employ full-time prison doctors.<sup>125</sup> Bavaria even lists the tasks of the prison doctors (Section 179 of the Bavarian Prison Act). In the other federal states (*Bundesländer*), the services of the prison doctors are regulated by administrative regulations and service regulations for the medical service in prisons.<sup>126</sup>

The federal states of Bavaria, Lower Saxony, Schleswig-Holstein, and Saxony-Anhalt have based their regulations on the provision of medical care by physicians on section 158 (1) of the Federal Prison Act (*Strafvollzugsgesetz*), which states:<sup>127</sup>

*“Die ärztliche Versorgung ist durch hauptamtliche Ärzte sicherzustellen. Sie kann aus besonderen Gründen nebenamtlichen oder vertraglich verpflichteten Ärzten übertragen werden.“*

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<sup>121</sup> Lesting, W. (2017), ‘Teil II § 62 LandesR’ in: Feest *et al.* (eds.), *Strafvollzugsgesetze. Kommentar*, Köln, Carl Heymanns, p. 526.

<sup>122</sup> Nestler, N. (2020): ‘F. Krankenbehandlung’ in: Schwind, H-D., Böhm, A. *et al.* (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 579.

<sup>123</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), p. 33.

<sup>124</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), p. 57.

<sup>125</sup> Lesting, W. (2022), ‘§ 98 LandesR – Medizinische Versorgung’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 2.

<sup>126</sup> See, for example, the Service Regulation of North Rhine-Westphalia ([Dienstordnung für das Gesundheitswesen in den Justizvollzugsanstalten des Landes Nordrhein-Westfalen](#)), 29 September 2010.

<sup>127</sup> Nestler, N. (2020): ‘D. Gesundheitsfürsorge’ in: Schwind, H-D., Böhm, A. *et al.* (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 554.



“Medical care shall be ensured by medical officers employed on a full-time basis. If there are special reasons, it may be delegated to physicians working on a part-time or contractual basis.”

Most of the federal states, on the other hand, do not specify by whom medical care is to be provided. However, this must always be a licensed medical practitioner.<sup>128</sup>

To ensure that only personnel who meet the general requirements for nursing care<sup>129</sup> that also apply outside the prison system are employed, the majority of the federal states have adopted section 158 (2) of the Federal Prison Act (*Strafvollzugsgesetz*) which stipulates:<sup>130</sup>

*“Die Pflege der Kranken soll von Personen ausgeübt werden, die eine Erlaubnis nach dem Krankenpflegegesetz oder dem Pflegeberufegesetz besitzen. Solange Personen im Sinne von Satz 1 nicht zur Verfügung stehen, können auch Bedienstete des allgemeinen Vollzugsdienstes eingesetzt werden, die eine sonstige Ausbildung in der Krankenpflege erfahren haben.”*

“Sick prisoners should be nursed by persons who are registered in accordance with the Nursing Act or the Nursing Profession Act. Where such persons as defined in the first sentence are not available, custodial staff who have been given other training in sick nursing may also be employed.”

#### c. Medical examination upon admission

In criminal detention, a medical consultation takes place within the framework of an admission examination by the prison physician.<sup>131</sup>

The same applies also for pre-trial detention. State legislation stipulates that all prisoners have to be examined by a prison doctor “soon” (*alsbald*). In Hamburg, the medical examination must happen “immediately” (*unverzüglich*), in Schleswig-Holstein it has to happen “preferably within 24 hours after the reception” of a prisoner.<sup>132</sup>

#### d. Preventive care

According to Section 57 of the **Federal Prison Act** (*Strafvollzugsgesetz*), copied by the **Bavarian Prison Act** (*Bayerisches Strafvollzugsgesetz*) (Section 59), prisoners of at least 35 years of age are entitled to receive a medical check every other year for the early detection of illnesses, in particular for cardiovascular and kidney diseases and diabetes. Further, detained males are entitled to an examination

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<sup>128</sup> Nestler, N. (2020): ‘D. Gesundheitsfürsorge’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 554 f.

<sup>129</sup> This are the Nursing Act ([Krankenpflegegesetz](#)) of 16 July 2003, and the Nursing Profession Act ([Pflegeberufegesetz](#)) of 17 July 2017 that replaces the former.

<sup>130</sup> Nestler, N. (2020): ‘D. Gesundheitsfürsorge’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 555.

<sup>131</sup> Nestler, N. (2020): ‘D. Gesundheitsfürsorge’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 555.

<sup>132</sup> Schulze, J. P. (2017), *‘Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich’*, Mönchengladbach, Forum Verlag Godesberg, p. 149.

for the early detection of cancer once a year (at most). This applies to all women who have reached the age of 20 and men who of at least 45 years of age.<sup>133</sup>

All other state legislations do not explicitly address preventive screenings anymore, but rather mention the prisoners' right to such measures as equivalent to the provisions in the Social Code (*Sozialgesetzbuch*).<sup>134</sup> The **Prison Act of North Rhine-Westphalia** (*Strafvollzugsgesetz Nordrhein-Westfalen*), for example, stipulates that the prisoners' right to a necessary, sufficient and appropriate medical care includes health screenings for the early detection of illnesses and health aids/protheses. In respect to the scope of such screenings, the Act refers to the provisions for regularly health-insured persons. Prisoners may be requested to contribute to the costs of medical care.<sup>135</sup>

The same provisions apply to persons in pre-trial detention.<sup>136</sup>

#### e. Specialised care

In criminal detention, special treatment by an external doctor may be considered if there is a lack of appropriately qualified medical staff or the necessary technical equipment within the institution. However, the prisoners do not have the right to consult a specialist doctor of his or her choice. Rather, the consultation of a specialist is at the medical discretion of the prison doctor.<sup>137</sup>

#### f. Treatment of the detainee's choosing

In criminal detention, the prisoners do not have the right to consult a (specialist) doctor of his or her choice. Rather, the consultation of a specialist is at the medical discretion of the prison doctor. Free choice of a doctor was waived with because of perceived risks of abuse.<sup>138</sup>

In pre-trial detention, detainees may, after hearing the prison's medical staff first, call upon an external doctor at their own expense.<sup>139</sup>

#### g. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

<sup>133</sup> Section 57 (1) of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976, Section 59 (1) (2) of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)).

<sup>134</sup> Lesting, W. (2022), „§ 62 LandesR – Art und Umfang der medizinischen Leistungen, Kostenbeteiligung“ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 13.

<sup>135</sup> Section 45 (1) (3) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>136</sup> See, for example, section 25 (1) sentence 1 of the Bavarian Pre-Trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)), section 24 (1) of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>137</sup> Nestler, N. (2020): 'D. Gesundheitsfürsorge' in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 563.

<sup>138</sup> Nestler, N. (2020): 'D. Gesundheitsfürsorge' in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 563.

<sup>139</sup> Section 23 (3) sentence 1 of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)):

„Untersuchungsgefangenen kann nach Anhörung des ärztlichen Dienstes der Anstalt gestattet werden, auf eigene Kosten externen ärztlichen Rat einzuholen.“

Similar wording in section 25 (2) sentence one of the Bavarian Pre-Trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)).

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

*„In mehreren der besuchten Justizvollzugsanstalten wurden Fixierungen durchgeführt. In diesem Zusammenhang wurde die Nationale Stelle wiederholt darauf hingewiesen, dass eine ständige Eins-zu-eins Betreuung durch therapeutisches oder pflegerisches Personal nicht gewährleistet werden könne. Auch das Strafvollzugsgesetz fordert lediglich eine Betreuung durch „geschulte Bedienstete“. Die Anforderung einer Eins-zu-eins-Betreuung bei Fixierungen durch therapeutisches oder pflegerisches Personal, welches sich in der unmittelbaren Nähe befindet, ist durch die besonderen Gesundheitsgefahren begründet, die während einer Fixierung auftreten können und unmittelbarer fachlich fundierter Reaktion bedürfen. Durch den Einsatz von therapeutischem oder pflegerischem Personal kann zudem deeskalierend auf die Person eingewirkt werden, um eine schnelle Beendigung der Maßnahme zu ermöglichen.“* (p. 64 of the German version of the annual report 2022)

“Physical restraint was used in a number of the prisons visited. The National Agency was repeatedly told that constant one-on-one supervision by therapeutic or care staff whenever physical restraint was used could not be guaranteed. The German Prison Act only requires watchful care by “trained prison officers”. One-on-one supervision should be provided by therapeutic or care staff in the immediate vicinity of the individual restrained because the use of physical restraint can pose particular health risks requiring an immediate response from qualified personnel. Moreover, therapeutic or care staff can exert a de-escalating influence and thus reduce the period for which restraint is required.” (p. 61 of the English version of the annual report 2022)

*„Aus aktuellen Studien geht hervor, dass immer mehr Gefangene im deutschen Justizvollzug psychische Auffälligkeiten aufweisen – zurzeit zwischen 40 und 70%. Diese Tatsache erscheint umso schwerwiegender, als dort eine ausreichende Behandlung nicht immer gewährleistet werden kann. 182 BVerfG, Urteil vom 24.07.2018, Az.: 2 BvR 309/15. 183 Siehe z.B. Justizministerium Baden-Württemberg (2015): Umgang mit psychisch auffälligen Gefangenen. Abschlussbericht der Expertenkommission. Stuttgart. Im Rahmen ihrer Besuche hat die Nationale Stelle – wie auch der CPT184 – monatelange oder sogar jahrelange Absonderungen aufgrund psychischer Auffälligkeiten und die damit verbundene ungenügende Betreuung und Behandlung der Betroffenen beobachtet. Daher betrachtet sie Justizvollzugskrankenhäuser und psychiatrische Abteilungen – insbesondere in offenen Settings – als wichtige Einrichtungen zur psychologischen und psychiatrischen Behandlung der Gefangenen.“* (p.73 of the German version of the annual report 2022)

“Recent studies have found that increasing numbers of prisoners in German prisons – currently between 40 and 70% – are suffering from mental health issues. The fact that adequate treatment in prison is not always available makes a difficult situation all the more concerning. In the course of its visits, the National Agency – like the CPT – has observed individuals with mental health issues being held in isolation for months or even years and the corresponding lack of adequate support or treatment. The Agency therefore sees prison hospitals and psychiatric units – in particular in open settings – as key for the psychological and psychiatric treatment of prisoners.” (p. 69 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

*“Im Rahmen ihrer Besuche wird die Nationale Stelle immer wieder auf das Problem der mangelnden psychiatrischen Behandlung von Gefangenen im Justizvollzug aufmerksam. Dies stellt nach der Einschätzung der Nationalen Stelle ein möglicherweise strukturelles Problem dar, das einer weitergehenden Untersuchung, gegebenenfalls durch externe Stellen, bedarf. So ist in der JVA Bautzen eine hohe Zahl von Gefangenen psychiatrisch-medizinisch behandlungsbedürftig oder leidet unter den Folgen von Drogenmissbrauch, z.B. von Crystal-Konsum. Ein Gefangener war aufgrund eines psychiatrischen Störungsbildes und fehlender Krankheitseinsicht länger als ein Jahr ohne Zugang zur Gemeinschaft abgesondert. Eine gewünschte Überstellung in das Justizvollzugskrankenhaus Leipzig scheiterte an der dortigen Vollbelegung. Die Anlasserkrankung legt nahe, dass das Störungsbild sich ohne adäquate Behandlung und bei konstanter Isolierung verschlechtert. Auch die Verlegung psychisch schwer belasteter Gefangener, wie etwa ehemaliger Kindersoldaten, in stationäre psychiatrische Behandlung sei aus der JVA Bautzen heraus selten realisierbar.“* (p. 88 of the German version of the annual report 2021)

“In the course of its visits, the National Agency repeatedly became aware of the problem of a lack of psychiatric treatment for prisoners. According to the National Agency’s assessment, this might constitute a structural problem that requires further investigation, possibly by external bodies. For example, a high number of prisoners at Bautzen Prison require psychiatric medical treatment or suffer from the consequences of drug abuse, e.g. consumption of crystal meth. One prisoner had been segregated without access to the wider community for more than one year due to a psychiatric disorder and an inability to understand his illness. The desired transfer to the prison hospital of Leipzig Prison failed due to it being fully occupied. His illness suggests that the disorder will worsen if he does not receive adequate treatment and has to remain in constant isolation. It is also rarely possible to transfer prisoners with severe mental issues, such as former child soldiers, from Bautzen Prison to inpatient psychiatric treatment facilities.” (p. 86 of the English version of the annual report 2021)

*“Aufgrund der offensichtlichen Tragweite des Problems der mangelhaften psychiatrischen Behandlung im Justizvollzug ist die Nationale Stelle der Auffassung, dass eine Untersuchung der Verbreitung psychiatrischer Erkrankungen und deren Behandlung im deutschen Justizvollzug unbedingt erforderlich ist. Im Rahmen ihrer aktuellen Mittel ist die Nationale Stelle nicht dazu in der Lage diese selbst durchzuführen oder durch häufigere Besuche ein vollständiges Bild zu vermitteln.“* (p. 89 of the German version of the annual report 2021)

“Because of the obvious seriousness of the problem of inadequate psychiatric treatment in prisons, the National Agency believes that an investigation into the prevalence of psychiatric disorders and their treatment in German prisons is indispensable. Given its currently available resources, the National Agency is not in a position to carry out this investigation itself or to provide a complete picture through more frequent visits.” (p. 86 of the English version of the annual report 2021)

*“In den medizinischen Abteilungen der JVA Bautzen und JVA Tegel werden für Gespräche mit Ärzten teilweise Geräte zum Videodolmetschen genutzt, in anderen Bereichen werden für die Übersetzung vertraulicher Gespräche mit Gefangenen Dolmetscher von anderen Anstalten hinzugezogen. In Einzelfällen werden in beiden Anstalten jedoch auch Mitgefangene, vereinzelt auch Bedienstete, als Dolmetscher herangezogen. Ärzte haben in der JVA Tegel die Möglichkeit, bei vertraulichen Gesprächen*

*mit nicht-deutschsprachigen Gefangenen eine externe Dolmetscherin oder einen externen Dolmetscher hinzuzuziehen.”* (p. 96 of the German version of the annual report 2021)

“In the medical departments of Bautzen and Tegel Prisons, devices are sometimes used for video-based interpreting of conversations between prisoners and physicians. In other fields, interpreters are sometimes called in from other facilities to translate confidential conversations with prisoners. However, in individual cases, fellow inmates – and on rare occasions staff members – are asked to interpret in both facilities. At Tegel Prison, doctors can call in external interpreters to help with conversations with non-German-speaking prisoners.” (p. 93 of the English version of the annual report 2021)

*No additional comments by the NPM.*

## 9. Prevention of violence and ill-treatment

### a. Protection from violence by prison staff

Provisions on the qualification of staff differ. In **North Rhine-Westphalia**, for instance, section 96 (2) of the Prison Act (*Strafvollzugsgesetz Nordrhein-Westfalen*) explicitly mentions that each prison shall have the necessary number of appropriate and qualified staff. Moreover, the law provides for in-service training, counselling, and supervision opportunities. The **Bavarian Prison Act** (*Bayerisches Strafvollzugsgesetz*) only stipulates that each prison shall have the necessary number of staff (section 176).

Prisoners have access to complaints mechanisms (see chapter 18) and the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) might visit all prisons in Germany in line with OPCAT.

### b. Protection from violence by other detainees

In 2006, the **Federal Constitutional Court** (*Bundesverfassungsgericht*) decided that legal provisions must exist which protect prisoners against violent assaults.<sup>140</sup> The **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*) stipulates that “harmful consequences of detention is to be counteracted” (Section 3 IV), which is also meant to protect prisoners from health risk, and it provides for a “nonviolent climate” in prisons through “security and order” (Section 72 I). No differences exist between closed and open detention regimes in this regard.

Some states explicitly mention in their prison acts that prisoners are to be protected against violence, and other federal states’ prison acts have copied the provision on a “nonviolent climate” from the model act. Section 6 (2) of the **Prison Act of North Rhine Westphalia**, for instance, explicitly stipulates that the security of prisoners shall be protected by means of architecture and technology, organisational rules and structures for social life and the promotion of prisoners’ treatment. According to section 6 (5), the security measures shall promote a “nonviolent climate” and protect prisoners from assaults of other inmates. Moreover, the ability of prisoners to solve conflicts by non-violent means shall be developed and strengthened.<sup>141</sup>

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<sup>140</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2006), 2 BvR 1673/04, 31 May 2006, para. 57.

<sup>141</sup> Section 6 (2) (5) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

In all states, a key instrument to enforce order and protect prisoners from violent prisoners are the so-called special security measures (*besondere Sicherungsmaßnahmen*), which includes, among others, solitary confinement (see above). Another instrument to deescalate violent conflicts and maintain the prison order is the relocation of prisoners, which is provided for in all federal states' prison acts. However, more detailed regulation or guidance does not seem to exist. From Baden-Württemberg it was reported that some prisons have special "protection departments" (*Schutzabteilungen*) for the accommodation of vulnerable or threatened prisoners. It was also reported that prisoners at risk can also be relocated to another prison for their own protection.<sup>142</sup> Rhineland-Palatine reported that staff is trained in conflict management and de-escalation techniques to detect and prevent risks of violent confrontations among prisoners. In case of violence among prisoners, the prison management should call for an investigation under supervision of the public prosecution authority and consider sanctions in each case on an individual basis.<sup>143</sup> The **National Agency for the Prevention of Torture** has not yet issued standards or recommendations on the protection against violence in general or of vulnerable groups in particular.

### c. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

The Annual Report 2022 does not address the issue of violence by staff or other detainees.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*"In jedem besonders gesicherten Haftraum [in der JVA Tegel] befinden sich hierfür je zwei Leder- und zwei Metallfesseln. Nach Auskunft der Einrichtung würden die schneller verschließbaren Metallfesseln als Hilfsmittel der körperlichen Gewalt zur unmittelbaren Fixierung der Gefangenen genutzt, um in Erregungssituationen eine schnelle Fixierung sicherzustellen. Diese würden dann durch die gepolsterten Lederfesseln ersetzt, die aus einem anderen besonders gesicherten Haftraum hinzugeholt würden. [...] Fixierungen mit Metallfesseln bergen für die fixierte Person ein hohes Verletzungspotential. Bei der Anwendung können Hämatome entstehen und Nerven abgedrückt werden."* (p. 92f. of the German version of the annual report 2021)

"Two leather and two metal cuffs are kept in each [specially secured] cell [at prison Tegel] for this purpose. According to information provided by the facility, the metal cuffs, which can be locked more quickly, are used as a means of aiding the use of physical force for the immediate restraint of prisoners in order to ensure they can be restrained quickly in situations of distress. These are then replaced by padded leather cuffs, which are brought in from another specially secured cell. However, when several prisoners are restrained in different cells at the same time, there are insufficient leather cuffs available. Thus, there is a danger of metal cuffs being used for a longer period of time. Suitable material must be

<sup>142</sup> Email from the head of the unit on criminal detention at the Ministry of Justice and for Europe Baden-Württemberg, 30 May 2

<sup>143</sup> Email from Ministry of Justice of the State of Rhineland-Palatine, 12 June 2018.

available on site. The National Agency is aware that, in the forensic psychiatric sector and in many prisons, textile restraints are used exclusively. The use of metal cuffs has a high potential for injury to the restrained person. It can result in haematomas or compressed nerves.” (p. 90 of the English version of the annual report 2021)

*No additional comments by the NPM.*

## 10. Contact with the outside world

### a. Visits

The prisoner’s right to extramural contact is provided for in the German Constitutional Law, in particular through the protection of marriage and family (Art. 6 (1) GG) and the right to freedom of expression (Art. 5 (1) GG).

State legislation differs in respect to the regulation of minimum visiting hours of the prisoners, from at least one hour (Baden-Württemberg, Bavaria, Hamburg, Schleswig-Holstein) to a minimum of 4 hours per month (Brandenburg, Lower Saxony, Saxony).<sup>144</sup>

Bavaria, Brandenburg, Schleswig-Holstein, Hesse, Berlin, Saxony, Baden-Württemberg and North Rhine-Westphalia formulate an obligation of the institution to encourage and support the prisoners’ contact with persons outside of the prison facility.<sup>145</sup> Nevertheless, also for the other states, this provision is implied in the overall treatment objective of resocialisation which can only be achieved if the prisoner is released into a network of stable relationships.<sup>146</sup>

The monitoring and supervision of visits by the prisoner’s defence is not allowed.<sup>147</sup>

Section 15 of the **Bavarian Pre-trial Detention Act** provides that the minimum duration for visits is two hours per month. After three months, this standard can be reduced to one hour per month due to significant spatial, staffing, or organisational reasons.

The **Pre-Trial Detention Act of North Rhine Westphalia** stipulates that detainees should receive a minimum of two hours of visit per month, with an additional two hours for underage children (see question 10c). After an appropriate time (“*angemessene Zeit*”), detainees can be allowed to receive unsupervised visits of several hours (*Langzeitbesuche*) if these contribute to the maintenance of family, spousal, or comparable relationships.<sup>148</sup>

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<sup>144</sup> Knauer, F. (2022). §25 LandesR – Grundsatz’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

<sup>145</sup> Hesse, Berlin, Saxony, Baden-Württemberg and North-Rhine-Westphalia limit this provision to a certain group of people, e.g. relatives or people from whom a positive influence can be expected. Knauer, F. (2022). §25 LandesR – Grundsatz’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

<sup>146</sup> Knauer, F. (2022). §25 LandesR – Grundsatz’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

<sup>147</sup> Knauer, F. (2022). §28 LandesR – Durchführung der Besuche’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 27.

<sup>148</sup> Section 17 (1) (2) (4) of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

The **Federal Constitutional Court** (*Bundesverfassungsgericht*) found that visits of marital spouses or children may be allowed beyond the regular visiting hours.<sup>149</sup> 11 of 16 federal states have made use of the possibility to expand their visiting hours to marital spouses and partners.<sup>150</sup>

### b. Correspondence

All state legislation provides the prisoner's right to written correspondence. While the Federal Prison Act stipulated an "unrestricted" right, only Baden-Württemberg, Bavaria and Hamburg have maintained this wording. All other states have followed the provisions in the Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*) which cut the "unrestricted."<sup>151</sup>

Prisoners are obliged to take the costs of their written communication, with justified exceptions.<sup>152</sup> Section 34 (1) sentence 2 of the **Bremen Prison Act** stipulates an obligation for an early motivation and guidance of the prisoner.<sup>153</sup>

Due to the Covid-pandemic, many prisons expanded their capacities to offer video calls, respective infrastructure and opportunities remain. In 2023, Saxony accepted a draft law in which the "video visit" (*"Videobesuch"*) should be legally consolidated in the Prison Act of Saxony.<sup>154</sup>

Kilching and Wössner (2022) describe communication by telephone as a particularly important form of maintaining relationships outside of the prison and hence, as an essential element for penal measures to achieve reintegration (p. 23ff). However, Bavarian prison in particular seem to restrict the access to phone calls and, as only German state, feel it necessary to control and monitor every phone call.<sup>155</sup>

The **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) states that "maintaining contact with the outside world serves to facilitate prisoners' social rehabilitation and helps them reintegrate into their life outside of prison after their release. Regular contact with the outside world is urgently needed, especially for longer periods of imprisonment, in order to maintain and promote a welcoming space for release. In the National Agency's view, prisoners [...] should be allowed to have regular telephone conversations with relatives" (p. 91 of the English version of the annual report 2021).

### c. Visits with children

Many state legislations allow for additional visiting hours for children, e.g. in Berlin, prisoners receive one more hour per month for children under 18 years and Thuringia allows for two more hours for

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<sup>149</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), (1976). 2 BvR 61/76, para. 1311.

<sup>150</sup> For an overview, see

Feige, J. (2024), '[Kontaktmöglichkeiten zwischen Kindern und inhaftierten Eltern. Eine Befragung zur Praxis im Strafvollzug](#)' Deutsches Institut für Menschenrechte, p. 55.

<sup>151</sup> Knauer, F. (2022). '§ 31 LandesR – Recht auf Schriftwechsel' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

<sup>152</sup> Knauer, F. (2022). '§ 31 LandesR – Recht auf Schriftwechsel' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 9.

<sup>153</sup> Knauer, F. (2022). '§ 31 LandesR – Recht auf Schriftwechsel' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 8.

<sup>154</sup> Feige, J. (2024), '[Kontaktmöglichkeiten zwischen Kindern und inhaftierten Eltern. Eine Befragung zur Praxis im Strafvollzug](#)' Deutsches Institut für Menschenrechte, p. 43.

<sup>155</sup> Kilchling, M., & Wössner, G. (2022): '*Eingesperrt und abgehängt? Gefangenentelefonie im Lichte des Resozialisierungsanspruchs, des rechtlichen Rahmens und der Praxis im Ländervergleich.*' Baden-Baden: Nomos. (Kölner Schriften zur Kriminologie und Kriminalpolitik, Band 23)



children under 14 years.<sup>156</sup> According to a study by the German Institute for Human Rights, many prisons make use of the possibility to regulate the visiting hours freely within the legal framework. 72% of participating prisons reported to have irregular visiting hours for children, such as weekend days or specific children-visit days. This leads to large differences in visiting opportunities of parents and children between states (*Länder*) and prisons. Additionally, there is the option of extended visits (up to several hours) for family and children, including extended, unsupervised contact between detainees and their families (*Langzeitbesuche*).<sup>157</sup> The German Institute for Human Rights (2024) has released [a map giving an overview of the visiting hours with children in Germany](#).<sup>158</sup>

Some prisons organise special programs or measures for detainees with children, such as father-child-groups or family days in child-friendly rooms within the prisons. Family days or ‘summer camps’ outside of the prison facilities remain an exception.<sup>159</sup>

In respect to organising the visits in a child-friendly manner, two third of the participating prisons reported that there are no differences when conducting the security controls and searches between adults and children, according to the study by the German Institute for Human Rights. While 56% of the prisons stated that the institution is (rather) not child-friendly, almost 14% even found their reception area to be completely inadequate for hosting children.<sup>160</sup> Some prisons have implemented father-child-groups which enable supervised contact between detained fathers and their children (e.g. a pre-trial detention facility in Hamburg).<sup>161</sup>

The same applies to pre-trial detention. For example, the **Pre-Trial Detention Act of North Rhine Westphalia** provides that detainees should receive an additional two hours of visiting time for underage children. The conditions should be child-friendly, meaning that the needs of the children should be respected in in terms of visiting days, visiting hours and the environment.<sup>162</sup>

#### d. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

*“Im Kontext der Corona-Pandemie wurden zusätzliche Kommunikationsmöglichkeiten – wie die Videotelefonie – in nahezu allen Justizvollzugsanstalten eingeführt, um den Kontakt mit der Außenwelt zu unterstützen. In einigen Anstalten kann diese mittlerweile zusätzlich zu Besuchen beantragt werden.*

<sup>156</sup> Knauer, F. (2022). ‘§26 LandesR – Besuch’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 11.

<sup>157</sup> Feige, J. (2024), [‘Kontaktmöglichkeiten zwischen Kindern und inhaftierten Eltern. Eine Befragung zur Praxis im Strafvollzug’](#) Deutsches Institut für Menschenrechte, p. 44.

<sup>158</sup> Deutsches Institut für Menschenrechte (2024). [‘Besuchszeitregelungen für Kinder von Inhaftierten.’](#)

<sup>159</sup> Feige, J. (2024), [‘Kontaktmöglichkeiten zwischen Kindern und inhaftierten Eltern. Eine Befragung zur Praxis im Strafvollzug’](#) Deutsches Institut für Menschenrechte, p. 46.

<sup>160</sup> Feige, J. (2024), [‘Kontaktmöglichkeiten zwischen Kindern und inhaftierten Eltern. Eine Befragung zur Praxis im Strafvollzug’](#) Deutsches Institut für Menschenrechte, p. 37.

<sup>161</sup> Knauer, F. (2022). ‘§26 LandesR – Besuch’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 15.

<sup>162</sup> Section 17 (2) of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

*Auch die Einführung von Haftraumtelefonie konnte die Nationale Stelle verstärkt beobachten.“ (p. 59 of the German version of the annual report 2022)*

“Additional communication options – such as video calls – were introduced in almost all of the prisons during the coronavirus pandemic in order to facilitate contact with the outside world. In a number of facilities, prisoners can now request video calls in addition to visits. The National Agency also found that prisons were increasingly installing telephones in the cells.” (p. 57 of the English version of the annual report 2022)

Zur JVA Hamburg-Fuhlsbüttel and der Untersuchungshaftanstalt Hamburg: *„Durch den Einsatz von Haftraumtelefonie werden in beiden Anstalten ein regelmäßiger Kontakt mit der Außenwelt und das Führen vertraulicher Gespräche erleichtert.“* (p. 69 of the German version of the annual report 2022)

On the Hamburg-Fuhlsbüttel Prison and the Hamburg Remand Detention Facility: “Telephone access in the cells at both facilities facilitates regular contact with the outside world and makes it easier to hold private conversations.” (p. 66 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*“Vor der Corona-Pandemie wurde den Gefangenen der Justizvollzugsanstalten Straubing und Landsberg am Lech das Telefonieren wie in allen bayerischen Justizvollzugsanstalten gemäß Art. 35 Bayerisches Strafvollzugsgesetz nur „in dringenden Fällen“ auf Antrag gestattet, etwa wenn diese ansonsten keinen Besuch bekamen oder bei Todesfällen von Angehörigen. Damit war Bayern das einzige Bundesland, das die Außenkontakte seiner Gefangenen in Normalzeiten neben der Möglichkeit von Besuchen auf Briefwechsel beschränkte.“* (p. 93 of the German version of the annual report 2021)

“Before the Covid-19 pandemic, prisoners at Straubing and Landsberg am Lech Prisons were only allowed to make telephone calls – as in all Bavarian prisons as per Article 35 of the Bavarian Prison Act – upon request and “in urgent cases”, for example if they otherwise had no visitors or if a relative had died. This made Bavaria the only Land where, apart from actual visits, the external contacts of prisoners were, in normal times, limited to letters.” (p. 91 of the English version of the annual report 2021)

*Comment by the NPM:*

*The National Agency assesses systematically the conditions of contact with the outside world regarding possibilities of visits, phone calls and videotelephony. When complaints occur about the allocation of prisoners, the National Agency will address the issue in its visit reports.*

## 11. Special measures for female detainees

### a. General conditions of detention for women and girls

The special rules relating to the execution of sentences for female detainees essentially focus on specific aspects of health care for pregnant women and for women after the birth of a child. Only the prison

laws of Bavaria, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein still contain a separate section entitled "Special provisions for Women Prisoners".<sup>163</sup>

In Section 3 (6) of the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*), the principles of design of the penal system include the requirement for the institutions to take into account the different needs of the prisoners resulting from gender, age and origin. This provision was adopted by Brandenburg, Bremen, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt and Thuringia.<sup>164</sup>

Beyond the separation of male and female prisoners (section 10 of the Model State Prison Act, consideration is given in some federal states to the rights of pregnant women and nursing mothers in connection with the obligation to work (Berlin, Hesse, Saxony-Anhalt and Thuringia), the need for medical advice in disciplinary measures (Brandenburg, Berlin, Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony and Thuringia) as well as to food (Berlin).<sup>165</sup>

#### b. Separation from men

The prison laws of all federal states provide for the separation of female and male prisoners (principle of separation, *Trennungsprinzip*).<sup>166</sup> Section 140 (2) of the Federal Prison Act (*Strafvollzugsgesetz*) stipulates:

*“Frauen sind getrennt von Männern in besonderen Frauenanstalten unterzubringen. Aus besonderen Gründen können für Frauen getrennte Abteilungen in Anstalten für Männer vorgesehen werden.“*

“Women shall be accommodated separately from men in special penal institutions for women. For special reasons, separate units for women may be provided in institutions for men.”

Brandenburg, Rhineland-Palatinate, Saxony-Anhalt, and Thuringia have adopted the principle of priority of special institutions for women in relation to separate units in institutions for men laid down in the Federal Prison Act,<sup>167</sup> while the federal states of Baden-Wuerttemberg, Bavaria and North Rhine-Westphalia do not apply such prioritization in their legislative texts.<sup>168</sup>

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<sup>163</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1423.

<sup>164</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1421.

<sup>165</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1421.

<sup>166</sup> Dee, C. (2020): ‘B. Trennung des Vollzuges’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1308.

<sup>167</sup> Section 17 (1) of the Brandenburg Prison Act ([Brandenburgisches Justizvollzugsgesetz](#)), section 17 (1) of the Rhineland-Palatinate Prison Act ([Landesjustizvollzugsgesetz](#)), section 17 (1) of the First Book of the Saxony-Anhalt Prison Act ([Erstes Buch Justizvollzugsgesetzbuch Sachsen-Anhalt](#)) and section 17 (1) Thuringia Prison Act ([Thüringer Justizvollzugsgesetzbuch](#)).

<sup>168</sup> Section 4 (1) of the First Book of the Baden-Württemberg Prison Act ([Justizvollzugsgesetzbuch Buch 1](#)); Art. 166 (2) of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)); section 85 (1) of the North Rhine-Westphalia Prison Act ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

Bremen, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Saarland, Saxony and Schleswig-Holstein do not explicitly refer to these different types of accommodation for women at all.<sup>169</sup> Berlin only refers to accommodation in special penal institutions for women.<sup>170</sup>

Independent facilities for women currently exist in Berlin, Chemnitz, Frankfurt am Main III, Schwäbisch Gmünd, Vechta and Willich II. In contrast, most penal institutions that house women are affiliated with institutions for men or are merely dependent departments of men's institutions. The exemption provision of the second sentence of section 140 (2) of the Federal Prison Act (*Strafvollzugsgesetz*) and its state equivalents is the rule in practice.<sup>171</sup> Mixed-sex correctional facilities are not currently practiced in Germany.<sup>172</sup>

Deviations from the principle of separation are made by section 140 (3) of the Federal Prison Act (*Strafvollzugsgesetz*), which stipulates:

*“Von der getrennten Unterbringung nach den Absätzen 1 und 2 darf abgewichen werden, um dem Gefangenen die Teilnahme an Behandlungsmaßnahmen in einer anderen Anstalt oder in einer anderen Abteilung zu ermöglichen.“*

“Separate accommodation in accordance with subsections (1) and (2) may be departed from in order to make it possible for a prisoner to participate in measures of treatment in some other institution or in another unit.”

As in section 140 (3) of the Federal Prison Act (*Strafvollzugsgesetz*), the federal laws of Baden-Württemberg, Bavaria, Brandenburg, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Saarland and Saxony permit exceptions to the principle of separation for the purpose of participating in (treatment) measures in another institution or another unit. In addition to the exceptions for reasons of treatment, some federal states have also permitted deviation from the principle of separation for urgent organizational reasons (Lower Saxony and Hesse). Further exceptions may be made with the consent of the detainee (Baden-Württemberg and Hesse) and in cases of need for assistance or physical danger (Hesse).<sup>173</sup>

### c. Hygiene

According to section 22 (1) sentence 1 of the **Federal Prison Act** (*Strafvollzugsgesetz*) and section 53 (2) sentence 4 of the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*), detainees may use the house money or pocket money to buy food, luxuries and personal hygiene products. Section

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<sup>169</sup> Section 10 sentence 1 of the Bremen Prison Act ([Bremisches Strafvollzugsgesetz](#)); section 70 (2) sentence 1 of the Hesse Prison Act ([Hessisches Strafvollzugsgesetz](#)); section 10 (1) of the Mecklenburg-Western Pomerania Prison Act ([Strafvollzugsgesetz Mecklenburg-Vorpommern](#)); section 171 (1) sentence 1 of the Lower Saxony Prison Act ([Niedersächsisches Justizvollzugsgesetz](#)); section 10 sentence 1 of the Saarland Prison Act ([Saarländisches Strafvollzugsgesetz](#)); section 10 sentence 1 of the Saxony Prison Act ([Sächsisches Strafvollzugsgesetz](#)); section 10 (1) of the Schleswig-Holstein Prison Act ([Landesstrafvollzugsgesetz Schleswig-Holstein](#)).

<sup>170</sup> Section 11 sentence 1 of the Berlin Prison Act ([Berliner Strafvollzugsgesetz](#)):

*“Weibliche Gefangene werden von männlichen Gefangenen getrennt in einer gesonderten Anstalt untergebracht“.*

<sup>171</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1416.

<sup>172</sup> Dee, C. (2020): ‘B. Trennung des Vollzuges’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1308.

<sup>173</sup> Dee, C. (2020): ‘B. Trennung des Vollzuges’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1310.

22 (1) sentence 1 of the Federal Prison Act further stipulates, that these products may be selected from among an assortment offered through the mediation of the institution. There are no provisions specifically for females.

The federal states of Bavaria and North Rhine-Westphalia have adopted almost the exact wording of section 22 (1) sentence 1 of the Federal Prison Act (*Strafvollzugsgesetz*) in their prison laws.<sup>174</sup> The provisions contained in their pre-trial detention laws refer to food, luxuries and other items of personal need that may be purchased to a reasonable extent.<sup>175</sup>

The **Dresden Higher Regional Court** ruled that it follows from the state's duty of care towards the detainee that the detainee who does not have the means necessary to purchase the articles for personal hygiene has a right to the provision of the corresponding articles free of charge in accordance with his or her needs.<sup>176</sup> The Zweibrücken Higher Regional Court, on the other hand, denied such a claim with reference to the provisions of section 56 (2) of the Federal Prison Act (*Strafvollzugsgesetz*), according to which the detainee must support the necessary hygiene measures, and to section 3 (1), according to which life in prison is to be brought as close as possible to general living conditions.<sup>177</sup>

The **Federal Constitutional Court** (*Bundesverfassungsgericht*) has clarified that an interpretation of the Federal Prison Act (*Strafvollzugsgesetz*) to the effect that prisoners should in principle be provided with the necessary articles for personal hygiene free of charge by the prison is not required by constitutional law.<sup>178</sup>

#### d. Healthcare

Medical care for imprisoned pregnant women must be fundamentally equivalent to that for legally insured pregnant women in freedom.<sup>179</sup>

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<sup>174</sup> Section 24 (1) sentence 1 of the Bavaria Prison Act ([Bayerisches Strafvollzugsgesetz](#)):

*“Die Gefangenen können sich vom Hausgeld (Art. 50) oder Taschengeld (Art. 54) aus einem von der Anstalt vermittelten Angebot Nahrungs- und Genussmittel sowie Mittel zur Körperpflege kaufen“;*

section 17 (1) sentence 1 of the North Rhine-Westphalia Prison Act ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

*“Gefangene dürfen von ihrem Hausgeld (§ 36) oder Taschengeld (§ 35) aus einem von der Anstalt vermittelten Angebot Nahrungs- und Genussmittel sowie Mittel zur Körperpflege einkaufen“.*

<sup>175</sup> Section 14 (3) sentence 1 of the Bavarian Pre-trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)):

*“Sie dürfen durch Vermittlung der Anstalt regelmäßig Nahrungs- und Genussmittel sowie andere Gegenstände des persönlichen Bedarfs in angemessenem Umfang kaufen“;*

section 11 (5) sentence 1 of the North Rhine-Westphalia Pre-trial Detention Act ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)):

*“Untersuchungsgefangene dürfen in angemessenem Umfang aus einem von der Anstalt vermittelten Angebot Nahrungs- und Genussmittel sowie andere Gegenstände des persönlichen Bedarfs einkaufen“.*

<sup>176</sup> Germany, Dresden Higher Regional Court (*Oberlandesgericht Dresden*) (2003), 2 Ws 381/02, 17 January 2003.

<sup>177</sup> Germany, Zweibrücken Higher Regional Court (*Oberlandesgericht Zweibrücken*) (2004), 1 Ws 174/04, 19 May 2004.

<sup>178</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2008), 2 BVR 1268/07, 29 October 2008, para. 2.

<sup>179</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1426.

Section 76 (2) and (3) of the Federal Prison Act (*Strafvollzugsgesetz*) stipulate:<sup>180</sup>

*“(2) Die Gefangene hat während der Schwangerschaft, bei und nach der Entbindung Anspruch auf ärztliche Betreuung und auf Hebammenhilfe in der Vollzugsanstalt. Zur ärztlichen Betreuung während der Schwangerschaft gehören insbesondere Untersuchungen zur Feststellung der Schwangerschaft sowie Vorsorgeuntersuchungen einschließlich der laborärztlichen Untersuchungen.*

*(3) Zur Entbindung ist die Schwangere in ein Krankenhaus außerhalb des Vollzuges zu bringen. Ist dies aus besonderen Gründen nicht angezeigt, so ist die Entbindung in einer Vollzugsanstalt mit Entbindungsabteilung vorzunehmen. Bei der Entbindung wird Hilfe durch eine Hebamme und, falls erforderlich, durch einen Arzt gewährt.“*

“(2) During pregnancy and in the course of, and after, childbirth, the prisoner shall be entitled to medical care and midwifery in the penal institution. Medical care during pregnancy shall include in particular examinations to diagnose pregnancy and prophylactic examinations, including medical laboratory tests.

(3) For childbirth the pregnant woman shall be taken to a hospital outside the institution. Where this is not advisable for special reasons, childbirth shall take place in a penal institution with a maternity ward. Upon childbirth assistance by a midwife and, where necessary, by a medical officer shall be given.”

The Model State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz*) does not contain specific provisions on pregnancy and maternity health benefits. According to the explanatory memorandum, such benefits are without further ado already part of the general medical benefits provided for in section 62. Baden-Württemberg, on the other hand, has specified medical care during pregnancy beyond what is outlined in the Federal Prison Act (*Strafvollzugsgesetz*).<sup>181</sup>

Whereas only Baden-Württemberg and Bavaria have retained the original version of section 76 (3) of the Federal Prison Act (*Strafvollzugsgesetz*), Hamburg additionally refers in its state law to a possibility of delivery in the central hospital of the Hamburg pre-trial detention facility. In Lower Saxony, by contrast, no exception is made for delivery within the prison facility.<sup>182</sup>

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<sup>180</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>181</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1430; section 37 (2) of the Third Book of the Baden-Württemberg Prison Act ([Justizvollzugsgesetzbuch Buch 3](#)):

*“(2) Die Gefangene hat während der Schwangerschaft sowie bei und nach der Entbindung Anspruch auf ärztliche Betreuung einschließlich der Untersuchungen zur Feststellung der Schwangerschaft und zur Schwangerenvorsorge sowie auf Hebammenhilfe. Die ärztliche Betreuung umfasst die Beratung der Schwangeren zur Bedeutung der Mundgesundheit für Mutter und Kind einschließlich des Zusammenhangs zwischen Ernährung und Krankheitsrisiko sowie die Einschätzung oder Bestimmung des Übertragungsrisikos von Karies“.*

<sup>182</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1428.

#### e. Pregnancy and women with babies or young children

Generally, pregnant women in criminal and pre-trial detention should receive the same care as pregnant women outside of prisons.<sup>183</sup>

In all federal states except Schleswig-Holstein, it is provided in principle that young children may be admitted together with their mothers to a mother-child unit, if this is in the child's best interest. The regulations of the federal states are essentially based on section 80 of the Federal Prison Act (*Strafvollzugsgesetz*), which stipulates:<sup>184</sup>

*“(1) Ist das Kind einer Gefangenen noch nicht schulpflichtig, so kann es mit Zustimmung des Inhabers des Aufenthaltsbestimmungsrechts in der Vollzugsanstalt untergebracht werden, in der sich seine Mutter befindet, wenn dies seinem Wohl entspricht. Vor der Unterbringung ist das Jugendamt zu hören.*

*(2) Die Unterbringung erfolgt auf Kosten des für das Kind Unterhaltspflichtigen. Von der Geltendmachung des Kostenersatzanspruchs kann abgesehen werden, wenn hierdurch die gemeinsame Unterbringung von Mutter und Kind gefährdet würde.“*

“(1) Where a woman prisoner's child is not yet subject to compulsory school attendance, s/he may, with the consent of the person entitled to determine the child's place of residence, be accommodated in the penal institution where his/her mother is, provided this would be for his/her welfare. Prior to such accommodation the Youth Welfare Office shall be consulted.”

(2) Accommodation shall be given at the expense of the person liable to pay for the child's maintenance. Assertion of the claim to the refund of costs may be disregarded where the joint accommodation of mother and child would thereby be jeopardised.”

Section 142 of the Federal Prison Act (*Strafvollzugsgesetz*) mentions in this regard that penal institutions for women shall provide facilities, in which mothers can be accommodated with their children.

Most state legislation provides that a doctor needs to be consulted before any disciplinary measures are taken against a pregnant woman or a woman who has just given birth.<sup>185</sup>

#### f. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden-

*“Die JVA Vechta verfügt über eine eigene psychiatrische Abteilung mit zehn Plätzen. Unter diesem Gesichtspunkt ist die gute Ausstattung des psychologischen und psychiatrischen Dienstes hervorzuheben, insbesondere dass eine kooperierende Klinik einen Psychiater mit 30 Stunden pro Woche*

<sup>183</sup> Bönig, D. & Weßels, O. (2022) ‘Kapitel 5 – Frauen im Strafvollzug’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 34.

<sup>184</sup> Morgenstern, C. (2020): ‘A. Vorbemerkung: Die besondere Situation inhaftierter Frauen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1432.

<sup>185</sup> Bönig, D. & Weßels, O. (2022) ‘Kapitel 5 – Frauen im Strafvollzug’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 31.

stellt, der ausschließlich der Justizvollzugsanstalt zur Verfügung steht.” (p. 70 of the German version of the annual report 2022)

“Vechta Prison has its own psychiatric unit with 10 spaces. Support in terms of psychology and psychiatric provision is good; the National Agency noted in particular that a partner hospital provides a psychiatrist, who works 30 hours a week solely for the prison.” (p. 67 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports don't address in a comprehensive, separated chapter the issue of women in detention, this is always an important aspect which belongs to each visit and it is part of the visit report in case of deficits. The Annual Report 2022 makes some statements about the Vechta Women's Prison, however, without mentioning in detail specific needs of female detainees.*

## 12. Special measures for foreign nationals

### a. General measures for foreign nationals

Generally, foreign prisoners are not mentioned much in the prison acts of the different states.<sup>186</sup> The only measures address language and translation issues (see 12b).

### b. Interpretation and translation

According to the CM/Rec(2012)12 concerning foreign prisoners, foreign prisoners need to be informed in a language understandable to them during the admission and the full time of detention. Accordingly, Bremen and Saxony provide for the involvement of translators/language mediators. The prison acts of Bremen and Baden-Württemberg stipulate that (relevant parts of) their institution rules should be translated into the most prominent foreign languages.

The Prison Act of North Rhine-Westphalia provides that German courses should be offered to persons without sufficient knowledge of the German language.<sup>187</sup>

In 2022, the **National Agency for the Prevention of Torture** stipulates:<sup>188</sup>

“When communication problems arise during medical consultations, an interpreter should always be involved. The video interpreting service that is already being used could be expanded for this purpose.” (p. 93)

<sup>186</sup> Graebisch, C. M. (2022). ‘Kapitel 3 – Ausländische Gefangene’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 113.

<sup>187</sup> Section 39 (2) sentence 2 of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)).

<sup>188</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), p. 93.



The North Rhine Westphalian pre-trial detention act does not mention foreign prisoners, except for stating that during admission, all prisoners should be informed in a language understandable to them.<sup>189</sup>

### c. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

*„Ebenso wertschätzt die Nationale Stelle die „Hausordnung in Bildern für Inhaftierte ohne Kenntnisse der deutschen Sprache oder Schrift“ in der Untersuchungshaftanstalt Hamburg. Das Verständnis für Regeln und Strukturen der Anstalt sowie die damit verbundene Transparenz gesetzter Grenzen kann deeskalierend wirken und die Vermeidung von individuellen Krisensituationen und Konflikten unterstützen.“* (p. 69 of the German version of the annual report 2022)

„The National Agency also welcomes the “Hausordnung in Bildern für Inhaftierte ohne Kenntnisse der deutschen Sprache oder Schrift” (“Facility rules in pictures for inmates without knowledge of (written) German”) at Hamburg Remand Detention Facility. An understanding of the rules and structures of the facility and the boundaries that these set can have a de-escalating effect and prevent crises and conflicts.” (p. 66 of the English version of the annual report 2022)

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*“Bayern hat in den vergangenen Jahren in zahlreichen Justizvollzugsanstalten Videodolmetscher-Anlagen eingerichtet, über die vereidigte Dolmetscherinnen und Dolmetscher innerhalb kurzer Zeit für alle benötigten Sprachen zur Verfügung stehen. Auf diesem Weg können vielfach vorhandene Verständigungsschwierigkeiten behoben und gleichzeitig die Vertraulichkeit des Gesprächsinhalts gewahrt werden.“* (p. 89 of the German version of the annual report 2021)

“In the past several years, Bavaria has set up video-based interpreting systems in numerous prisons through which sworn interpreters for all necessary languages can be made available at short notice. This allows communication difficulties to be overcome while ensuring that the conversation itself can be kept confidential.” (p. 87 of the English version of the annual report 2021)

*Comment by the NPM:*

*One systematic recommendation of the National Agency in its visit reports is to translate house rules in the most represented languages spoken in the visited prison, as well as a translation in an easily understandable written language for all inmates who cannot read well enough complicated texts.*

*The presence of interpreters and the use of videotelephony are regular aspects addressed during the visits.*

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<sup>189</sup> Section 6 (2) sentence 2 of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)).

### 13. Special measures relating to detention of children and young adults/juvenile detention regime

#### a. Age groups

The age categories falling under the juvenile detention regime are determined by section 1 (1) of the Youth Court Act (*Jugendgerichtsgesetz*): Juvenile detention can be ordered by youth courts against juveniles (*Jugendliche*), who at the time of the offence reached the age of 14 years but did not complete 18 years of age, and adolescents (*Heranwachsende*), who at the time of the offence reached the age of 18 years but not yet 21 years of age, “if, as a result of the harmful inclinations demonstrated by the juvenile during the act, supervisory measures or disciplinary measures are not sufficient for the purposes of supervision or if such a penalty is necessary given the seriousness of the juvenile’s guilt” (section 17 (2) of the Youth Court Act). According to Section 17 (1) of the Youth Court Act, “‘youth penalty’ shall mean deprivation of liberty in a facility provided for its execution”. The minimum duration shall be six months, the maximum duration is ten years in cases of serious criminal offences.

#### b. General measures for detained children and young adults

On 31 May 2006, the **Federal Constitutional Court** (*Bundesverfassungsgericht*) decided that the regulation of juvenile detention by the Federally Harmonised Administrative Regulation for the Juvenile Detention Regime (*Bundeseinheitlichen Verwaltungsvorschriften für den Jugendstrafvollzug*) was unconstitutional: the court called for legal regulation. Since then, all federal states (*Bundesländer*) have adopted special juvenile detention acts (*Jugendstrafvollzugsgesetze*) or have regulated this area of detention by specific chapters of their general prison acts.

Beecken (2021) states that, because of the small number of female juvenile offenders, the issue of their allocation is particularly unsatisfying. They are often either very far away from home which complicates to maintain extramural relationships, or they do not receive appropriate treatment.<sup>190</sup> The antagonism of the benefits of an allocation close to home on the one hand, and specific, differentiated treatment opportunities on the other hand, is particularly notable for female juvenile offenders.<sup>191</sup>

Both in Bavarian and North Rhine-Westphalian pre-trial detention, juvenile prisoners have the right to four hours of visits per month (as opposed to two hours for adult detainees). Visits by custodians and legal representation is not calculated within the 4 hours.<sup>192</sup>

#### c. Separation from adults

Accordingly, juvenile detention or youth penalty (*Jugendstrafe*) is organised in special juvenile detention facilities (*Jugendstrafanstalten*, *Jugendanstalten* or simply *Justizvollzugsanstalten*). However, in particular female juvenile offenders are usually accommodated in special departments of women prisons due to their small number.<sup>193</sup>

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<sup>190</sup> Beecken, Johanna (2021): ‘Weibliche Jugendstrafgefangene in Deutschland. Eine bundesweite Bestandsaufnahme mit vollzugspolitischen Reformvorschlägen’, *Kriminologische und sanktionenrechtliche Forschungen (KSF)*, Vol. 24, Berlin, Duncker & Humblot.

<sup>191</sup> Laubenthal, K. (2024). ‘*Strafvollzug*’, *Zeitschrift für die gesamte Strafrechtswissenschaft*, Vol. 136, No. 1, pp. 164-219.

<sup>192</sup> See section 38 (1) (2) of the Pre-trial Detention act of North Rhine-Westphalia (*Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen*) or section 32 (1) of the Bavarian Pre-trial Detention Act (*Bayerisches Untersuchungshaftvollzugsgesetz*).

<sup>193</sup> Walkenhorst, P. (2010), ‘Jugendstrafvollzug’, *Aus Politik und Zeitgeschichte*, No. 7/2010, p. 24.

Juvenile detention was the thematic focus of the annual report 2015 of the **National Agency for the Prevention of Torture**: The Agency noted that the visited detention facilities were well staffed and that the prison staff is trained for interaction with young offenders in most federal states (*Bundesländer*). Moreover, specialists such as social workers or psychiatrists reported good cooperation with the ordinary prison staff. However, the Agency recommended improvements to protect the privacy of juvenile prisoners, e.g. special security cells (*besonders gesicherte Hafträume*), shower rooms and during strip searches.<sup>194</sup>

#### d. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports don't address in a comprehensive, separated chapter the issue of juvenile in detention, this is always an important aspect which belongs to each visit, and it is part of the visit report in case of deficits.*

*The 2015 annual report focused on youth detention.*

### 14. Special measures to protect detainees with disabilities or serious medical conditions

#### a. Care in detention

Generally, persons with disabilities find little representation in state legislation and prison practice. This concerns the lack of cells adapted to the needs of prisoners with disabilities, bad access to common rooms, the capacity of prison hospital to handle complex pain diseases which are often associated with disabilities, the lack of employment/work possibilities for persons with disabilities in prison, issues of correspondence, recreational time, education, and basic health care. There are no statements on compensation for detrimental effects, nor bans on discrimination in state legislation.<sup>195</sup>

There is no information about the number of persons with disability in prison/detention in criminal statistic.<sup>196</sup> Some states have reported in their numbers of cells available for/adapted to the needs of

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<sup>194</sup> National Agency for the Prevention of Torture (2016), [Annual Report 2015](#), Wiesbaden, pp. 28-30

<sup>195</sup> Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 7.

<sup>196</sup> Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 1.

prisoners with physical disabilities, however, no official numbers exist.<sup>197</sup> Similarly, only anecdotal information exists about measures of certain prisons to support the needs of deaf persons.<sup>198</sup>

In accordance with the UN Convention on the Rights of Persons with Disabilities, the prisoners' right to measures for participation should be formulated within state legislation. Although this is not the case, the UN Convention nevertheless serves as an orientation for the interpretation of current national law.<sup>199</sup>

A look at court cases depicts a somewhat difficult situation for prisoners with disabilities. For example, the Higher Regional Court (*Oberlandesgericht*) Celle has rejected the requests of a visually impaired prisoner to, due to his disability and associated additional expenditures, receive a higher amount of allowance.<sup>200</sup> In another case, the request of a prisoner in a wheelchair to be transferred to another prison to be visited by his wife (*Besuchszusammenführung*) was rejected by the prison based on the argument of "unproportional effort" ("*unverhältnismäßiger Aufwand*"). The Higher Regional Court (*Oberlandesgericht*) Celle, however, saw a violation of the ban on discrimination.<sup>201</sup>

Prisoners with mental health issues can be treated either stationary in psychiatric wards of the prison hospitals (*vollzugseigene psychiatrische Abteilungen*) or ambulatory by psychiatrists or psychotherapists. If there are no adequate treatment possibilities within prison, all state legislation allows for the prisoner's transfer to a general (psychiatric) hospital.<sup>202</sup> In cases in which the prisoner falls severely mentally ill and is expected to maintain this condition for a considerable time ("*erhebliche Zeit*"), the prison sentence can be paused if this does not pose a danger to society. A requirement is that the prisoner is not able to oversee the purpose of their sentence anymore and is unavailable for the carceral treatment.<sup>203</sup>

#### b. Continuity of care

According to Tolmein (2022), work engagement during incarceration is a particularly important resocialisation and participation factor for prisoners with disabilities as they face particular difficulties to find employment after release. However, no specific legislation or efforts are in place to sufficiently prepare rehabilitation and reintegration after release.<sup>204</sup>

Similarly insufficient regulations exist for the post-release care of prisoners with mental-health conditions. Ideally, the prison doctor, social services, forensic services, municipalities and hospitals

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<sup>197</sup> Hesse: 21 spaces in eight out of 16 prisons; Prison Straubing (Bavaria): 21 spaces; Schleswig-Holstein: 5 cells. Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, paras. 3, 4.

<sup>198</sup> Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 5.

<sup>199</sup> Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns Verlag, para. 12.

<sup>200</sup> Germany, Celle Higher Regional Court (*Oberlandesgericht Celle*) (2013), 1 Ws 375/13, 25 September 2013.

<sup>201</sup> Germany, Celle Higher Regional Court (*Oberlandesgericht Celle*) (2012), 1 Ws 458/12, 22 November 2012.

<sup>202</sup> Lindemann, M. (2022). 'Kapitel 8 – Psychisch kranke Strafgefangene' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 32.

<sup>203</sup> Section 455 (1) of the Criminal Procedure Code ([Strafprozessordnung](#)):

"Die Vollstreckung einer Freiheitsstrafe ist aufzuschieben, wenn der Verurteilte in Geisteskrankheit verfällt."

See also section 455 (4) of the Criminal Procedure Code ([Strafprozessordnung](#)).

<sup>204</sup> Tolmein, O. (2022). 'Kapitel 7 – Menschen mit Behinderung im Strafvollzug' in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 19.

maintain close cooperation to enable the prisoner a therapeutic placement after release. However, this is not granted.<sup>205</sup>

c. Reasonable accommodation and accessibility

No. See a).

d. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports don't address in a comprehensive, separated chapter the issue of inmates with chronic diseases of disabilities, this is always an important aspect which belongs to each visit and it is part of the visit report in case of deficits.*

*The focus of the visits in 2024 is on the psychiatric care in prisons.*

## 15. Specific measures to protect detainees with special needs or other vulnerabilities

### a. Protection of LGBTI detainees

Besides the provisions for trans, inter and non-binary detainees (see 15b), there are no other regulations on the protection of LGBTI detainees.

### b. Protection of trans detainees

There are no uniform provisions for the protection of and dealing with trans persons in detention.

In 2023, the Authority for Justice and Consumer Protection (*Behörde für Justiz und Verbraucherschutz*) of Hamburg released a paper with general provisions and a guide on the handling of trans, inter and non-binary detainees in prisons and pre-trial detention.<sup>206</sup>

*“Neben der ausschließlichen Zuordnung zum weiblichen oder männlichen Geschlecht existieren weitere Geschlechtsidentitäten. Der Justizvollzug verpflichtet sich, Aspekte der Vulnerabilität im Zusammenhang mit der sexuellen Orientierung und der Geschlechteridentität zu respektieren und bei der Zuweisung zu einer Anstalt, unter Zugrundelegung der Sicherheit und Ordnung, hinreichend zu berücksichtigen.“*

<sup>205</sup> Lindemann, M. (2022). ‘Kapitel 8 – Psychisch kranke Strafgefangene’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 43.

<sup>206</sup> Behörde für Justiz und Verbraucherschutz (2023). [Hamburgisches Justizverwaltungsblatt Nr. 6](#) from 16 Oktober 2023, p. 274.

"In addition to the exclusive categorisation as female or male, other gender identities exist. The prison system commits to respect aspects of vulnerability in connection with sexual orientation and gender identity and to take them sufficiently into account when allocating a prison, in consideration of aspects of security and order."

Among other provisions, the paper stipulates that trans, inter and non-binary detainees are to be addressed in accordance with their personal gender identity, that the allocation of a prison shall be based on an individual case assessment (which is mirrored in Section VI of the Hamburg execution scheme, *Vollstreckungsplan*), and that the concerned persons have a right to private shower possibilities.<sup>207</sup>

Berlin has also integrated certain provisions for the protection of trans, inter and non-binary persons in prisons and pre-trial detention: besides an individual assessment of the prison allocation, the detainee's wish to be searched by a person of a particular gender shall be respected during physical searches associated with their undressing.<sup>208</sup>

The state of Berlin has further published [information](#) on their official homepage, including contact details, for persons affected by trans, inter and non-binary gender identities in prison.

According to a newsletter by the Justice Department of North Rhine-Westphalia, a guide on the handling of trans persons in detention shall be developed, the timing of which remains unclear.<sup>209</sup> In 2021, the newspaper ZEIT reported that, according to the German Press Agency (*dpa*), the state government of North Rhine-Westphalia sees no need to adapt the Prison Act to the needs of trans or inter persons in detention.<sup>210</sup>

The Bavarian legislation finds no comment on the protection or handling of trans, inter or non-binary detainees.

### c. Protection of other vulnerable detainees

From Baden-Württemberg it was reported that some prisons have special "protection departments" (*Schutzabteilungen*) for the accommodation of vulnerable or threatened prisoners. It was also reported that prisoners at risk can also be relocated to another prison for their own protection.<sup>211</sup>

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<sup>207</sup> Behörde für Justiz und Verbraucherschutz (2023). [Hamburgisches Justizverwaltungsblatt Nr. 6](#) from 16 Oktober 2023, pp. 274ff.

<sup>208</sup> See section 11 and section 83 (3) of the Berlin Prison Act ([Berliner Strafvollzugsgesetz](#)).

For pre-trial detention, see section 11 (3) and section 44 (2) of the Berlin Pre-Trial Detention Act ([Berliner Untersuchungshaftvollzugsgesetz](#)).

<sup>209</sup> Gefängnisseelsorge.net (07 July 2023), [Transgender in Haft nicht ausreichend geschützt](#), retrieved on 09 April 2024.

<sup>210</sup> Dpa Nordrhein-Westfalen (14 October 2021). [Transsexuelle Häftlinge: NRW plant keine Gesetzesänderung](#), retrieved 09 April 2024.

<sup>211</sup> Email from the head of the unit on criminal detention at the Ministry of Justice and for Europe Baden-Württemberg, 30 May 2018.

#### d. NPM assessment

The National Agency for the Prevention of Torture has not yet issued standards or recommendations on the protection against violence in general or of vulnerable groups in particular. None of the previous reports address the needs of LGBTI detainees.

*Comment by the NPM:*

*The issue is orally addressed during visits.*

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

## 16. Specific measures to address radicalisation in prisons

### a. General measures to prevent radicalisation

A large number of model projects on the prevention of radicalisation and/or the promotion of deradicalisation in prison exist in Germany.<sup>212</sup> Some address the prevention and early detection of radicalisation in prison and often involve group trainings and prevention workshops in youth detention facilities. Others aim to deradicalize person with already deeply engrained extremist beliefs, such as members of national terror cells or terroristic returnees from Syria. These usually work with more intensive one-to-one training.<sup>213</sup>

As an example: between 2019 and 2021, the Centre for Intercultural Competency (*Zentrum für Interkulturelle Kompetenz, ZIK*) of the North Rhine-Westphalian Ministry of Justice completed a project called “Prevention of radicalisation in criminal detention facilities in North-Rhine Westphalia” (*“Prävention von Radikalisierung im Justizvollzug des Landes NRW”*). The project, which was overseen by experts for Islamic studies, involved training and education of prison staff and the implementation of religious counselling for Muslim detainees. Following the completion of the project, the department for the prevention of carceral radicalisation in North Rhine-Westphalia (*Fachbereich Radikalisierungsprävention im Justizvollzug NRW*) was established within the ZIK. It is the aim of the department to collect data on radicalisation in prisons, to develop concepts for the early detection and prevention of radicalisation and for the handling of extremist prisoners.

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<sup>212</sup> For an overview and sample introductions, see for example Ministry for Family Affairs, Senior Citizens, Women and Youth (2022). *‘Prävention und Deradikalisierung im Strafvollzug’*, Berlin.

<sup>213</sup> Violence Prevention Network (2024). *‘Deradikalisierung im Strafvollzug’*.

Interestingly, while the name and self-description of the project and department appear to include all forms of extremism, the only group of persons that are actually addressed and discussed are Muslim detainees. There is no mentioning of right-wing extremism or other forms of radical ideologies.<sup>214</sup>

In 2022, North Rhine-Westphalia issued that there should be a commissioner for extremism (*Extremismusbeauftragte\_r*) in every prison. This aims to intensify the prevention of radicalisation and to stabilize combating extremism. The commissioner shall, among others, coordinate efforts to fight extremism, cooperate with police, the Office for the Protection of the Constitution (*Verfassungsschutz*), the department for the prevention of carceral radicalisation in North Rhine-Westphalia (*Fachbereich Radikalisierungsprävention im Justizvollzug NRW*), collect data within respective institution and be involved in certain decision-making of extremist prisoners.<sup>215</sup>

Bavaria established a Department for Combatting Extremism in Criminal Detention (*Extremismusbekämpfung im Justizvollzug*) in 2015. The department contains a Coordination Centre für Measures against Salafism/Islamism in Criminal Detention (*Zentralen Koordinierungsstelle für Maßnahmen gegen Salafismus/Islamismus in Justizvollzugsanstalten, ZKS*) and, since 2020, a Coordination Centre for Measures Against Extremism (*Zentralen Koordinierungsstelle für Maßnahmen gegen Extremismus, ZKE*). The ZKE and its Operative Unit Combating Extremism in Criminal Detention (*Operative Einheit Extremismusbekämpfung im Justizvollzug*) is located at Prison Nuremberg and aims to develop action plans when dealing with radicalising or radical detainees, to implement treatment measures and to offer training and education to staff. Before release, contact shall be established between the prison and probatory services to identify need for support.<sup>216</sup>

Bavaria has further developed an action plan against right-wing extremism (*Handlungskonzept gegen Rechtsextremismus*) which involved prevention programs in prison and detention facilities. The responsible Department for Combatting Extremism and Security Matters in the Prison System (*Referat für Extremismusbekämpfung und Sicherheitsangelegenheiten im Justizvollzug*) of the Ministry of Justice closely cooperates with the ZKE.<sup>217</sup>

Other states (*Länder*) have established similar approaches to combatting extremism and radicalisation in prison.

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<sup>214</sup> See the Justice Administrative Provision (*Justizverwaltungsvorschrift*) 4400 – IV. 508, [‘Einrichtung eines Fachbereichs Radikalisierungsprävention im Justizvollzug. AV d. JM vom 31. Mai 2021’](#):

Section 2: “Ziel ist die Prävention gegen den religiösen und politischen Extremismus und die Bekämpfung von Radikalisierungsgefahren im Justizvollzug.“

“The aim is the prevention of the religious and political extremism and the fight of the risk of radicalisation in prison.”

Section 3.2.8 [*Aufgaben/tasks*]: “die Unterstützung der Justizvollzugseinrichtungen beim Ausbau der Betreuung von muslimischen Gefangenen“

„the support of criminal detention facilities to expand the counselling of muslim detainees“.

<sup>215</sup> Justice Administrative Provision (*Justizverwaltungsvorschrift*) 4434 – IV.233, [‘Richtlinien für die Extremismusbeauftragten in den Justizvollzugsanstalten des Landes Nordrhein-Westfalen. RV d. JM vom 9. November 2022.’](#)

<sup>216</sup> Bavarian Ministry of Justice (2024). [‘Extremismusbekämpfung im Justizvollzug’](#), retrieved 10.04.2024.

<sup>217</sup> Bavarian State Government (*Bayerische Staatsregierung*) (2022). [‘Bayerisches Handlungskonzept gegen Rechtsextremismus’](#), München.



#### b. Risk assessments

During trial, a risk assessment is legally required in certain scenarios, e.g. in cases of a transfer to a forensic hospital (*Maßregelvollzug*) or preventive detention (*Sicherungsverwahrung*). Once a person is incarcerated, however, there are no legal requirements to carry out risk assessments anymore. Nevertheless, the use of risk assessments does, in fact, represent an essential tool in the context of diagnostic and therapeutical work during incarceration.<sup>218</sup>

Statistical (nomothetic) risk assessments exist for selective offender groups, including risk assessment tools for violent extremist offenders, such as the Violent Extremism Risk Assessment (VERA-2R).<sup>219</sup> However, there are no information to what extent risk assessments are carried out particularly for detainees with terrorist and violent extremist offences.

The Introductory Law for the Courts Constitution Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*) stipulates that special criminal detention provisions apply to prisoners convicted of terrorist offences: the right to contact with the outside world can be almost entirely lifted in certain cases of terrorism and written and oral correspondence can be barred completely if a prisoner's offence is associated to a terrorist group. This also includes a ban on communication with other prisoners which would require a separation.<sup>220</sup>

#### c. Training of staff

Many projects for the prevention of radicalisation (or the promotion of deradicalisation) involve the training of prison staff. This depends on the specific program and the implementation thereof.

#### d. Deradicalisation measures

See a).

Projects in prison often integrate efforts to prevent radicalisation and promote deradicalisation. For example, the Violence Prevention Network leads deradicalisation programs in six states (*Länder*). Their methods include a transition management (*Übergangsmangement*), followed by a stabilisation coaching (*Stabilisierungscoaching*) which aim to transfer the knowledge and skills obtained in group and single sessions to the individual's post-release life. The stabilisation coaching can last up to 12 months and involves a close cooperation with probation services and other state institutions.

#### e. NPM assessment

Radicalisation in prison is not addressed in either of the reports.

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

<sup>218</sup> Rettenberger, M. et al. (2017), [Kriminalprognosen in der Praxis. Die Ergebnisse des International Risk Survey \(IRiS\) aus Deutschland](#), *Diagnostica*, 63(1), pp. 2- 14.

<sup>219</sup> Sadowski, F., Rossegger, A., Pressman, E., Rinne, T., Duits, N. & Endrass, J. (2017). Das Violent Extremism Risk Assessment Version 2 Revised (VERA-2R). Eine Skala zur Beurteilung des Risikos extremistischer Gewalt/Deutsche Übersetzung, *Kriminalistik*, 71(5).

<sup>220</sup> Knauer, F. (2022) ,§ 25 – LandesR – Grundsatz' (para. 14) and ,§26 LandesR – Besuch' (para. 35) in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

No comments by the NPM.

## 17. Inspections and monitoring

### a. Inspections

Transferred from Section 151 (1) of the **Federal Prison Act** (*Strafvollzugsgesetz*) and Section 101 (1) of the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*), all states see the state's Justice Administration (*Landesjustizverwaltung*) / Ministries of Justice (*Justizministerien*) as responsible agent for the supervision of criminal detention facilities.<sup>221</sup>

Except for Hamburg (Section 111 of the Hamburg Prison Act), state legislation does not explicitly define more specific aspects of the supervision of detention facilities. However, it can be derived from the general administrative law (*Verwaltungsrecht*) that the ministries hold legal, administrative, and technical supervision of prisons.<sup>222</sup>

The supervisory authority is allowed to visit the prisons at any time and should do so periodically. Generally, such visits are pre-announced. The self-commitment to visit each prison at least twice a year which was originally included in the federal administrative regulations (*Verwaltungsvorschriften*) was not adopted by the federal states.<sup>223</sup>

Every prison is allocated an advisory board (*Beirat*) which, as representative of the public and superordinate to the prison management (*Anstaltsleitung*), takes on supervisory and consulting tasks.

North Rhine-Westphalia additionally has a Commissioner for Criminal Detention (*Justizvollzugsbeauftragte\_r*) who visits prisons, publishes reports, and takes care of concerns, complaints and contacts from individuals affected by criminal detention.<sup>224</sup>

### b. Access to detention facilities by national authorities

All state constitutions provide that the **parliament** has the right to monitor its administration. It can request reports of the ministers of justice (*Justizminister\_innen*), view case files, records, and relevant

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<sup>221</sup> Goerdeler, J. (2022). ‚§ 101 LandesR – Aufsichtsbehörde‘ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 9.

<sup>222</sup> Goerdeler, J. (2022). ‚§ 101 LandesR – Aufsichtsbehörde‘ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, paras. 12, 13.

<sup>223</sup> Goerdeler, J. (2022). ‚§ 101 LandesR – Aufsichtsbehörde‘ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 22.

<sup>224</sup> See e.g. the Commissioner for Criminal Detention of North Rhine-Westphalia ([Justizvollzugsbeauftragter des Landes Nordrhein-Westfalen](#)).

documents, and establish committees of inquiry for the investigation of serious concerns. The latter can comprise inspections and the hearing of witnesses.<sup>225</sup>

It is the task of the **National Agency for the Prevention of Torture** (*Nationale Stelle zur Verhütung von Folter*) to regularly visit places of detention (“*Orte der Freiheitsentziehung*”), including criminal detention facilities (*Justizvollzugsanstalten*). The members of the Agency shall have unrestricted and unhindered access too all persons deprived of liberty. This includes the right to have confidential and private conversations with prisoners during their visits. In recent years, the frequency of the Agency’s prison visits varied (e.g. 2023: 17 prison visits, 2022: 15, 2021: 5, 2018: 2, 2016: 20) and they usually announce their visits shortly in advance. The Agency may always establish contact to the UN Sub-Committee for the Prevention of Torture and transmit information.<sup>226</sup>

#### c. Access to detention facilities by international bodies

Alongside all other 46 states of the Council of Europe, Germany has ratified The **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**. The Committee (CPT) therefore has unrestricted and unhindered access to prison facilities in Germany. There are not reports that this provision is not put into practice. [Visits in Germany by the CPT](#) took place in 2023, 2020, 2018, 2015, 2013, 2010, 2005, 2000, 1998, 1996 and 1991.

#### d. NPM assessment

The National Agency for the Prevention of Torture has published annual reports about their visits in criminal detention facilities since 2009. The annual report 2022 evaluates the visits of 17 prisons while the Annual Report 2021 derives their assessments from five prison visits.

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Within the last years, the National Agency hasn’t faced any problem visiting detention facilities.*

<sup>225</sup> Goerdeler, J. (2022). ‘§ 101 LandesR – Aufsichtsbehörde’ in: Feest, J., Lesting, W. & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 35.

<sup>226</sup> National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2024). ‘[FAQ](#)’, retrieved 11.04.2024.

## 18. Access to remedy

### a. Legal remedies

The fourteenth title of the **Federal Prison Act** (*Strafvollzugsgesetz*) addresses remedies available to detainees in the event of a violation or breach of the national standards for criminal detention (sections 108 to 121b).

Unlawful actions of the enforcement authority can be asserted by way of internal self-regulation. In this case, enforcement measures are reviewed by the executing authority itself or the supervisory authority and, if necessary, revoked or amended. Furthermore, there is the possibility of external judicial review of enforcement measures.<sup>227</sup>

#### Judicial review

The provisions of sections 109 to 121 of the **Federal Prison Act** (*Strafvollzugsgesetz*) on the available judicial proceedings, unlike the other provisions on prison conditions, still fall within the catalogue of matters of concurrent legislative powers listed in Article 74 (1) of the Basic Law (*Grundgesetz*) which, under Article 72 (1) of the Basic Law, are barred to the federal states after the Federation has exercised its legislative power.<sup>228</sup>

Section 109 (1) of the Federal Prison Act (*Strafvollzugsgesetz*) stipulates:

*„Gegen eine Maßnahme zur Regelung einzelner Angelegenheiten auf dem Gebiet des Strafvollzuges oder des Vollzuges freiheitsentziehender Maßregeln der Besserung und Sicherung kann gerichtliche Entscheidung beantragt werden. Mit dem Antrag kann auch die Verpflichtung zum Erlaß einer abgelehnten oder unterlassenen Maßnahme begehrt werden.“*

*„A measure regulating individual matters in the field of execution of imprisonment or of execution of measures of reform and prevention involving deprivation of liberty may be contested by applying for a court ruling. The application may also request imposition of the obligation to order a measure that was refused or omitted.“*

In the first instance, jurisdiction is vested in the criminal chamber responsible for execution of sentences at the Regional Court (*Landgericht*) pursuant to section 110 of the Federal Prison Act (*Strafvollzugsgesetz*), and in the second instance there is the possibility of appeal by the Criminal Division of the Higher Regional Court (*Oberlandesgericht*) pursuant to sections 116 et seq of the Federal Prison Act (*Strafvollzugsgesetz*).<sup>229</sup>

With regard to pre-trial detention, section 119a of the Code of Criminal Procedures (*Strafprozessordnung*) applies, according to which inmates can challenge decisions or measures of the prison management in court. Such requests for a court ruling do not have suspensive effects. The court

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<sup>227</sup> Laubenthal, K. (2020): ‘12. Kapitel, Rechtsbehelfe, Vorbemerkungen’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1187.

<sup>228</sup> Laubenthal, K. (2020): ‘B. Antrag auf gerichtliche Entscheidung’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1196 f

<sup>229</sup> Laubenthal, K. (2020): ‘B. Antrag auf gerichtliche Entscheidung’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1196

may, however, issue provisional orders. The prison managements may lodge an appeal against decisions of a court.

In the field of juvenile detention, section 92 (1) sentence 1 of the Youth Courts Act provides for the possibility of filing an application for a court ruling on a measure of the correctional authority, to which, according to section 92 (1) sentence 2, sections 109 and 111 to 120 (1) of the Federal Prison Act (*Strafvollzugsgesetz*) shall apply *mutatis mutandis*.

#### b. Legal assistance

According to Section 140 (1) 3 of the **Criminal Procedure Code** (*Strafprozessordnung*), “necessary defence” (*notwendige Verteidigung*) shall be given to everyone who is accused of having committed a criminal offence. The principle of free defence (*Grundsatz der freien Verteidigung*) stipulates that every prisoner has the right to freely communicate, in written or oral form, with their defence.<sup>230</sup> This provision manifests in all state legislation: all states (*Länder*) allow for the prisoners’ unlimited access to legal advice. Lower Saxony explicitly states that there are no restrictions in respect to duration or frequency of visits by legal representation.<sup>231</sup> The only exception is formulated in the law for contact ban (*Kontaktsperregesetz*) which stipulates that the written and oral correspondence of a prisoner can be barred completely if their offences are associated to terrorist groups.<sup>232</sup>

Visits by legal assistance is not calculated with the visiting hours.<sup>233</sup>

Both in criminal detention and in pre-trial detention, the visits by defence lawyers may not be monitored.<sup>234</sup>

Section 34 (2) of the **Model State Prison Act** (*Musterentwurf zum Landesstrafvollzugsgesetz*) and section 29 (1) of the **Federal Prison Act** (*Strafvollzugsgesetz*) stipulate that the written correspondence between prisoners and their defence shall not be monitored. All state prison acts have transferred this principle.<sup>235</sup>

#### c. Request and complaints

All states (*Länder*) explicitly refer in their prison laws to the possibility for detainees to contact either the prison director (*Anstaltsleiter\_in*), the prison management (*Anstaltsleitung*) or the prison authority

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<sup>230</sup> Section 140 (1) 3 and section 148 (1) of the German Criminal Procedure Code ([Strafprozessordnung](#)).

<sup>231</sup> Knauer, F. (2022) §26 LandesR – Besuch’ in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 27.

<sup>232</sup> Knauer, F. (2022) §26 LandesR – Besuch’ in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 35.

<sup>233</sup> Knauer, F. (2022) §26 LandesR – Besuch’ in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 31.

<sup>234</sup> See e.g. section 26 (2) of the Prison Act of North Rhine-Westphalia ([Strafvollzugsgesetz Nordrhein-Westfalen](#)) and section 22 of the Pre-Trial Detention Act of North Rhine-Westphalia ([Untersuchungshaftvollzugsgesetz Nordrhein-Westfalen](#)). See further section 30 (5) of the Bavarian Prison Act ([Bayerisches Strafvollzugsgesetz](#)) and section 22 (2) of the Bavarian Pre-Trial Detention Act ([Bayerisches Untersuchungshaftvollzugsgesetz](#)).

<sup>235</sup> Knauer, F. (2022). ‘§34 LandesR – Überwachung des Schriftwechsels’ in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. 14.

(Vollzugsbehörde) directly with their concerns as stipulated by section 108 (1) of the **Federal Prison Act (Strafvollzugsgesetz)**:<sup>236</sup>

*„Der Gefangene erhält Gelegenheit, sich mit Wünschen, Anregungen und Beschwerden in Angelegenheiten, die ihn selbst betreffen, an den Anstaltsleiter zu wenden. Regelmäßige Sprechstunden sind einzurichten.“*

„The prisoner shall be given an opportunity to apply to the Head of the Institution with requests, suggestions and complaints on matters concerning himself/herself. Regular consulting hours should be held.“<sup>237</sup>

The manner in which the right to complain is guaranteed in detail, is subject to the discretionary powers of the prison authority. A prisoner can raise their concerns in writing at any time. The establishment of regular consultation hours is required in principle and is expressly standardized in the prison laws of Baden-Württemberg, Bavaria, Hamburg, and Saxony-Anhalt.<sup>238</sup>

The states have also adopted the possibility for detainees to express their concerns in the absence of prison staff during a visit to the prison by representatives of the supervisory authority as mentioned in section 108 (2) of the Federal Prison Act (*Strafvollzugsgesetz*):<sup>239</sup>

*“Besichtigt ein Vertreter der Aufsichtsbehörde die Anstalt, so ist zu gewährleisten, daß ein Gefangener sich in Angelegenheiten, die ihn selbst betreffen, an ihn wenden kann.“*

“When a representative of the supervisory authority inspects the institution, it shall be ensured that a prisoner can apply to him or her in matters concerning the prisoner himself/herself.”

In North Rhine-Westphalia, the legislature has, instead, included the option of contacting a Prisons and Probation Ombudsman (*Justizvollzugsbeauftragter*).<sup>240</sup>

In addition, the states – with the exception of Lower Saxony and North Rhine-Westphalia – have standardized the possibility of a disciplinary complaint to the supervisory authority as referred to by 108 (3) of the Federal Prison Act (*Strafvollzugsgesetz*):<sup>241</sup>

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<sup>236</sup> Spaniol, M. (2022). ‚§ 91 LandesR – Beschwerderecht‘ in: Feest, J., Lesting, W., & Lindemann, M. (eds.) *Strafvollzugsgesetze. Kommentar*, Carl Heymanns, para. A 1.

<sup>237</sup> Germany, Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty – Prison Act ([Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung – Strafvollzugsgesetz](#)), 16 March 1976. [English version](#) dated from 2021.

<sup>238</sup> Laubenthal, K. (2020): ‘A. Beschwerderecht’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1190 f.; section 84 sentence 2 of the North Rhine-Westphalia Prison Act ([Strafvollzugsgesetz Nordrhein-Westfalen](#)):

“The possibility of appealing to the Prison Commissioner of the Land of North Rhine-Westphalia shall remain unaffected.” [“Die Möglichkeit, sich an die Justizvollzugsbeauftragte oder den Justizvollzugsbeauftragten des Landes Nordrhein-Westfalen zu wenden, bleibt unberührt.”]

<sup>239</sup> Laubenthal, K. (2020): ‘A. Beschwerderecht’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1192

<sup>240</sup> 5 Laubenthal, K. (2020): ‘A. Beschwerderecht’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, p. 1192.

<sup>241</sup> Laubenthal, K. (2020): ‘A. Beschwerderecht’ in: Schwind, H-D., Böhm, A. et al. (eds.), *Strafvollzugsgesetze. Bund und Länder*, Berlin/Boston, De Gruyter, p. 1192 f.

„Die Möglichkeit der Dienstaufsichtsbeschwerde bleibt unberührt.“

„The option of lodging a disciplinary complaint shall remain unaffected.“

The state acts on pre-trial detention also each contain a provision on the right to complain that is substantially similar to section 108 of the Federal Prison Law.<sup>242</sup>

Moreover, all prisoners have the fundamental right to lodge a petition with the responsible parliament according to article 17 of the Basic Law (*Grundgesetz*). The parliaments have established special petition committees that deal with the submitted petitions.

#### d. Independent authority

See question 18c.

#### e. NPM assessment

Nationale Stelle zur Verhütung von Folter (2023), [Jahresbericht 2022](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2023), [Annual Report 2022](#), Wiesbaden.

Nationale Stelle zur Verhütung von Folter (2022), [Jahresbericht 2021](#), Wiesbaden.

National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) (2022), [Annual Report 2021](#), Wiesbaden.

*Comment by the NPM:*

*Whereas annual reports do not make any statements on the prisoners' access to legal remedies, access to information on legal remedies and access to confidential contact with lawyers, independent bodies and other structures linked to complaint mechanisms are systematically addressed during the visits.*

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<sup>242</sup> Schulze, J. P. (2017), 'Die Untersuchungshaftvollzugsgesetze der Länder im Vergleich', Mönchengladbach, Forum Verlag Godesberg, p. 287

## Part II: National case-law

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 1 BvR 409/09, 22 February 2011.

Thematic area	Cells (1)
Decision date	22 February 2011
Reference details	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 1 BvR 409/09 <a href="https://www.bverfg.de/entscheidungen/20110222_1bvr040909.html">ECLI:DE:BVerfG:2011:rk20110222.1bvr040909</a>
Key facts of the case	The applicant applied for legal aid for an official liability action against the <i>Land</i> (federal state of) North Rhine-Westphalia because of undignified detention in two prisons. The Regional Court ( <i>Landgericht</i> ) rejected the applicant's legal aid request, finding that he was not entitled to compensation on the basis of official liability.
Main reasoning/argumentation	The Regional Court deviates from the case-law of the regular and constitutional courts in its assessment of the prospects for success of the intended official liability action with regard to the prerequisites for a human rights violation. Accordingly, the detention conditions which the Regional Court has taken as a given meet the criteria for a violation of human dignity.
Key issues (concepts, interpretations) clarified by the case	The question of whether the applicant's right to equality of legal protection is violated under Article 3 (1) of the Basic Law (Grundgesetz) is determined by an assessment of the prospects for success of the intended official liability action with regard to the prerequisites for a human rights violation.
Results (sanctions) and key consequences or implications of the case	The Federal Constitutional Court reversed the challenged decisions because they violate the applicant's right to equality of legal protection under Article 3.1 of the Basic Law (principle of equal treatment) in conjunction with Article 20.3 of the Basic Law (principle of the rule of law). The case was remanded to the Regional Court for a new ruling.
Key quotation in original language and translated into English with reference details	<p><i>„Im Hinblick auf den Schadensersatzanspruch sei zu berücksichtigen, dass der Beschwerdeführer der die Gesundheit gefährdenden und die Privatsphäre negierenden Situation zwangsweise ausgesetzt gewesen sei und dass das Land diese Situation bewusst in Kauf genommen habe.“</i> (Rn. 7)</p> <p>„With regard to the claim for damages, it had to be taken into account that the complainant had been forcibly exposed to the situation that jeopardised his health and negated his privacy and that the state had deliberately accepted this situation.“ (para. 7)</p> <p><i>„Es sei Prozesskostenhilfe zu gewähren, wenn - wie hier - eine Beweisaufnahme ernsthaft in Betracht komme und keine konkreten nachvollziehbaren Anhaltspunkte dafür vorlägen, dass die Beweisaufnahme mit großer Wahrscheinlichkeit zum Nachteil des Beschwerdeführers ausgehen würde.“</i> (Rn. 17)</p> <p>Legal aid should be granted if - as in this case - the taking of evidence is seriously considered and there are no concrete, comprehensible indications that the taking of evidence would very likely be to the disadvantage of the complainant.“ (para. 17)</p>



Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 566/15, 22 March 2016.

<b>Thematic area</b>	<b>Cell space (1a)</b>
<b>Decision date</b>	22 March 2016
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 2 BvR 566/15 <a href="https://eur-lex.europa.eu/eli/de/bverfg/2016/rk20160322_2bvr056615">ECLI:DE:BVerfG:2016:rk20160322.2bvr056615</a>
<b>Key facts of the case</b>	The complainant is serving a life sentence in Butzbach Prison. In March/April 2014, he was transferred for a few weeks to a so-called "tube cell", the floor area of which was 4.49 sqm according to his submission and around 6 sqm according to the submission of the prison authority. He applied to the Regional Court for a court ruling that the placement in the cell had been unlawful and had violated his human dignity. The claim was rejected and the complainant's appeal to the Higher Regional Court was unsuccessful.
<b>Main reasoning/argumentation</b>	The Federal Constitutional Court found that, since the Regional Court had based its decision on the information provided by the prison without conducting its own examination of the cell space, it had only inadequately clarified the facts of the case. The Federal Constitutional Court stated that the view that even the cell size of only 4.49 sqm was not objectionable did not take into account the fact that the Regional Court had not made any findings beyond the size and furnishings of the cell and the duration of the placement that could be included in an overall assessment.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The question of whether the cell conditions of a prisoner violate human dignity under Article 1 (1) of the Basic Law ( <i>Grundgesetz</i> ) is determined by an overall view of the factual circumstances of the individual case and thus primarily by an examination of factors such as the floor space per prisoner, the separation and ventilation of the sanitary facilities, the daily confinement times and the duration of the accommodation, as well as other individual circumstances.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Federal Constitutional Court held that the decisions of the Regional Court and the Higher Regional Court violated the complainant's guarantee of legal protection under Article 19 (4) in conjunction with his human dignity under Article 1 (1) of the Basic Law. Therefore, the decisions were revoked and the case was referred back to the Regional Court for a new decision.
<b>Key quotation in original language and translated into English with reference details</b>	<i>"Ob die Art und Weise der Unterbringung eines Strafgefangenen die Menschenwürde verletzt, ist von 44 into English with reference details einer Gesamtschau der tatsächlichen, die Haftsituation bestimmenden Umstände abhängig (...)."</i> (Rn. 27)  "Whether the way in which a prisoner is accommodated violates human dignity depends on an overall view of the actual circumstances determining the situation in detention (...)." (para. 27)

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2015), 1 BvR 1127/14, 14 July 2015

<b>Thematic area</b>	<b>Cell space (1a)</b>
<b>Decision date</b>	14 July 2015
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 1 BvR 1127/14 <a href="https://eur-lex.europa.eu/eli/de/bverfg/2015/rk20150714_1bvr112714">ECLI:DE:BVerfG:2015:rk20150714.1bvr112714</a>
<b>Key facts of the case</b>	In a decision published on 5 November 2009, the Berlin Constitutional Court ( <i>Verfassungsgerichtshof</i> ) had found a violation of human dignity in the case of

	another complainant who had been detained in a solitary cell of 5.25 m <sup>2</sup> without separate toilet for between 15 and 21 hours a day for several months. The complainant in the case at hand had been detained under similar conditions. In as far as the judgment of the Berlin Higher Regional Court rejected the public liability claims for the time before the publication of the decision by the Berlin Constitutional Court and granted a time period of two weeks to implement that decision, this is not objectionable under constitutional law.
<b>Main reasoning/argumentation</b>	The Berlin Constitutional Court pointed out that, in taking into account all relevant factors, detaining a prisoner in a solitary cell with an area of 5.25 m <sup>2</sup> and locking him up for between 15 and 21 hours a day for about three months violated the detainee's human dignity. This constitutes an assessment that is not objectionable under federal constitutional law. In this regard, however, the Berlin Constitutional Court also held that, in large detention facilities, it was not possible to establish conditions respecting human dignity overnight and that therefore, a transitional period of two weeks was to be tolerated.
<b>Key issues (concepts, interpretations) clarified by the case</b>	Whether the way in which a prisoner is accommodated violates human dignity was decided based on an overall view of the actual circumstances determining the detention situation and, in particular, the size of the room.
<b>Results (sanctions) and key consequences or implications of the case</b>	The judgment of the Court of Appeal of 21 March 2014 - 9 U 252/12 - violates the complainant's fundamental right under Article 1 (1) in conjunction with Article 20 (3) of the Basic Law. The decision is revoked insofar as it also dismissed the action for official liability with regard to the period of detention after 19 November 2009. In this respect, the case is referred back to the Court of Appeal for a new hearing and decision.
<b>Key quotation in original language and translated into English with reference details</b>	<p><i>„Eine fortdauernde Inhaftierung nach Ablauf der Übergangsfrist stellt demgegenüber ersichtlich ein schuldhaftes, amtshaftungsrechtliche Ansprüche auslösendes Handeln dar, weil die verantwortlichen Amtswalter ab diesem Zeitpunkt nicht länger ohne Fahrlässigkeit davon ausgehen konnten und durften, dass die fortdauernde Unterbringung in den betreffenden Einzelzellen weiterhin unbeanstandet hingenommen werden würde.“</i> (Rn. 18)</p> <p>„On the other hand, continued detention after the expiry of the transitional period clearly constitutes culpable behaviour that triggers claims under official liability law, because from this point onwards the responsible officials could no longer and were no longer allowed to assume without negligence that the continued placement in the individual cells concerned would continue to be accepted without objection.“ (para. 18)</p>

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 1 BvR 1403/09, 7 November 2011.

<b>Thematic area</b>	<b>Cell space (1a)</b>
<b>Decision date</b>	07 November 2011
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 1 BvR 1403/09 <a href="https://www.bverfg.de/entscheidungen/ECLI:DE:BVerfG:2011:rk20111107.1bvr140309">ECLI:DE:BVerfG:2011:rk20111107.1bvr140309</a>
<b>Key facts of the case</b>	The complainant applied for legal aid to bring an action for official liability. He claimed that he had suffered from inhumane accommodation during his pre-trial detention, as he was placed in different multi-person cells, each with floor space of only 4 sqm per detainee and a toilet separated only by an adjustable wooden wall. The Regional Court and the Higher Regional Court denied the complainant legal aid on the grounds that the threshold of severity above which compensation could be considered had not been exceeded and that he had not made any formal request for a transfer.

<b>Main reasoning/argumentation</b>	The Federal Constitutional Court pointed out that the detention rooms in question fell short of the minimum cell size per detainee set by the relevant case-law and did not comply with the required spatial separation of the toilet and separate ventilation. The Court held that the legal question of the violation of human dignity and the general right of personality, thus, could not be brought forward into the legal aid proceedings and answered in a manner that deviated from the existing case law to the detriment of the financially disadvantaged complainant.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The fundamental right to human dignity does not call for a distinction between criminal detention and pretrial detention regarding the minimum cell size per detainee as well as the requirement of physical separation of the toilets from the rest of the cell and their separate ventilation.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Federal Constitutional Court found that the decisions of the Regional Court and the Higher regional Court violated the complainant's right to equal protection of the law based on Article 3 (1) in conjunction with Article 20 (3) of the Basic Law. The 45 decisions were, therefore, revoked and the case was referred back to the Regional Court for a new decision.
<b>Key quotation in original language and translated into English with reference details</b>	<p>„Denn die (...) räumlichen Haftbedingungen erfüllen die oben genannten Kriterien für eine Menschenwürdeverletzung, da in den vom Beschwerdeführer bewohnten Hafträumen die üblicherweise veranschlagten Mindestflächen pro Gefangenen unterschritten wurden und die jeweils in die Zelle integrierte Toilette nicht räumlich abgetrennt und belüftet war. (...) Das Grundrecht der Menschenwürde gebietet insofern auch keine Unterscheidung zwischen Strafhaft und Untersuchungshaft.“ (Rn. 41)</p> <p>"For the (...) spatial conditions of detention meet the above-mentioned criteria for a violation of human dignity, since in the detention rooms occupied by the complainant the usually assessed minimum spaces per detainee were not reached and the toilet integrated into the cell in each case was not spatially separated and ventilated. (...) In this respect, the fundamental right to human dignity also does not call for any distinction between criminal detention and pre-trial detention." (para. 41)</p>

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2015), 2 BvR 1111/13, 18 March 2015.

<b>Thematic area</b>	<b>Video-surveillance of cells (1c)</b>
<b>Decision date</b>	18 March 2015
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 2 BvR 1111/13 <a href="https://www.bverfg.de/entscheidungen/ECLI:DE:BVerfG:2015:rk20150318.2bvr111113">ECLI:DE:BVerfG:2015:rk20150318.2bvr111113</a>
<b>Key facts of the case</b>	The incident underlying the constitutional complaint occurred in September 2010. After a planned dental treatment had not been carried out, the complainant began banging and kicking the door of his prison cell. He was then taken to a specially secured detention room, where he was forcibly stripped of all his clothes and placed under permanent camera surveillance for an entire day. Only on the next day he was given a pair of pants and a blanket made of tear-resistant material. His legal action against this treatment before the Regional Court and the Higher Regional Court was unsuccessful.
<b>Main reasoning/argumentation</b>	The Federal Constitutional Court argued that the decisions revealed a fundamentally wrong understanding of the meaning of the general right of personality. Contrary to the prison's statements referring to the complainant's self-endangerment by drumming on the cell door, the necessity of complete undressing was not apparent to the Federal Constitutional Court. The court also pointed out that the principle of proportionality 46 required that the prisoner be

	provided immediately with replacement clothing made of tear-resistant material in order to maintain a minimum degree of privacy.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The placement of a completely undressed detainee in a specially secured detention room with permanent video surveillance violates the general right of personality of the person concerned, which is protected by Article 2 (1) in conjunction with Article 1 (1) of the Basic Law ( <i>Grundgesetz</i> ).
<b>Results (sanctions) and key consequences or implications of the case</b>	The challenged decisions of the Regional Court and the Higher Regional Court were revoked, and the case was referred back to the Regional Court for a new decision.
<b>Key quotation in original language and translated into English with reference details</b>	<p><i>“The challenged decisions of the Regional Court and the Higher Regional Court were therefore revoked and the case was referred back to the Regional Court for a new decision. “Die als besondere Sicherungsmaßnahme in § 88 Abs. 1, Abs. 3 in Verbindung mit Abs. 2 Nr. 5 StVollzG vorgesehene Unterbringung in einem besonders gesicherten Haftraum mit permanenter Videoüberwachung stellt schon für sich genommen einen erheblichen Eingriff in grundrechtlich geschützte Rechtspositionen dar (...). Die Erheblichkeit des Eingriffs und der verfassungsrechtlich gebotene Grundsatz der Verhältnismäßigkeit erfordern aber grundsätzlich, dem Gefangenen unmittelbar und gleichzeitig mit der Entkleidung Ersatzkleidung aus schnell reißendem Material zur Verfügung zu stellen, um ihm ein Mindestmaß an Intimsphäre zu bewahren und ihn nicht zum bloßen Objekt des Strafvollzuges zu degradieren (...).“ (Rn. 32)</i></p> <p>“The placement in a specially secured detention room with permanent video surveillance provided for as a special security measure in Section 88 (1), (3) in conjunction with (2) No. 5 of the Prison Act constitutes in itself a significant encroachment on legal positions protected by fundamental rights (...). However, the seriousness of the interference and the constitutionally required principle of proportionality require in principle that the prisoner be provided with replacement clothing made of fast-tearing material immediately and simultaneously with the undressing in order to preserve a minimum of privacy and not to degrade him to a mere object of the penal system (...).” (para. 32)</p>

Federal Constitutional Court (*Bundesverfassungsgericht*) (2007): 2 BvR 939/07, 13 November 2007.

<b>Thematic area</b>	<b>Access to toilets (3a)</b>
<b>Decision date</b>	13 November 2007
<b>Reference details</b>	Federal Constitutional Court (Bundesverfassungsgericht) 2 BvR 939/07 <a href="https://www.bverfg.de/entscheidungen/ECLI:DE:BVerfG:2007:rk20071113.2bvr093907">ECLI:DE:BVerfG:2007:rk20071113.2bvr093907</a>
<b>Key facts of the case</b>	During his pre-trial detention, the complainant was transferred to K. Prison, where he was accommodated in 47 different single cells, which were each equipped with a toilet that was not spatially separated and not separately ventilated. After the complainant had unsuccessfully complained to the prison about the conditions of his placement, which he claimed were inhumane, he asserted the illegality before the Higher Regional Court, which, however, rejected the application.
<b>Main reasoning/argumentation</b>	The Federal Constitutional Court found no violation of the complainant's fundamental rights by the challenged decision of the High Regional Court. It stated that, unlike in the case of forced confrontation with the physical intimate area of other detainees, the odor nuisance that might arise in a single cell when using a

	toilet without separate ventilation would not go beyond a short-term nuisance and could be adequately countered by ventilation through the cell window.
<b>Key issues (concepts, interpretations) clarified by the case</b>	Unlike cases where two or more prisoners are housed together and there is no adequate protection from sight, smell and noise due to the lack of sufficient physical separation of the toilet from the rest of the room, the lack of separation in a single cell does not violate the prisoner's right to respect for his human dignity. However, the prisoner's privacy may be compromised by prison staff entering the cell while the visually exposed toilet is in use. In this case, the prisoner is entitled to special consideration from the prison staff entering the cell.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Federal Constitutional Court did not accept the complainant's constitutional complaint for decision, as it did not attribute any general significance to it and did not consider its acceptance to be indicated in order to enforce the complainant's fundamental rights or rights equivalent to fundamental rights.
<b>Key quotation in original language and translated into English with reference details</b>	"Bei einer Zuweisung des Haftraums als Einzelhaftraum verletzt die fehlende Abtrennung der Toilette vom übrigen Raum nicht den Anspruch des Gefangenen auf Achtung seiner Menschenwürde (Art. 1 Abs. 1 GG)." (Rn. 19)  "If the detention room is assigned as an individual detention room, the lack of separation of the toilet from the rest of the room does not violate the detainee's right to respect for his human dignity (Article 1 (1) of the Basic Law)." (para. 19)

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2023), 2 BvR 166/16, 2 BvR 1683/17, 20 June 2023.

<b>Thematic area</b>	<b><i>Work and education of detainees to promote social reintegration: access to work (7b)</i></b>
<b>Decision date</b>	20 June 2023
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 2 BvR 166/16 2 BvR 1683/17 <a href="https://www.bverfg.de/entscheidungen/ECLI:DE:BVerfG:2023:rs20230620.2bvr016616">ECLI:DE:BVerfG:2023:rs20230620.2bvr016616</a>
<b>Key facts of the case</b>	The Federal Constitutional Court found the remuneration regulations in the Free State of Bavaria (2 BvR 166/16) pursuant to Article 46 of the Act on the Execution of Imprisonment and Juvenile Sentences of 10 December 2007 (Bavarian Prison Act - BayStVollzG) and in the State of North Rhine-Westphalia (2 BvR 1683/17) pursuant to Sections 32 and 34 of the Act Regulating the Execution of Prison Sentences in North Rhine-Westphalia of 13 January 2015 (North Rhine-Westphalia Prison Act - StVollzG NRW) to be incompatible with the German constitution.
<b>Main reasoning/argumentation</b>	Bavaria According to the Constitution, criminal detention shall orient towards the aim of resocialisation in order to enable the prisoners to live a responsible live. The aspect of work – both obligatory and voluntary – is of great important in this aim. The constitutional requirement of resocialisation provides that such work must be met with appropriate recognition. Remunerated work, in particular, prepares prisoners for working life in freedom.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The constitutional requirement of resocialisation under Art. 2 para. 1 in conjunction with Art. 1 para. 1 GG obliges the legislator to develop a comprehensive, effective and coherent resocialisation concept based on the state of the art and to base the essential regulations of the prison system to be determined by the legislator on this concept.
<b>Results (sanctions) and key consequences or implications of the case</b>	The states ( <i>Länder</i> ) have to develop new regulations on the remuneration of prisoners, in accordance with constitutional law, until 30 June 2025.

<b>Key quotation in original language and translated into English with reference details</b>	<p>„Aus dem verfassungsrechtlichen Resozialisierungsgebot folgt, dass Arbeit im Strafvollzug nur dann ein wirksames Resozialisierungsmittel ist, wenn die geleistete Arbeit angemessene Anerkennung findet.“ (Rn. 169)</p> <p>It follows from the constitutional requirement of resocialisation that work in prison is only an effective means of resocialisation if the work performed is appropriately recognised. (para. 169)</p> <p>„Die angemessene Anerkennung von Arbeit bleibt nach diesen Maßstäben unverzichtbar, weil der Einzelne dadurch Achtung und Selbstachtung erfährt.“ (Rn. 194)</p> <p>The appropriate recognition of work remains indispensable according to these standards, because the individual thereby experiences respect and self-respect [...].“ (para. 194)</p>
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Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 1673/04, 31 May 2006.

<b>Thematic area</b>	<b><i>Protection (of young detainees) from violence by other detainees (9b)</i></b>
<b>Decision date</b>	31 May 2006
<b>Reference details</b>	Federal Constitutional Court (Bundesverfassungsgericht) 2 BvR 1673/04 2 BvR 2402/04 <a href="https://www.federal-constitutional-court.de/decisions/2006/20060531.2bvr167304">ECLI:DE:BVerfG:2006:rs20060531.2bvr167304</a>
<b>Key facts of the case</b>	The decision of the Federal Constitutional Court is based on two constitutional complaints lodged in 2004 by the complainant, who was serving a juvenile sentence in a juvenile prison. The complainant objected to the general monitoring of his mail and to disciplinary measures imposed on him for his involvement in a physical dispute with a fellow inmate. He argued that the measures in each case involved interferences with his fundamental rights that went beyond the mere deprivation of liberty and, in the absence of a Juvenile Detention Act, had been carried out without the necessary statutory basis.
<b>Main reasoning/argumentation</b>	The Federal Constitutional Court stated that in the field of juvenile detention, measures interfering with fundamental rights have so far lacked the constitutionally required legal basis. However, the Federal Constitutional Court found that the measures in question had to be accepted for a limited transitional period until the necessary statutory regulation came into force, insofar as they were indispensable for the maintenance and constitutional implementation of an orderly juvenile prison system.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The juvenile detention system requires legal foundations that are specifically tailored to the needs of the juvenile developmental phase. Juveniles are biologically, psychologically and socially in a stage of transition that is typically associated with tensions and adjustment difficulties. By intervening in this phase of life through the deprivation of liberty, the state assumes a special responsibility for the further development of the person concerned, which must be taken into account when designing the legal framework.
<b>Results (sanctions) and key consequences or implications of the case</b>	The constitutional complaints were unsuccessful. The Federal Constitutional Court rejected them as unfounded.
<b>Key quotation in original language and translated into English with reference details</b>	“Die Ausgangsbedingungen und Folgen strafrechtlicher Zurechnung sind bei Jugendlichen in wesentlichen Hinsichten andere als bei Erwachsenen (...).“ (Rn. 50)

	<p>"The initial conditions and consequences of criminal imputation are in essential respects different for juveniles than for adults (...)." (para. 50)</p> <p><i>"Ein der Achtung der Menschenwürde und dem Grundsatz der Verhältnismäßigkeit staatlichen Strafens verpflichteter Strafvollzug muss diesen Besonderheiten, die jedenfalls bei einem noch jugendhaften Entwicklungsstand größtenteils auch auf Heranwachsende zutreffen, Rechnung tragen."</i> (Rn. 56)</p> <p>"A penal system committed to respect for human dignity and the principle of proportionality of state punishment must take into account these special features, which, at least at a still juvenile stage of development, also apply for the most part to adolescents." (para. 56)</p>
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Germany, Zweibrücken Higher Regional Court (*Oberlandesgericht Zweibrücken*) (2004), 1 Ws 174/04, 19 May 2004.

Thematic area	<i>[Please indicate the topic and insert the question number from Part I here]</i>
Decision date	16 May 2024
Reference details	<a href="#">Zweibrücken Higher Regional Court (Oberlandesgericht Zweibrücken) 1Ws 174/04</a>
Key facts of the case	The prisoner complained that the prison wrongly refused his request to be given various products for bodily care and correspondence free of charge. As the recipient of pocket money, the institution was obliged to give him these items free of charge. It was therefore wrong to refer him to the fact that he could buy these items with the pocket money of €30 granted to him. His application for a court decision, which was aimed at ordering the prison to continue to provide him with the above-mentioned items free of charge, was rejected by the Enforcement Chamber as unfounded.
Main reasoning/argumentation	There is only a right to the free provision of a basic equipment of hygiene articles if the prisoner is destitute. With the reception of pocket money, they lose their status of being in need.
Key issues (concepts, interpretations) clarified by the case	There is no entitlement to the free provision of hygiene articles, even for recipients of pocket money. The prison fulfils its duty of care in this respect by providing the prisoner with pocket money in accordance with Section 46 of the Prison Act.
Results (sanctions) and key consequences or implications of the case	On the prisoner's appeal, the order of the Penitentiary Enforcement Chamber of the Regional Court of Frankenthal (Palatinate) ( <i>Strafvollstreckungskammer des Landgerichts Frankenthal, Pfalz</i> ) of 13 April 2004 is set aside insofar as his application for the free handing over of writing materials was rejected. In this respect, the case is referred back to the Penal Enforcement Chamber of the Regional Court of Frankenthal (Palatinate) for a new decision, including on the costs of the appeal proceedings.
Key quotation in original language and translated into English with reference details	<p><i>„Nach § 3 Abs. 1 StVollzG soll das Leben im Vollzug den allgemeinen Lebensverhältnissen soweit als möglich angeglichen werden. Daraus folgt, dass der Gefangene nur dann an die außerhalb des Vollzugs herrschende Normalität herangeführt werden kann, wenn ihm aufgezeigt wird, dass er - persönliche Leistungsfähigkeit vorausgesetzt - für die Kosten der sozialadäquaten Körperpflege selbst aufkommen muss.“</i> (Rn. 13).</p> <p>"According to Section 3 (1) StVollzG, life in prison should be harmonised with general living conditions as far as possible. It follows from this that prisoners can only be introduced to the normality that prevails outside of prison if they are shown that - assuming they are personally capable - they must cover the costs of socially appropriate personal hygiene themselves." (para. 13)</p>

Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2008), 2 BvR 1268/07, 29 October 2008.

<b>Thematic area</b>	<b><i>Special measures for female detainees: hygiene (11c)</i></b>
<b>Decision date</b>	29 October 2008
<b>Reference details</b>	Federal Constitutional Court (Bundesverfassungsgericht) 2 BvR 1268/07 <a href="https://eur-lex.europa.eu/eli/de/bverfg/2008/rk20081029.2bvr126807">ECLI:DE:BVerfG:2008:rk20081029.2bvr126807</a>
<b>Key facts of the case</b>	The complainant challenged the order of the Koblenz Higher Regional Court of 8 March 2007 (1 Ws 83/07) and the order of the Koblenz Regional Court - Diez Criminal Enforcement Chamber of 15 December 2006 (7 StVK 464/06). They argued that in view of the increasing burden of other daily living expenses, the pocket money granted to him was not sufficient to purchase the necessary hygiene and personal care items. The constitutional complaint was not accepted.
<b>Main reasoning/argumentation</b>	If the Prison Act means that prisoners are to be referred to their pocket money for the procurement of personal hygiene products, the fundamental rights interests are sufficiently protected by the fact that pocket money is to be granted as "appropriate", i.e. in an appropriate amount. If a prisoner is of the opinion that the legally guaranteed adequacy of the pocket money no longer exists - for example due to price increases - they can assert this with an application to the prison authority for an appropriate increase in the pocket money amount and, if necessary, with an application for a court decision.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The complainant's argument that, in view of the increasing burden of other costs of daily living, the pocket money granted to him is not sufficient to procure the necessary hygiene and personal hygiene articles, does not lead to the assumption with constitutional necessity that such articles, insofar as they belong to the minimum subsistence level guaranteed by fundamental rights or their availability must be ensured for other legal reasons, must be provided free of charge by the prison.
<b>Results (sanctions) and key consequences or implications of the case</b>	--
<b>Key quotation in original language and translated into English with reference details</b>	„Eine Auslegung des Strafvollzugsgesetzes dahingehend, dass Strafgefangenen die benötigten Artikel zur Hygiene und Körperpflege grundsätzlich kostenlos von der Anstalt zur Verfügung zu stellen wären, ein Gefangener insoweit also nicht auf die Inanspruchnahme seines Taschengeldes (§ 46 StVollzG) verwiesen werden darf, ist verfassungsrechtlich nicht geboten.“ (Rn. 2)  “An interpretation of the Prison Act to the effect that prisoners should in principle be provided with the necessary articles for hygiene and personal hygiene free of charge by the prison, i.e. that a prisoner may not be referred to the use of his pocket money (§ 46 StVollzG) in this respect, is not constitutionally required.” (para. 2)

Germany, Celle Higher Regional Court (*Oberlandesgericht Celle*) (2013), 1 Ws 375/13, 25 September 2013.

<b>Thematic area</b>	<b><i>Special measures to protect detainees with disabilities or serious medical conditions: care in detention (14a)</i></b>
<b>Decision date</b>	25 September 2013
<b>Reference details</b>	Celle Higher Regional Court (Oberlandesgericht Celle) 1 Ws 375/13 <a href="https://eur-lex.europa.eu/eli/de/olgce/2013/0925.1ws375.13strvollz.0a">ECLI:DE:OLGCE:2013:0925.1WS375.13STRVOLLZ.0A</a>



<b>Key facts of the case</b>	<p>The applicant has been recognised as 100% severely disabled. In the contested decision of 6 February 2013, the Prison Enforcement Chamber rejected as unfounded his application for a court decision to oblige the prison authorities to increase the pocket money granted to the applicant by 17% with retroactive effect from 1 October 2010 due to his severe disability.</p> <p>The applicant is appealing against this decision. He complains of a breach of formal and substantive law.</p> <p>The appeal on points of law is unsuccessful.</p>
<b>Main reasoning/argumentation</b>	<p>The pocket money regulations in § 43 NJVollzG and § 46 StVollzG are conclusive; neither they nor the calculation regulations provide for an increase in pocket money in the event of a severe disability. Contrary to the applicant's opinion, § 30 Para. 1 SGB XII, according to which an additional requirement of 17% of the standard requirement level is recognised for persons with conditions that apply to the applicant's situation, does not apply to the calculation of the pocket money according to § 43 NJVollzG.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b>	<p>While the standard needs levels are determined according to the actual consumption expenditure of lower income levels, the pocket money is calculated as a fraction of the basic allowance pursuant to Section 43 para. 2 StVollzG. This applies to all prisoners - disabled and non-disabled - who are in need through no fault of their own.</p>
<b>Results (sanctions) and key consequences or implications of the case</b>	<p>The additional needs provision of Section 30 (1) SGB-XII does not apply to the assessment of pocket money for prisoners in accordance with Section 43 NJVollzG.</p>
<b>Key quotation in original language and translated into English with reference details</b>	<p>„[...] das Taschengeld [berechnet sich] als ein Bruchteil der Eckvergütung nach § 43 Abs. 2 StVollzG. Es dient nämlich nur als Ausgleich dafür, dass ein Gefangener aus Gründen, die er nicht zu vertreten hat, weder Arbeitsentgelt noch Ausbildungshilfe erhält (vgl. Laubenthal aaO Rn. 8). Diese Ausgangslage ist aber bei allen unverschuldet bedürftigen Gefangenen - behinderten und nicht behinderten - gleich.“ (Rd. 16)</p> <p>„[...] the pocket money is calculated as a fraction of the basic allowance pursuant to Section 43 para. 2 StVollzG. It only serves as compensation for the fact that a prisoner receives neither pay nor educational assistance for reasons for which he is not responsible (cf. Laubenthal loc. cit. para. 8). However, this initial situation is the same for all prisoners - disabled and non-disabled - who are in need through no fault of their own.“ (para. 16)</p>

Germany, Celle Higher Regional Court (*Oberlandesgericht Celle*) (2012), 1 Ws 458/12, 22 November 2012.

<b>Thematic area</b>	<i>[Please indicate the topic and insert the question number from Part I here]</i>
<b>Decision date</b>	22 November 2012
<b>Reference details</b>	<p>Celle Higher Regional Court (Oberlandesgericht Celle) 1 Ws 458/12 <a href="https://www.eclis.de/OLGCE:2012:1122.1WS458.12STRVOLLZ.0A">ECLI:DE:OLGCE:2012:1122.1WS458.12STRVOLLZ.0A</a></p>
<b>Key facts of the case</b>	<p>The applicant is serving a prison sentence in Lower Saxony. As his wife lives in Bavaria, he applied for a transfer to Bavaria for visits. The prison rejected this application in a decision as the distance to the wife's place of residence was approx. 430 km and could be covered by car in about four and a half hours.</p> <p>The Prison Enforcement Chamber dismissed the applicant's application for a court decision as unfounded because the cost of transferring him to Bavaria for a visit would be disproportionately high.</p> <p>The applicant appeals against this decision with his legal complaint. The appeal is successful.</p>

<b>Main reasoning/argumentation</b>	<p>The Basic Law, which stipulates the state's obligation to provide a prison system geared towards the goal of resocialisation, follows that prisoners are entitled to an appropriate level of contact with their relatives. The state is obliged to provide the prisons with the necessary equipment and personnel to safeguard fundamental rights. Among other things, it may be necessary to compensate for spatial and personnel-related bottlenecks with regard to enabling visits by working overtime and to exhaust all possibilities of alleviating problems by transferring prisoners - insofar as this is the more constitutionally sound means.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b>	<p>--</p>
<b>Results (sanctions) and key consequences or implications of the case</b>	<p>Due to errors of law, the Senate sets aside not only the contested decision of the Prison Enforcement Chamber, but also the decision of the prison and obliges the prison to reassess the applicant in accordance with the Senate's legal opinion, because the matter is ready for decision in this respect.</p>
<b>Key quotation in original language and translated into English with reference details</b>	<p><i>„Drohen aufgrund unzureichender Ausstattung von Haftanstalten Beeinträchtigungen, die normalerweise von Rechts wegen nicht hinnehmbar sind, so sind den Anstalten besondere Anstrengungen zum Ausgleich des Mangels und zur zügigen Abhilfe abzuverlangen [...] Unter anderem kann es geboten sein, räumlich und personell bedingte Engpässe hinsichtlich der Ermöglichung von Besuchen durch den Einsatz von Überstunden auszugleichen (vgl. BVerfG NJW 1995, 1478) und alle Möglichkeiten der Problemschärfung durch Verlegung von Gefangenen [...] auszuschöpfen.“</i> (Rd. 18)</p> <p>“If, due to inadequate facilities in prisons, there is a threat of impairments that are normally unacceptable by law, the prisons must be required to make special efforts to compensate for the deficiency and to remedy it swiftly [...] Among other things, it may be necessary to compensate for space and staffing bottlenecks with regard to enabling visits by working overtime (cf. BVerfG NJW 1995, 1478) and to exhaust all possibilities of alleviating the problem by transferring prisoners [...].” (para. 18)</p>