



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention  
pursuant to the optional reporting procedure**

**Sixth periodic report of States parties due in 2015**

**Germany**<sup>\*</sup>, <sup>\*\*</sup>, <sup>\*\*\*</sup>

[Date received: 8 August 2017]

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\* The fifth periodic report of Germany is contained in document CAT/C/DEU/5; it was considered by the Committee at its 1028th and 1031st meetings (CAT/C/SR.1028 and 1031), held on 4 and 8 November 2011. For details of its consideration, see the Committee's concluding observations (CAT/C/DEU/CO/5).

\*\* The annexes to the present report are on file with the Secretariat and are available for consultation. They may also be accessed from the web page of the Committee against Torture.

\*\*\* The present document is being issued without formal editing.



## **I. Introduction**

1. The Federal Republic of Germany wishes once again to apologize for the delay in presenting its answer to the list of issues in lieu of reporting to the Committee against Torture.
2. The answers to the list have been compiled by the Federal Government. Unless otherwise stated, they refer to the situation as of March 15, 2017.
3. Some lists of statistical tables have been appended to the list in order to maintain readability. Two recent reports from the National preventive mechanism under OPCAT relating to some of the issues mentioned in the list have also been appended, as has a description of the current situation at Freiburg prison and the current GRETA report.
4. Statistical data concerning refugees in Germany are transmitted on the understanding that, due to the situation prevailing in the second half of the year 2015 and into 2016, figures must still be subject to later correction. However, the figures given do provide a fairly accurate impression of the situation.

## **II. Specific information on the implementation of Articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations**

### **Articles 1 and 4**

#### **Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/DEU/QPR/6)**

5. The Federal Government continues to hold that it is not necessary to provide for a specific offence of torture in German criminal law.
6. It is not intended to amend the provisions of the law cited. The range of sanctions provided for by sections 340 and 224 of the Criminal Code (StGB) includes the punishment of imprisonment of up to ten years. This allows the seriousness of a crime to appropriately be taken into account, also as compared to other criminal offences.
7. As concerns the criminal offences governed by the Military Penal Code (WStG), the Federal Government would note that, where the prerequisites stipulated by sections 340 or 224 of the Criminal Code (StGB) are met, these constituent elements of the offence will likewise have been realised and that, depending on the circumstances, an aggregate punishment will have to be established for which the range of sanctions will be oriented by the longest threatened term of imprisonment.

#### **Reply to the issues raised in paragraph 2**

8. In their jurisdiction, the German courts have referred to the Convention and relied on it in a large number of cases. A search in the "juris" database of court rulings alone will retrieve 500 court rulings in which a German court has referred to the Convention. As a rule, these decisions will concern proceedings in cases of extradition or deportation, in which the conditions given in the destination state are to be reviewed. In this context, the courts will generally refer to the stipulations of the Convention.
9. In cases concerning the situation given in Germany itself, the rights guaranteed by the Convention are warranted already, as a rule, by the fundamental rights enshrined in the Basic Law (*Grundgesetz*, GG) and the rights enshrined in the European Convention on Human Rights, which likewise have direct application. In this regard, the Federal Government refers to the presentation of the legal situation in paragraph 140 et seqq. of the current Common Core Document.

## Article 2

### Reply to the issues raised in paragraph 3

10. The measures taken by the *Länder* in terms of executing prison sentences are coordinated by a variety of committees, specifically the *Strafvollzugsausschuss der Länder* (Committee of the *Länder* on the Execution of Prison Sentences). The correction experts responsible for the execution of prison sentences at the level of the *Länder* regularly convene at the sessions of this committee. This is where, *inter alia*, draft models for the *Land* legislation on various topics requiring regulation by law are elaborated, where shared policies and measures are coordinated, and where experience gained in practical work is shared. The Federal Government holds a seat in this committee in an advisory capacity. The superordinate coordination committee is the *Konferenz der Justizminister und — ministerinnen* (Conference of *Land* Justice Ministers), which meets twice a year. The Federal Minister of Justice attends these meetings as a guest.

11. It bears noting in this context that the governing bodies of the legislative and executive branches of the *Länder* are bound in the same manner to the Basic Law (GG) and the existing obligations under international law as are the governing bodies of the Federation.

### Reply to the issues raised in paragraph 4

12. It is usual practice in all *Länder* that all persons who are taken into custody are immediately informed on the reasons why this has been done, and are instructed as to their rights and obligations. Generally, information sheets are handed out, which are available in up to 34 languages in the detention facilities.

13. As a matter of principle, any contact the detainees have with close relatives, lawyers, doctors or the representatives of a consular service, and/or visits from such persons, are documented and thus can be verified later. As a general rule, the detainees are offered the possibility of availing themselves of legal aid, and where required, it is ensured that they can consult their attorney in an undisturbed setting.

14. Among other aspects, the bill submitted by the Federal Government of the Act strengthening the procedural rights of accused parties in criminal proceedings and amending the laws governing lay judges (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren und zur Änderung des Schöffengerichts*) (Official Records of the German Parliament, *Bundestagsdrucksache* — BT-Drs. 18/9534) provides for an obligation on the part of the law enforcement agencies to make available general information to an accused party wishing to consult with a defense attorney prior to being examined, which will allow him or her to contact such a defense attorney. Concurrently, particulars of the existing emergency attorneys' services are to be provided.

15. The Federal Government does not perceive a need to amend the relevant legal provisions. Pursuant to section 114 b (2), first sentence, no. 6 of the Code of Criminal Procedure (*Strafprozessordnung*, StPO), anyone who has been apprehended must be informed that he or she may notify a close relative or a person of his or her confidence, provided that this does not place the purpose of the investigation at risk. This right itself is codified in section 114 c (1) StPO. The wording of the regulation clearly states that the instruction is the rule, and that the notification may be refrained from, or postponed, only in exceptional cases in which there is cause for the concern that such notification would jeopardise the investigations. The wording "provided the purpose of the investigation is not endangered thereby" is used in several instances in the Code of Criminal Procedure. An understanding of how this constituent element of the provision should be interpreted has evolved that is accorded universal validity; it serves police officers in actual practice without creating any interpretation issues for them. Concurrently, this wording allows the officers to take a decision in each individual case based on the circumstances given. The Federal Government believes that this standard is sufficiently clear and definite both in terms of protecting the person taken into custody and of ensuring that the police can properly perform their tasks. The only conceivable alternative would be to introduce

provisions governing individual cases, which, in light of the variety of situations that can arise in life, would be subject to the risk of omissions.

16. The fact that the exception granted in section 114b (2) no. 6 of the Code of Criminal Procedure (StPO) and section 114c (1) StPO is to be applied only for as short a period of time as possible is the consequence of the provision made in section 114c (1) StPO, according to which the accused party is to be given the opportunity, without undue delay, to notify others. According to the universally valid definition given to this phrase in section 121 (1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), “without undue delay” means “without culpable delay” in this case as well. This corresponds to the requirements made by the European Court of Human Rights, which derives, from the right to respect for private and family life, an obligation incumbent on governments to ensure that the family members of a detained person are notified “promptly,” respectively “*rapidement*,” of the detention (European Court of Human Rights (ECtHR), judgments of 4 April 2006, Application nos. 42596/98 and 42603/98, *Sari and Çolak v. Turkey*, § 36). It bears noting in this context that section 114c (2) StPO creates a further limitation in time: According to this regulation, the court is to order, if it has ordered detention to be executed, that one of the arrested accused’s relatives or a person trusted by him or her be notified without undue delay (without culpable delay). This obligation exists without any exception and is not subject to any restrictions even if the purpose of the investigation were to be endangered, thus distinguishing it from the right of the accused party to notify others of his or her arrest pursuant to section 114c (1) StPO. The decision on the execution of a prison sentence is taken in the context of the arrested accused being brought before the competent judge. This decision is to be taken in each case without delay (and thus likewise: without culpable delay) following the arrest, and not later than on the following day (section 115 (1), (2), section 128 (1) StPO). As a consequence, the very latest time at which a relative or a person trusted by the accused party is notified of his or her arrest is the day following such arrest.

17. According to section 114b (2), no. 4 of the Code of Criminal Procedure, suspects have to be informed that they are under no obligation to make any statement when questioned by the police services, or in any other circumstances, and that they have the right, moreover, to involve counsel for their defence at any time — the norm explicitly mentions “before the questioning.” This allows suspects to understand that they need not subject themselves to any questioning by the police without a defence attorney being present if they have requested that counsel be involved. This suffices to prevent any ill-treatment or psychological pressure during questioning.

18. Additionally, section 136 (1), second sentence, read in conjunction with section 163a (4), second sentence, StPO stipulates that any accused party shall be informed at the commencement of the first examination by the police that he or she is free, by law, to respond to the charges or not to make any statement on the charges.

19. Consequently, these provisions of the law show that, already under prevailing law, the accused party may make his or her willingness and readiness to make any statement dependent on the presence of his or her defence counsel, which is tantamount to a means of forcibly obtaining the presence of counsel.

20. Nonetheless, the bill submitted by the Federal Government for an Act strengthening the procedural rights of accused parties in criminal proceedings and amending the laws governing lay judges (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren und zur Änderung des Schöffengerichts* (Official Records of the German Parliament, *Bundestagsdrucksache* - BT-Drs. 18/9534)) provides clarification for section 163a StPO by way of a supplementation declaring that the right of counsel to be present, which has already been expressly stipulated in section 168c (1) StPO for examinations by judges and public prosecutors, has corresponding application for examinations by the police (Official Records of the German Parliament (BT-Drs.) 18/9534, p. 5, 20 et seq.).

21. The right of accused parties to have access, in factual terms, to defence counsel paid for by the state is assured under German law by the assignment of a court-appointed defence attorney (*Pflichtverteidiger*). The criteria applying in such a case have been individually listed in section 140 StPO. They concern the seriousness of the criminal offence in question (section 140 (1) nos. 1 and 2 StPO), the legal consequences that are to

be expected (section 140 paragraph (1) nos. 1, 2, 3 and 7 as well as paragraph (2) StPO), the complexity of the case (section 140 (2) StPO), and the personal circumstances of the accused party, namely his or her ability to defend himself or herself (section 140 paragraph (1) nos. 4, 5 and 9 as well as paragraph (2) StPO); thus, they are in keeping with the criteria that the European Court of Human Rights has developed for interpreting the concept of the interests of justice (*Rechtspflegeinteresse*) as enshrined in Article 6 paragraph 3 letter c of the European Convention on Human Rights (ECHR) (cf. ECtHR, judgment of 24 May 1991 — Application no 12744/87 — *Quaranta v. Switzerland*, § 33; ECtHR, judgment of 10 June 1996 — Application no 19380/92 - *Benham v. the United Kingdom*, § 60; ECtHR, judgment of 6 November 2012 — Application no 32238/04 — *Zdravko Stanev v. Bulgaria*, § 38). The provision made in section 140 StPO on the necessary defence takes account of these interests. The assistance, at no charge to the accused party, by a court-appointed defence attorney will be provided, subject to the prerequisites set out in section 140 StPO, independently of whether or not the accused party may be indigent. Inasmuch, the provisions made under German law extend above and beyond the requirements of Article 6 paragraph 3 letter c of the European Convention on Human Rights (ECHR).

22. In addition to the right to be assisted by a court-appointed defence attorney, accused parties who are indigent may avail themselves of the legal advice and consultation provided in the context of the “*Beratungshilfe*” legal assistance system. Pursuant to the Act on legal advice and representation before the courts for low-income citizens (*Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen*), accused parties who are not entitled to having a court-appointed defence attorney assigned to them pursuant to section 140 StPO, but who are not in the position, in light of their economic circumstances, to obtain the funds necessary for a defence attorney, are entitled to legal advice at no charge by an attorney.

23. At present, the Federal Government is preparing for the implementation into German domestic law of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (Official Journal of the European Union (OJ) L 297, p. 1 of 4 November 2016). In this context, the creation of a separate application right for the accused party, as well as the advancement in time of the assignment of a court-appointed defence attorney may conceivably be provided for.

24. The *Länder* are bound by the law just as the Federation is, in this case by the StPO.

#### **Reply to the issues raised in paragraph 5**

25. In June of 2013, a deputy head was additionally appointed to the Federal Agency; this function covers — together with Federal Agency’s head — the (relatively small) field of the competences of the Federation. In June of 2014, the 85th Conference of *Land* Justice Ministers resolved to double the number of members in the Joint Commission of the *Länder*, from four to eight. The additional members were proposed by the Ministries of Health, Social Affairs, and Family, and by the Ministry of the Interior, in order to add to the expertise available to the Joint Commission knowledge from fields that thus far had not been represented. The four newly appointed members of the Joint Commission took up their work as per 1 January 2015. Concurrently, the Federation and the *Länder* resolved to increase the budget allocated to the National Agency, providing it with an overall budget of € 540,000 from 2015 onwards (up from € 300,000 previously).

26. Should new appointments be made in the future, the principles developed by the Subcommittee are to be included in the considerations on how to structure the process.

#### **Reply to the issues raised in paragraph 6**

27. The Annual Reports provided by the National Agency show that there has never been an instance in Germany in which the National Agency was prevented from gaining access to an institution. Nor has it ever been demanded that it previously announce a visit. The practice of the National Agency to announce its intention to visit an institution (which announcement is made hours, and not days, prior to the visit) is based on the free discretion

it may exercise as an independent body. Moreover, this practice is limited to larger penal institutions. Smaller detention facilities, in particular detention facilities of the police, regularly will be visited also without any prior announcement being made.

**Reply to the issues raised in paragraph 7(a), 7(b) and 7(c)**

28. The information requested has been provided in the attached Annual Reports provided by the National Agency ([see Annexes 1a and 1b](#)).

**Reply to the issues raised in paragraph 8**

29. The study published by the Criminological Research Centre of Lower Saxony (KFN Study) was extensively covered by the media and also met with significant interest from specialists. The KFN Study as such, and in particular the topic of violence and the prevention of violence in correctional institutions, were debated in great detail and from different perspectives (science and practice) in the corresponding specialist journals and were also the topic of various working groups, expert conferences, and specifically at the Work and Professional Development Conference of the Federal Association of the Heads of Correctional Institutions (*Bundesvereinigung der Anstaltsleiter und Anstaltsleiterinnen im Justizvollzug*).

30. In this debate, the KFN Study was strongly criticised for its inexact presentation of the results obtained, the analysis tools and methodology used, etc.

31. Independently of the study, the Committee of the *Länder* on the Execution of Prison Sentences has accorded particular significance to the topic of “preventing violence in correctional institutions” and has thus made it a focus topic to be addressed by the corresponding committees at the *Land* level, to be covered along with aspects of staffing and treatment.

32. Additionally, further scientific surveys and research projects have been performed on this topic. Thus, the Institute of Criminology at the University of Cologne obtained funding from the science and research organisation *Deutsche Forschungsgemeinschaft* (DFG) for two projects, this being “Violence and Suicide in Young Offenders’ Institutions — the Phenomenon, its Causes and its Prevention” and its follow-on project “Violence and Suicide among Female and Male Young Offenders — A Gender Comparison of Causal Conditions and Courses of Development” (term: July 2013 — August 2017). The results of these studies likewise were published and discussed at expert conference, for example at the 21st German Congress on Crime Prevention (*Deutscher Präventionstag*) on 6 and 7 June 2016 in Magdeburg. This shows that this matter continues to be a topic of debate.

**Reply to the issues raised in paragraph 9(a), 9(b), 9(c), 9(d) and 9(e)**

33. The Federal Government refers to the attached report (see Annex 2) submitted by the Group of Experts on Action against Trafficking in Human Beings (GRETA) as regards the implementation of the Council of Europe Convention on human trafficking in Germany. The numbers requested under c) have been set out on page 12 of this report, inasmuch as such numbers are compiled in Germany. The recommendations made by GRETA are an important means of pointing the way for the Federal Government in developing its strategies further in combating human trafficking, and in fact have already been implemented in some aspects (see also the observations made below). At the session of the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings on 15 June 2017, Germany will submit an interim report.

34. On 15 October 2016, the Act on the Improvement of the Measures taken to Combat Human Trafficking, on the Amendment of the Federal Central Criminal Register Act and on the Amendment of Book VIII of the German Welfare Act (*Gesetz zur Verbesserung der Bekämpfung des Menschenhandels und zur Änderung des Bundeszentralregistergesetzes sowie des Achten Buches Sozialgesetzbuch*) entered into force. This not only serves to transpose Directive 2011/36/EU into national law, it also implements the Coalition Agreement. The Act specifically includes a recast of the provisions of criminal law on human trafficking, as well as new definitions of the constituent elements of the criminal offences of “work exploitation” and “exploitation while benefiting from the deprivation of

liberty.” Likewise, a provision has been included that makes customers purchasing sexual services from victims of human trafficking or forced prostitution liable to punishment under criminal law. According to this stipulation of the law, whosoever benefits from the predicament of the victim in order to obtain sexual acts will be liable to punishment under criminal law, even if the customer merely accepts said predicament as being inevitable without specifically aiming at it.

35. In order to improve the working conditions prevailing in legal prostitution, and in order to protect the persons working there against exploitation, forced prostitution, and human trafficking, the Bundestag adopted, on 7 July 2016, the Act Regulating the Business of Prostitution and Serving to Protect Persons Working in Prostitution (*Gesetz zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen* (ProstSchG)). This means that for the first time, the business of prostitution has been subjected to comprehensive rules and regulations. The objective is to establish fundamentals, as a specialist statute, warranting acceptable working conditions and the health protection of those working in prostitution, while combating crime in prostitution such as trafficking in humans, violence against prostitutes and their exploitation, and procuring. The core elements of the Act are the obligation to obtain a permit for operating a prostitution business and the obligation to register prostitution activities with the authorities. The legislative process was concluded on 27 October 2016 and the Act will enter into force on 1 July 2017.

36. The Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet* (AufenthG)) includes a special humanitarian regulation in section 25 (4a) allowing a residence permit to be granted to victims of human trafficking. Provided that the person affected is willing to cooperate in proceedings under criminal law, a residence permit is to be granted and extended in accordance with section 25 (4a), first sentence, of said Act. This rule will now apply also after the termination of the criminal proceedings for purely humanitarian or personal reasons. In both cases, the foreigners’ authority (*Ausländerbehörde*) will have the option to act in derogation herefrom only in atypical cases. Moreover, victims of human trafficking may be granted a residence permit also pursuant to other regulations, independently of whether or not they have assisted with criminal proceedings. In particular where minors are victims of human trafficking, it is conceivable that a residence permit will be granted, for example pursuant to sections 23a, 25 (4) or (5) AufenthG. The Federal Government will continue to monitor how these statutory rules prove themselves in actual practice.

37. Where victims of human trafficking suffer injuries to their health by the offence committed, the applicable law already stipulates that, subject to certain prerequisites, benefits may be granted pursuant to the Act on Compensation for Victims of Violent Crime (*Opferentschädigungsgesetz — OEG*). As part of the restructuring of the laws on social compensation (*soziales Entschädigungsrecht*) that has been resolved upon as part of the Coalition Agreement, such that the laws governing the compensation provided to victims of violent crime is to be rebalanced, those victims of human trafficking who have suffered injuries to their health exclusively by psychological violence are also to be included in the group entitled to the benefits.

38. The Federal Government has launched a consultation procedure to review the institution of a national rapporteur function, along with opportunities for institutionalising an improved coordination of all strategies and measures serving to combat human trafficking in all its forms. The civil society and the *Länder* will be involved by way of the Federal Government/*Länder* Working Groups.

39. The Federal Government plans to establish a nationwide service agency against human trafficking for purposes of work exploitation. This service agency is to bundle expertise while promoting the build-out and consistent further development of regional structures against human trafficking for purposes of work exploitation. Regional stakeholders and networks in the *Länder* are to be provided with services enabling them to organise and pursue their work particularly effectively. Such services are to consist of informational material on legal fundamentals, training kits on how to identify persons affected, or other forms of further professional training.

40. From 2017 onwards, an enhanced situation report on human trafficking (*Bundeslagebild Menschenhandel*) will be prepared, which will take particular account of minors. In cooperation with non-governmental organisations, the Federal Government has worked together with experts to draft a nationwide cooperation concept serving the improvement of the protection afforded to victims of human trafficking in minors. The objective is to warrant adequate measures of protection and comprehensive aid for potential and actual victims of human trafficking who are minors, independently of the purpose and form of the exploitation concerned. At present, the draft of the cooperation concept is being finalised and coordinated. It is to serve as a recommendation for the introduction of own cooperation concepts at the level of the *Länder*, respectively as a guideline for aligning cooperation concepts already in place among individual stakeholders in the *Länder*.

41. The Federal Government will continue to actively collaborate with civil society, as before, for example by involving employees of the specialist consultation services for trafficked persons when training courses are offered to the special commissioners (*Sonderbeauftragte*) for victims of human trafficking in the field offices of the Federal Office for Migration and Refugees (BAMF). The topic of trafficking in children likewise will be addressed in the training courses for the special commissioners.

42. Since 1999, the Federal Government has been funding the Nationwide Coordination Panel against Human Trafficking (*Bundesweiter Koordinierungskreis gegen Menschenhandel*, KOK), to which the majority of the specialist consultation services have delegated representatives (see also the response to Question 10).

#### **Reply to the issues raised in paragraph 10(a), 10(b) and 10(c)**

43. Although the laws applicable thus far already allowed offences of the type described above to be punished, the German legislator decided in 2013 to include section 226a, "Female genital mutilation," in the Criminal Code (StGB), which expressly subjects the mutilation of the external genitalia of a female person to punishment under criminal law. In this context, the range of sanctions includes imprisonment of between one year to fifteen years. In less serious cases, the court may sentence the offender to terms of imprisonment of six months to up to five years. However, there was never any gap in criminal liability in the time preceding this amendment of the law.

44. By the Act on Improving the Protection against Stalking (*Gesetz zur Verbesserung des Schutzes gegen Nachstellungen*), which entered into force on 10 March 2017, the enforcement of conciliations reached in proceedings for the protection against violent acts was optimised, for the purpose, *inter alia*, of improving the protection afforded to victims. Now, any instance in which an obligation that has been provided for by a conciliation confirmed by a court is violated will be liable to punishment pursuant to section 4 of the Act on Protection against Violence (*Gewaltschutzgesetz*). In this way, a provision was obtained that parallels the protection afforded under criminal law by court orders protecting against violence. In addition, a new provision included in the Act ensures that the competent police authority and other public authorities must be notified of a court-confirmed conciliation.

45. By way of improving the collection of data and in order to enhance the knowledge about undetected crimes, a study was performed to shed light on the opportunities to create a monitoring system where violence against women is concerned. This explorative analysis (performed in September of 2012), which served to gain data and indicative information on violence in relationships and sexual violence against women and men with a view to establishing a long-term monitoring scheme at the national level, constitutes the first proposal for developing a nation-wide, well-thought-out set of tools. It is intended to regularly reflect, over the long term, the prevalence, the forms, and the consequences of violence against women and men, as well as the effects of anti-violence policies with institutions, organisations, and the parties affected, both at the level of the Federation and of the *Länder*. The monitoring is to be a prerequisite for creating a long-term basis, rooted in reliable information gained from systematic and knowledge-based data, for the specialist policies of the Federation and the *Länder* and for the support system in place addressing violence against women.

46. As one of the components of the monitoring scheme, the criminal statistics were evaluated for the aspect of violence in relationships for the year 2015:

47. On 22 November 2016, the Federal Ministry for Family, Senior Citizens, Women and Youth, together with the Federal Criminal Police Office, presented a statistical survey for 2015 concerning domestic violence. The main findings and figures are:

48. In 2015, a total of 127,457 persons (of which some 82% women) became victims of murder, manslaughter, bodily harm, rape, sexual abuse, threats or stalking by partners or former partners.

49. That means that more than 104,000 women were victims of violence within a relationship. This amounts to more than 36 % of the total number of victims of murder, manslaughter, bodily harm, rape, sexual abuse, threats or stalking.

50. The women victim numbers in detail are:

- Simple bodily harm: over 65,800
- Threats: over 16,200
- Aggravated bodily harm: over 11,400
- Stalking: over 7,900
- Murder and manslaughter: 331

51. Moreover, the Federal Government published a report in 2012 on the situation of women's shelters, of the specialist consultation services, and of other support schemes available to women affected by violence as well as their children. For Germany, more than 350 women's shelters were identified, as well as more than 40 sheltered housing units providing over 6,000 beds, which afford protection and advice each year to around 15,000 to 17,000 women with their children — in other words, somewhere between 30,000 and 34,000 people. Add to that the more than 750 specialist consultation services available across the Federal Republic, in which women affected by violence have the opportunity to obtain qualified advice and support. Besides the large number of women's consultancy centres and women's distress helplines, which professionally target violence against women in general terms or which focus on providing support and consultancy as regards sexual violence, these services also comprise around 130 intervention services for domestic violence, around 40 specialist consultation services for victims of trafficking in women, as well as other specific forms of violence. They include, for example, specialist advice centres and cooperative offices focusing on forced marriages or stalking.

52. In March of 2013, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth launched the nationwide distress helpline for violence against women. Under the number 08000 - 116 016, women who have been subjected to violence can speak to women specialised in this field of advice, around the clock, in 17 languages, barrier-free, anonymously, and free of charge. They will be provided with advice, support, information, and also the particulars of local consultancy institutions to which they can turn. Additionally, the website [www.hilfetelefon.de](http://www.hilfetelefon.de) also gives access to information and advice. The distress helpline offers support and consultancy services on all forms of violence. Besides the women affected by violence, the target groups served by this distress helpline are their family and friends, other people from their social environment, as well as expert staff from a professional environment. By the end of 2016, the distress helpline for violence against women had already processed 100,000 consultancy contacts.

53. Moreover, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports the important work done by the support system for women, as part of the limited competence of the Federation, by funding cooperation projects pursued across Germany and networking bodies (the association coordinating women's shelters "Frauenhauskoordination e.V." and the federal association for women's consultancy centres and distress helplines "Bundesverband für Frauenberatungsstellen und Frauennotrufe - bff," as well as the Nationwide Coordination Panel against Trafficking in Women and Violence against Women in the Migration Process (*Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess*

e.V. - KOK). The network formed across the Federal Republic by consultancy offerings and support and aid centres for women affected by violence is an important element of the comprehensive strategy pursued by the Federal Government to combat and prevent violence against women.

54. The networking bodies (*Vernetzungsstellen*) bundle the knowledge and specialist competence of the institutions lending support to women affected by violence in Germany and contribute this expertise, at the federal level, to the political discussion, the public discourse, and the legislative process. Also at the federal level, they support their members in achieving the objectives they have set themselves in their respective fields, as well as their overall societal aims, and provide support in legal matters. Moreover, the networking bodies contribute to shaping structures that will promote the efficient and economically viable provision of services by the local support institutions. By their public relations work and offerings in terms of ongoing professional training on the topic of violence against women and their children, and also on how to avert and prevent sexism and sexist violence, the networking bodies inform their members and raise the awareness of this issue of the public and of various relevant professional groups.

55. In light of the highly complex issues that domestic violence and trafficking in women/human trafficking entail, and which concern a range of policy areas, target groups, and levels, the Federal Government has instituted the Federal Government/*Länder* Working Groups on domestic violence and on human trafficking under the auspices of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The tasks of the working groups include the continual exchange of information in the sixteen *Länder*, as well as in the national and international committees, about the many and diverse activities pursued, the preparation of analyses of the specific problems encountered in combating domestic violence and trafficking in women, as well as the elaboration of recommendations and, as the case may be, of joint action to be taken in combating domestic violence and trafficking in women.

56. On 11 May 2011, the Council of Europe opened for signature a Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) establishing comprehensive and specific measures serving to prevent and combat violence against women and domestic violence, and protecting victims. Germany signed the Convention on the very day it was so opened for signature. On 8 March 2017, the Federal Cabinet resolved to ratify the corresponding Act; said ratification is set to take place still in the course of the first half year of 2017.

57. On 18 November 2015, Germany ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and implemented it by enacting a corresponding Act on the Convention (in force since 28 January 2015). Gaps in criminal liability were closed by the 49th Act on the Amendment of the Criminal Code — Implementation of European Requirements regarding the Laws governing Sexual Offences (*49. Gesetz zur Änderung des Strafgesetzbuches — Umsetzung europäischer Vorgaben zum Sexualstrafrecht*), which entered into force on 27 January 2015. Thus, for example, the constituent elements forming the criminal offence of the sexual abuse of wards (*Schutzbefohlene*) pursuant to section 174 StGB were enhanced. Additionally, the date on which sexual offences become statute-barred, particularly those committed against children, was defined for a significantly later time. Thus, the period of limitation of certain criminal offences is suspended until the victim reaches the age of 30.

58. By its 2011 action plan “For the protection of children and youth against sexual violence and exploitation,” the Federal Government has implemented recommendations that were elaborated both at the international level and in the national context. In 2014, an “Overall concept for the protection of children and youth against sexual violence” was developed in which the various approaches are bundled.

59. By instituting the round table “Sexual abuse of children in relationships of dependency and power in private and public institutions and in the family environment,” the office of the Independent Commissioner for Matters of Sexual Abuse of Children (*Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs*) was created; the term of this office was extended until the end of March of 2019.

60. Additionally, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth promotes a variety of projects and initiatives serving to enhance the protection afforded to children and youth against sexualised violence.

61. The term of the initiative “*Trau Dich*” (Speak Out, Get Help),” which has been in force since 2010 across the nation and serves to prevent sexual abuse, and which the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is running together with the Federal Centre for Health Education, was extended until the end of 2018.

62. Furthermore, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has taken the “Federal initiative for ongoing professional training to strengthen the competence and confidence (prevention and intervention) of specialist staff in child and youth welfare services in preventing sexualised violence” as its basis for launching the federal model project 2015 — 2018 “Consult and Strengthen” serving to protect girls and boys with disabilities against sexualised violence in institutions.

63. Further preventive measures such as the guidebook for parents “*Mutig fragen — besonnen handeln*” (Dare to Ask Questions — Take Prudent Action) serve to raise awareness and provide information about the sexual abuse of children. For many years now, the Federal Government has been funding the association “*Nummer gegen Kummer*” (number against sorrow). This distress helpline provides free-of-charge, anonymous support and consultancy to children and youth.

64. Moreover, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been supporting the projects “Primary prevention of the sexual abuse of children by youth” since 2014; it is set to run until 2017. The objective is to preventively protect children and youth against sexualised violence committed by youth and to prevent the use of images of abuse.

65. In order to warrant sustainable protection and effective assistance for refugee women, children, and other particularly vulnerable persons in German refugee shelters and outside of them, the Federal Government has taken a number of measures:

- Jointly with the promotional bank Kreditanstalt für Wiederaufbau (KfW), the Federal Government established a special programme that has been supporting municipalities since March of 2016 by granting interest-free loans financing structural protective measures in refugee shelters. In total, 200 million Euros have been made available for measures of this type. German cities and municipalities have until 31 December 2017 to apply for loans towards structural protective measures in refugee shelters.
- Furthermore, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has launched an initiative, together with the United Nations child welfare organisation UNICEF and further partners, for the protection of women and children in refugee shelters. As part of the federal initiative, “minimum standards for the protection of children, youth, and women in refugee shelters” will be elaborated and published. As part of the initiative, coordinators for the protection against violence (*Gewaltschutzkoordinatoren*) will be hired by the end of 2017, who will be working in 100 refugee shelters in order to elaborate and implement specific protective concepts on the basis of the minimum standards.
- Another focus is on awareness-raising and information campaigns in order to instruct women and girls about their rights as well as about the advice and protection they can obtain in Germany. A significant contribution is made in this regard by the distress helpline for violence against women “*Hilfetelefon Gewalt gegen Frauen*” operating across the Federal Republic (see above), as well as the coordination units against violence against women and human trafficking, which exist across the entire Federal Republic.
- Moreover, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry for the Interior, and the *Länder* are pursuing consultations on the need to take legislative action for the protection of women and children in refugee shelters.

**Reply to the issues raised in paragraph 11**

66. The Federal Government continually scrutinises its legislation in this respect. It is convinced that, especially after the thorough analysis by the Parliamentary Committee of Enquiry, its legislation is in line with Germany's international legal obligations. If the Committee should regard any specific aspects of the national legal framework as falling short of these obligations, the Federal Government will be glad to discuss such aspects in the course of this dialogue.

**Article 3****Reply to the issues raised in paragraph 12(a), 12(b), 12(c), 12(d), 12(e) and 12(f)****12(a) and 12(b)**

67. The numbers have been set out in Annex 3 to Questions 12 a) and b).

**12(c)**

68. The Federal Office for Migration and Refugees (BAMF) examines the matter of whether someone is at risk of torture in their home country as a target state-related factor preventing deportation (section 60 (5) and (7) of the Residence Act (AufenthG)) as part of reviewing that person's application for asylum. Only if the person in question does not file an asylum application will the competent foreigners' authority examine this issue after having involved the Federal Office for Migration and Refugees (section 72 (2) of the Residence Act (AufenthG)).

69. The question of the risk of torture generally will be factored in when it comes to custody pending deportation in those cases in which asylum applications/follow-on applications are filed by someone who is already in detention. These applications are, in turn, examined by the Federal Office for Migration and Refugees.

70. Fundamentally, no statistical data are collected on the grounds that asylum applicants cite in their proceedings. For this reason, no details can be provided regarding the number of cases in which a moratorium is ordered for the deportation due to the risk of torture or ill-treatment.

**12(d)**

71. The numbers have been set out in Annex 3 to Question 12 d).

**12(e)**

72. No numbers are available regarding appeals lodged, for the reasons cited above, against decisions ordering expulsion, return, or deportation.

**12(f)**

73. The numbers have been set out in Annex 3 to Question 12 f).

**Reply to the issues raised in paragraph 13**

74. In Germany, asylum seekers have a statutory entitlement to being notified by the Federal Office for Migration and Refugees (BAMF) on the course of the asylum proceedings and their rights and obligations in same (section 24 (1), second sentence, of the Asylum Act). This provision is supplemented by the obligations of the Federal Office for Migration and Refugees (BAMF) (section 25 paragraphs (1) and (2) of the Administrative Procedure Act (VwVfG)) to provide consultancy services and information. In addition, asylum seekers can take recourse to a broad range of consultancy services provided by non-governmental organisations and attorneys. In some instances, said offerings by non-governmental organisations are co-financed by governmental bodies. The legal advice is provided by attorneys on the basis of the Act on Legal Advice and Representation for Low-Income Citizens (*Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem*

*Einkommen*), respectively the corresponding regulations in place in the *Länder*, and for the most part will be provided free of charge. A harmonisation of this heterogeneous situation would contribute to streamlining and expediting the asylum proceedings. For this reason, the Federal Office for Migration and Refugees (BAMF) began implementing a pilot project on 1 March 2017 in which consultancy is provided on asylum proceedings. The objective of the project is to test model proceedings in which asylum seekers have better access to independent advice on asylum proceedings that is free-of-charge and takes account of their individual situation. This consultancy on asylum proceedings is intended to lend support to asylum seekers such that they are able to obtain qualified information and consultancy at an early stage of the asylum proceedings regarding its content and course, and the rights and obligations they have in this regard.

75. The Federal Office for Migration and Refugees (BAMF) will be pursuing this three-month pilot project at several locations that process expeditious asylum proceedings. The pilot project is implemented by three of the large German welfare organisations, these being Deutscher Caritasverband, Deutsches Rotes Kreuz, and Diakonie Deutschland Evangelischer Bundesverband. In providing the services, the welfare organisations will be supported by attorneys in accordance with the Legal Services Act (*Rechtsdienstleistungsgesetz*, RDG), who are responsible for giving technical instruction to the consultants providing advice on the asylum proceedings and for lending support to them. Furthermore, the welfare organisations will also closely cooperate with the bodies providing consultancy services of other types where required by this purpose.

76. Subsequently, the pilot project will be evaluated by the research centre of the Federal Office for Migration and Refugees (BAMF) and UNHCR Germany. The effects of the consultancy services provided will be evaluated in terms of the asylum proceedings' compliance with the principle of the rule of law as well as their fairness, quality, and efficiency. The evaluation will also consider the effectiveness of the consultancy model.

#### **Reply to the issues raised in paragraph 14**

77. The recommendation of the European Commission dated 8 December 2016 provides for the resumption of transfers under the Dublin Regulation of those asylum seekers irregularly entering Greece from 15 March 2017, as well as of other persons for whom Greece is responsible by reason of other criteria than those set out in Chapter III Article 13 of Regulation (EU) No 604/2013.

78. The recommendations also list the measures that the Greek authorities must take or continue in light of the recommendation to resume, step by step, the transfers under the Dublin Regulation.

79. Furthermore, the recommendation sets out the modalities for the resumption of transfers, by which it is to be warranted that the person to be transferred is accommodated in accordance with the stipulations of the Reception Conditions Directive 2013/33/EU and that their request will be processed pursuant to the Asylum Procedures Directive 2013/32/EU. In this regard, the Member States are to obtain, prior to transferring an asylum seeker to Greece, a corresponding individual assurance from the competent Greek authorities. For the time being, vulnerable asylum applicants and unaccompanied minors are not to be transferred to Greece. Moreover, an EASO (European Asylum Support Office) group is to be instituted that is comprised of experts from the Member States and that has the task of lending support in actually applying the stipulations of the Directives to the persons being transferred.

80. In keeping with the recommendation made by the European Commission, the Federal Office for Migration and Refugees (BAMF) will resume the application of the Dublin system in a staged process, while initially refraining from filing transfer applications with Greece where vulnerable persons are concerned.

81. However, the Federal Office for Migration and Refugees (BAMF) will file transfer applications with Greece, from mid-March of 2017, concerning single persons, married couples, and families not affected by any problematic issues (in cases in which EURODAC searches obtain an asylum application in Greece, or an illegal entry via Greece from 15 March 2017, or a resident permit or visa granted by Greece, with which the person enters

Greece from 15 March 2017 onwards), and in this context will request an assurance in the sense of the recommendation made by the European Commission of 8 December 2016.

82. Since it is likely that not only Germany will be transferring people to Greece, the Federal Government regards the institution of a coordination structure between Greece, EASO, and the affected Member States to be important.

#### **Reply to the issues raised in paragraph 15**

83. As part of implementing Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (restated Qualification Directive), it was primarily section 34a of the Asylum Act (*Asylgesetz* - previously Asylum Procedure Act) that was amended. The statutory provision has been further amended by the Act to Expedite Asylum Procedures (*Asylverfahrenbeschleunigungsgesetz*) of 20 October 2015 and the Integration Act (*Integrationsgesetz*) of 31 July 2016 and will now read as follows:

“(1) If the foreigner is to be deported to a safe third country (Section 26 a) or to a country responsible for processing the asylum application (Section 29 (1) no. 1), the Federal Office shall order his deportation to this country as soon as it has been ascertained that the de- portation can be carried out. This shall also apply if the foreigner filed the application for asylum in another country which is responsible for processing an asylum application based on European Community law or an international treaty, or if he withdraws the application before the Federal Office has made a decision. No prior notification announcing deportation or deadline shall be necessary. If it is not possible to order a foreigner's deportation in line with the first or second sentences, the Federal Office shall notify the foreigner that he will be deported to the country in question.

(2) Appeals of the deportation order pursuant to Section 80 (5) of the Code of Administrative Court Procedure shall be filed within one week of notification. No deportation shall be permis- sible prior to a court decision if the appeal has been filed in time. Applications for temporary relief against decisions by the Federal Office setting time limits for entry or residence bans in line with Section 11 (2) of the Residence Act are to be filed within one week of the notifica- tion. This shall not affect the enforceability of the deportation order.”

84. In implementation of the case law handed down by the European Court of Human Rights and the European Court of Justice, and by way of implementing Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast Dublin Regulation), the Act serving to transpose into national law Directive 2011/95/EU of 28 August 2013 (EU Directives Implementation Act (*Richtlinienumsetzungsgesetz*) 2013) is intended to warrant that all objections to transfers under the Dublin Regulation can be asserted in a timely manner, and that legal review can be sought in court proceedings, still prior to the transfer.

85. No statistics are kept on the grounds for which a deportation or transfer was suspended.

#### **Reply to the issues raised in paragraph 16**

86. All doctors who carry out initial medical checks are fully qualified and registered doctors. They are generally prison doctors employed by the establishment in question (*Anstaltsarzt*) or the respectively competent police doctors. Some of them work in this field in addition to their regular occupation and run their own private practices, generally as general practitioners. Where there is a need for a specialist physician to be consulted, the corresponding specialists will be called in.

87. All doctors are free and independent in their medical decisions; the same applies to doctors under contract with the police or prisons.

88. Consultation of an additional advisory physician at the cost of the asylum seeker: This category is not recorded in Berlin. The other *Länder* stated that no cases were recorded.

89. In total, the Federal Office deploys 262 special commissioners.

#### **Reply to the issues raised in paragraph 17**

90. The airport procedure is applied in the case of unaccompanied minors with the requisite sensitivity. Only in a very few, isolated cases was entry refused. In 2016, the airport procedure was not applied in a single case where minors were concerned.

91. Just as is the case for the decision taken in regular asylum proceedings, the airport procedure is applied based on an evaluation of the individual case, including a risk assessment.

### **Articles 5, 7 and 8**

#### **Reply to the issues raised in paragraph 18**

92. The Federal Government has been informed that the investigation against the persons suspected of having taken part in the abduction of Mr. El-Masri has been closed on 15 March 2017 by the Munich prosecution office. The reason for the decision is that the prosecution is now time-barred.

93. The execution of the European Court of Human Rights' judgment has been under supervision (in the so-called "enhanced procedure") by the Council of Europe's Committee of Ministers since 2012. It has so far been discussed in seven meetings of the Committee. The Federal Government takes part in this collective supervision effort which aims at ensuring that the applicant will as far as possible receive *restitutio in integrum*.

#### **Reply to the issues raised in paragraph 19**

94. Proceedings based on the principle of universal jurisdiction were held before the *Oberlandesgericht* (Higher Regional Court) of Stuttgart under the German Code of Crimes against International Law (*Völkerstrafgesetzbuch* — VStGB) against two citizens of Rwanda for war crimes and crimes against humanity. The defendants were sentenced to thirteen years and eight years of imprisonment, respectively.

95. The Federal Government is not aware of any further proceedings.

### **Article 10**

#### **Reply to the issues raised in paragraph 20**

96. The Federal Government has seen to it that a German translation of the Istanbul Protocol is available in the Open-Access site of a scientific publishing house; it can be accessed at no charge under the following URLs: [http://www.v-r.de/de/istanbul\\_protokoll/t-1/1010111/](http://www.v-r.de/de/istanbul_protokoll/t-1/1010111/); <http://www.vr-elibrary.de/doi/book/10.14220/9783737000307>.

97. By letter of 10 August 2015, all of the *Land* Ministries of Justice and of the Interior were informed of this new manual having become available; the significance of the Protocol for the training courses provided to members of staff was once again highlighted in order to warrant its corresponding use in the respective training programmes of the *Länder* and of the Federal Office for Migration and Refugees. Above and beyond this, the National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*), the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*), the Human Rights Centre (*Menschenrechtszentrum*) of the University of Potsdam, the Forum for Human Rights (*Forum Menschenrechte*), the Treatment Centre for Victims of Torture (*Behandlungszentrum für Folteropfer*), and further NGOs were also informed of the opportunity to access this Protocol free of charge; they were asked to likewise contribute to disseminating the Istanbul Protocol further.

**Reply to the issues raised in paragraph 21**

98. The Federal Government continues to pursue efforts to keep the prohibition of violence in child-rearing a topic of public discourse. One example for the public relations work done is the letter to parents, available in German, Russian, Turkish, and Arabic, on the topic of domestic violence, which is distributed for free in schools by the Working Group for New Child-Rearing Principles (*Arbeitskreis Neue Erziehung*) and which has been widely disseminated. (<https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/elternbrief-zum-thema--haeusliche-gewalt--in-neuer-auflage-erschiene/83250?view=DEFAULT>).

**Reply to the issues raised in paragraph 22**

99. As already stated previously in paragraph 73 of the response to the List of Issues for the last State report, the instructions issued to the intelligence services continue to set out, as before, clear and unequivocal references to the prohibition of torture and other impermissible examination methods.

**Article 11****Reply to the issues raised in paragraph 23(a), 23(b), 23(c) and 23(d)****23(a)**

100. In the course of its visits to Germany, the CPT regularly reviews the use of physical restraints in various institutions and makes recommendations in this regard in its reports (most recently during the 6th periodic visit from 25 November until 7 December 2015). The reports are forwarded by the CPT liaison officers in the various departments (Justice, Interior, Health, Social Affairs, Family, and others) to a broad range of recipients at the federal level and in the *Länder*, requesting their feedback. In the follow-up proceedings, views and experiences are subsequently exchanged on specialist topics. The CPT reports and the statements of position by the Federal Government are published on the respective websites of the CPT and of the Federal Ministry of Justice and Consumer Protection. For details on the coordination among the *Länder*, reference is made to the response to Question 3.

**23(b) and 23(c)**

101. As concerns the oversight committees, particulars on statistics, and ongoing professional training, the Federal Government refers to its letter to the Committee of March 2014.

102. Above and beyond this, the following is to be amended regarding the field of nursing care:

103. All nursing homes and outpatient home care services are inspected regularly, at intervals of not longer than one year, by the Medical Service of the Health Insurance Providers (*Medizinischer Dienst der Krankenversicherung*), by the Inspection Service of the Private Health Insurance Providers (*Prüfdienst des Verbandes der privaten Krankenversicherung e.V.*), or by an expert appointed by the *Land* Associations of the Long-Term Nursing Care Funds (*Landesverbände der Pflegekassen*), as well as by the supervisory authority responsible for nursing homes (*Heimaufsicht*). In addition, repeat inspections may be performed, respectively, at any time, inspections for cause, for example due to a complaint having been filed. Fundamentally, all inspections of inpatient nursing care facilities are to be performed without prior announcement. Quality inspections performed in outpatient nursing care facilities are to be announced on the previous day (with inspections for cause also being performed unannounced).

104. The attention that this issue is increasingly being paid is evidenced also by the fact that a guideline was developed by members of the specialist academic field and by practitioners, and updated in 2015, that lends support to caregivers on the basis of scientific insights on how to avoid the use of measures restricting the liberty of the patients for whom they are caring ([www.leitlinie-fem.de](http://www.leitlinie-fem.de)). The guideline was elaborated together with a group

of experts from various fields. Among others, residents, nursing care facilities, the supervisory authority responsible for nursing homes, and the Medical Service of the Health Insurance Providers were involved. The project was funded by the Federal Ministry for Education and Research.

105. Two projects — Werdenfelser Weg and ReduFix — are actively offering training seminars on how to avoid restraints to the greatest degree possible. The Werdenfelser Weg project has had a considerable impact. Having started as a regional project in Bavaria, it is now active throughout Germany and gives guidance to those dealing with the issue on the ground. The ReduFix project by now has produced a number of instructors (“multipliers”) who offer in-house trainings in institutions interested in reducing the recourse to restraints. On its website, the project offers handbooks and guiding material as well as contact points for training courses. All these materials and training seminars aim at raising awareness not only of the legislative provisions mentioned but also of the general necessity of avoiding restraints as much as possible.

106. The German Judicial Academy also continues to offer seminars on the topic.

### **23(d)**

107. The Federal Government refers to its letter to the Committee of March 2014. Moreover, statistical information is submitted regarding complaints about abuse that were filed against officers of the Federal Police (*Bundespolizei*) and officers of the *Land* police authorities (*Länderpolizeibehörden*) (in the period from 1 January 2011 until 31 December 2015), which had also been transmitted to the CPT by way of following up on its most recent visit to Germany ([see Annex 4](#)).

108. The statistics maintained by the judicial authorities about proceedings that have been initiated do not allow any conclusions to be drawn about the specific outcome of the criminal proceedings in which an indictment was preferred. This is the result simply of the fact that the filing of charges under criminal law, the preferment of the indictment, and the conclusion of the proceedings in a final and conclusive manner often will occur in different calendar years. However, it was possible to glean a number of decisions from the personnel files kept by the authorities employing the persons in question that are suited to serve as example; they show that where indictments are preferred against police officers, these obviously may also result in grave sanctions under criminal law or in disciplinary consequences in the individual case. Thus, suspended sentences were meted out in Bavaria in the years 2013 until 2016 in seven cases, which also resulted in disciplinary measures being taken.

109. In Saxony, two sentences were handed down that required a fine to be paid, and in one case, the accused party was sentenced to imprisonment; several proceedings are still pending. In Saxony-Anhalt, a police officer was removed from the service; in one case in which charges had been filed for the suspicion of bodily harm having been caused in the course of official duties, the criminal proceedings were dismissed and a fine was levied in the subsequent disciplinary proceedings. The above are just a few examples from a small number of *Länder*.

### **Reply to the issues raised in paragraph 24**

110. From the perspective of the *Länder* affected, in which the practice of *Fixierung* continues to be applied, it is not possible to forgo this means of last resort in dealing with prison inmates. At the very least, this measure must continue to be an option in order to protect the party affected as well as others. However, the strict statutory requirements in place that must be met for a corresponding order to be issued, along with the strict implementing rules applying in its regard, are a reflection of the efforts made by all *Länder* to ensure that *Fixierung* is ordered only as a last resort.

111. Where *Fixierung* continues to be practiced, it is used only for short periods of time (under direct and constant supervision by a member of staff — *Sitzwache*) and immediately is brought to the attention of a doctor.

112. Those *Länder* that still uphold the option of *Fixierung* in police custody will continuously be encouraged to draw on the experiences of those *Länder* that have abandoned the practice. *Fixierung* in prisons has become a rare occurrence. The CPT has commented on the practice encountered in its 2015 visit as follows:

113. “The CPT welcomes the fact that, since the 2010 visit, the use of mechanical restraint (*Fixierung*) in the context of police custody has been abandoned by the **police authorities** of several *Länder*, including Baden-Württemberg, Berlin, Saarland and Thuringia. The Committee calls upon the police authorities of Lower Saxony, North-Rhine Westfalia, Saxony-Anhalt and all other *Länder* concerned to put an end to this practice without any further delay.”

114. “The CPT is pleased to note that the downward trend observed during the 2013 visit regarding the use of mechanical restraint (*Fixierung*) in **prisons** has continued. As a matter of fact, in most of the prisons visited, hardly any prisoner had been subjected to *Fixierung* in recent years. The CPT encourages the relevant authorities of all *Länder* to abandon the resort to *Fixierung* in prisons.”

#### **Reply to the issues raised in paragraph 25**

115. It is ensured in all of the *Länder* that any suspected ill-treatment will be investigated.

116. Fundamentally, all cases in which there is the suspicion of prison inmates having been subjected to ill-treatment are to be filed with the competent public prosecutor’s office. According to the relevant *Land* laws, the corresponding disclosure obligations exist either directly vis-à-vis the public prosecutor’s office or, where the medical staff is concerned, vis-à-vis the management of the institution, which will then take the decision on whether or not to file charges with the public prosecutor’s office.

117. The findings gained in such investigations are carefully documented and are brought to the attention of the prosecution authorities. The laws of some of the *Länder* additionally stipulate that prison physicians must disclose information to prison management to the extent this is required in order to avert any danger to the safety and order of the prison, or to the physical integrity and life of the inmates or of third parties, or to the extent this is otherwise required in order for the prison or detention facility to fulfil its tasks. This obligation is consistently complied with.

#### **Reply to the issues raised in paragraph 26**

118. Information about the possibilities of lodging an appeal is usually already contained in the general written information provided to detainees upon arrival in the place of detention. In North Rhine-Westfalia, Lower Saxony and Thuringia, prisoners will receive a copy of the decision upon request; in Saxony it was decided that, going forward, prisoners would be provided with a copy of the disciplinary decision, along with written instructions regarding the means available to them of lodging an appeal.

#### **Reply to the issues raised in paragraph 27**

119. By its Resolution CM/ResDH(2014)290 adopted on 17 December 2014, the Committee of Ministers has declared the monitoring done in these cases to be terminated. By its judgment handed down in the application proceedings of *Bergmann v. Federal Republic of Germany* (Application no 23279/14) of 7 January 2016, the European Court of Human Rights (ECtHR) has fundamentally accepted that the new provisions made for preventive detention by the Act on establishment, at the federal level, of a difference between the provisions on preventive detention and those on prison sentences (*Gesetz zur bundesrechtlichen Umsetzung des Abstandsgebotes im Recht der Sicherungsverwahrung*) that was signed into law in late 2012 and entered into force as per 1 June 2013 result in the German regulations complying with the provisions of the European Convention on Human Rights (ECHR).

**Total number of convicted offenders serving their sentence (male/female) for whom preventive detention was ordered, respectively deferred**

*Number of persons sentenced to imprisonment for whom, concurrently, preventive detention was either ordered or deferred:*

120. Preliminary note: The criminal prosecution statistics (kept by the Federal Statistical Office, special publication series 10, series 3) do not provide any figures on the deferral of preventive detention (section 66a (1) and (2) of the Criminal Code (StGB)).

121. In all other regards:

- 2010: 101 orders
- 2011: 64 orders
- 2012: 56 orders
- 2013: 32 orders
- 2014: 44 orders
- 2015: 47 orders

122. It is possible to supplement the number of *proceedings* that were pursued with regard to preventive detention, whether deferred or imposed post-conviction, from the statistics kept by the criminal courts on the allocation of duties to their panels (*Geschäftsstatistik*) (kept by the Federal Statistical Office, special publication series 10, series 2.3); however, the outcomes of these proceedings have not been recorded therein, nor do these numbers distinguish between deferred preventive detention and preventive detention imposed post-conviction:

- 2010: 60 proceedings
- 2011: 29 proceedings
- 2012: 29 proceedings
- 2013: 12 proceedings
- 2014: 23 proceedings
- 2015: 18 proceedings

**Total number of persons (male/female) in preventive detention:**

- 30 November 2010: 503 (501 m, 2 f)
- 30 November 2011: 466 (463 m, 3 f)
- 30 November 2012: 465 (462 m, 3 f)
- 30 November 2013: 493 (491 m, 1 f)
- 30 November 2014: 511 (510 m, 1 f)
- 30 November 2015: 521 (520 m, 1 f)
- 30 November 2016: 543 (542 m, 1 f)

123. As concerns the situation given in Freiburg prison, we refer to the attached summary of the current status ([see Annex 5a](#)), which presents the improvements made since the visit by the CPT in 2013. The sections concerning Freiburg from the statement of position filed by the Federal Government with the CPT by way of reacting to the latter's report of the time likewise have been attached hereto ([see Annex 5b](#)).

**Reply to the issues raised in paragraph 28**

124. In 2016, a total of 3,968 persons were transferred under the Dublin Regulation to another Member State.

125. Some of the data requested are not available. The figures in the following tables show, however, a marked decline in the use of detention for deportation. Virtually no minors have been detained in recent years.

#### Number of persons detained for deportation on given date

<i>Land</i>	<i>June 30th, 2012</i>		<i>June 30th, 2013</i>		<i>June 30th, 2014</i>		<i>June 30th, 2015</i>	
	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>
Baden-Württemberg	40	-	61	-	5	-	1	-
Bavaria	76	2	90	-	45	-	11	
Berlin	22		16		0		4	
Brandenburg	21		15		1		4	
Bremen	0		1		0		0	
Hessen	38		37	1	11			
Hamburg	12		4		3		2	
Mecklenburg-Western Pomerania	3		8					
Lower Saxony	14		9		8		6	
North Rhine-Westfalia	110		65		34		28	
Rhineland-Palatinate	9		2		2		0	
Saarland	1		1		0		0	
Saxony-Anhalt	6		3		7		0	
Schleswig-Holstein	38	7	28	5	17		1	
Saxony*								
Thuringia	4		1		0			
<b>Total</b>	<b>394</b>	<b>9</b>	<b>341</b>	<b>6</b>	<b>133</b>	<b>0</b>	<b>57</b>	

\* No figures for dates given, see second table for overall figures.

#### Total number of persons detained for deportation during the year

<i>Land</i>	<i>2012</i>		<i>2013</i>		<i>2014</i>		<i>2015</i>	
	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>
Baden-Württemberg	454		524		73		31	
Bavaria	1 106	28	1 029	9	489	1	146	
Berlin	325	1	221		348	1	153	
Brandenburg	339	1	236		102		20	
Bremen	27	1	13		9		4	
Hessen	530	*	441	*	117	*	46	*
Hamburg	149		116		80		3	
Mecklenburg-Western Pomerania	57	3	84	2	12			
Lower Saxony	223		142		129		75	
North Rhine-Westfalia	1 408		1 193		424		60	
Rhineland-Palatinate	109		28		27		14	
Saarland	25		6		5		1	
Saxony-Anhalt	63		37		14		9	
Schleswig-Holstein	38	7	28	5	17		1	
Saxony*	119	*	181	*	**		**	

<i>Land</i>	2012		2013		2014		2015	
	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>	<i>Adults</i>	<i>&lt;18</i>
Thuringia	18		16		2			
<b>Total</b>	<b>4 990</b>	<b>41</b>	<b>4 295</b>	<b>16</b>	<b>1 848</b>	<b>2</b>	<b>563</b>	

\* Not disaggregated.

\*\* No detention for deportation from 2014.

### Reply to the issues raised in paragraph 29

126. Since the judgments handed down by the European Court of Justice of 17 July 2014 (C 473/13) and by the Federal Court of Justice of 25 July 2014 (V ZB 137/14), it is impermissible to execute the custody pending deportation in penal institutions. The *Länder* are complying with this requirement. Inasmuch as the *Länder* do not maintain any separate facilities for immigration detainees, they use the institutions run by other *Länder*.

### Reply to the issues raised in paragraph 30

127. The Federal Government continues to hold that, in the context of extraditions, diplomatic assurances may be a means of ruling out the danger of violations of the Convention. This also corresponds to the interpretation of the law by the European Court of Human Rights, for example in the case of *Othman (Abu Qatada) v. the United Kingdom* (Application no 8139/09, judgment of 17 January 2012). The Federal Government observes the prerequisites listed by the ECtHR in this judgment, based on which assurances of this type are valid.

### Reply to the issues raised in paragraph 31

128. The Parliamentary Committee of Inquiry mentioned above had determined at the time that, where the facts and circumstances under investigation are concerned, the Federal Government, its employees, as well as the employees of subordinate authorities at all times acted in keeping with the existing laws in their efforts to combat international terrorism. In this context, there have been no violations of human rights or of the principle of the rule of law in the Federal Republic of Germany.

129. The recommendations made by the Parliamentary Committee of Inquiry referred to a reform of the parliamentary control of the intelligence services, which was implemented by the corresponding Acts of 2009 and 2016. An amended version of the Act has been attached hereto (see [Annex 6](#)). The Committee did not demand that the Federal Government perform an additional investigation besides the clarification already provided to the Parliamentary Committee of Inquiry.

## Article 12, 13 and 14

### Reply to the issues raised in paragraph 32

130. The principle applies that any investigation proceedings under criminal law pursued on the suspicion of a criminal offence having been committed will be subject to the powers of the public prosecution office to direct investigation proceedings. It is ensured in nearly all of the *Länder* that the necessary specific investigations will be assigned to a different police precinct than the one against whose staff the charges have been filed.

131. Moreover, the *Länder* Bavaria, Bremen, and Hamburg each have instituted a central investigation office which, as a rule, will be tied to the respective Ministry of the Interior or the *Land* Criminal Police Office and which will pursue the investigations should any complaints be raised regarding police officers.

132. The *Länder* Lower Saxony, Saxony, and Saxony-Anhalt have instituted central recourse mechanisms of the police in their Ministries of the Interior, whereby the independent central complaints office of the police (*Zentrale Beschwerdestelle der Polizei*)

instituted in Saxony does not pursue any investigations under criminal procedural law in cases in which charges have been filed against police officers.

133. The same applies to the central complaints office (*Zentrale Beschwerdestelle*) instituted in Saxony-Anhalt, which is likewise not bound by instructions.

134. Since 18 July 2014, the opportunity has been available also in the Rhineland-Palatinate to take recourse to the Commissioner for the *Land* Police Office (*Beauftragter für die Landespolizei*) with complaints about personal misconduct by individual police officers or about measures taken by the police. The Commissioner is the point of contact for complaints by citizens or suggestions regarding the *Land* Police Office. Likewise, police officers may file submissions in connection with their activities directly with the Commissioner, without having to go through official channels. The Commissioner for the *Land* Police Office observes his duties as an auxiliary body of the *Land* Parliament in exercising parliamentary control and is independent, not bound by any instructions, and subject solely to the law in exercising this office.

135. In Schleswig-Holstein, disciplinary inquiries are pursued centrally in the Ministry of the Interior by special disciplinary investigators, in which context the supreme disciplinary authority is a division that does not form part of the police. The *Land* Parliament of Schleswig-Holstein adopted the draft bill on 8 June 2016 for the Amendment of the Law on the Public Services Ombudsman (*Bürgerbeauftragten-Gesetz*), which is aligned with the model in place in the Rhineland-Palatinate and introduces the function of ombudsman for the *Land* Police Office of Schleswig-Holstein as a further instance of recourse. The law entered into force on 1 October 2016.

136. In Mecklenburg-Western Pomerania, everyone has the right to turn to the Public Services Ombudsman of the *Land* of Mecklenburg-Western Pomerania with the *Land* Parliament of Mecklenburg-Western Pomerania if there is the suspicion of misconduct by the police. The Public Services Ombudsman exercises his or her office independently and is subject only to the law.

137. The *Land* Baden-Württemberg has instituted the function of Public Services Ombudsman in 2016; he or she exercises the office independently, is not bound by any instructions, and is subject solely to the law (cf. Act on the Public Services Ombudsman of the *Land* of Baden-Württemberg (*Gesetz über die Bürgerbeauftragte oder den Bürgerbeauftragten des Landes Baden-Württemberg*) of 23 February 2016 - BürgBG BW, published in the Land Law Gazette (GBl.) 2016, p. 151). The Public Services Ombudsman is responsible in particular for the police. On the one hand, the function is the point of contact for police officers, and on the other, it is the central contact of citizens and represents their interests, in the capacity of mediator, when they file a notification regarding potential personal misconduct of individual staff members of the police or allege that a certain measure taken by the police is or was unlawful.

138. The intention in Berlin is to institute the function, in keeping with the model set by the Rhineland-Palatinate, of a Public Services Ombudsman of the *Land* of Berlin and Commissioner for the *Land* Police Office, in the interests of strengthening the rights of citizens and the acceptance of actions taken by the police. The Commissioner for the *Land* Police Office, whether male or female, also is to be the point of contact for staff members of the police.

139. In Bremen, every citizen has the opportunity to take recourse to the division “internal investigations” (*Interne Ermittlungen*) wherever his or her suspicion concerns matters governed by criminal law (e.g. infliction of bodily harm). In cases in which such facts or circumstances are mentioned in complaints brought before the police, the files will be forwarded, without undue delay, to the section “internal investigations” with the Senate of the Interior, for it to pursue the further investigations.

140. In the first half year of 2017, the Free State of Thuringia will have instituted the function of police ombudsman (*Polizeivertrauensstelle*) within the Thuringian Ministry for the Interior and Municipal Affairs.

141. At this juncture, the Federal Government would note that in 2015, the National Agency for the Prevention of Torture dealt with the matters, among others, of preventing

misconduct by the police as well as with independent complaints offices and investigations departments. The results have been published in the Annual Report for 2015 (see [Annex 1b](#) — Annual Report 2015, p. 16-18).

### Reply to the issues raised in paragraph 33

142. The *Länder* are responsible in each case themselves for deciding whether or not police officers are subjected to the requirement to wear identification badges. The Federal Government has recommended that the *Länder* take account of the views held by the CPT and the Committee. However, the Federal Government does not have the authority to instruct the *Länder* to take any measures in the sphere of responsibility governed by their own legislative power.

143. The following provisions apply at present in the *Länder* Rhineland-Palatinate, Schleswig-Holstein, North Rhine-Westfalia, and Lower Saxony, for which information has been requested by this Question:

144. In the Rhineland-Palatinate, wearing identification badges is mandatory.

145. Schleswig-Holstein recommends that police officers in uniform wear identification. At public lecture events and when manning information booths, officers in uniform are to wear name tags. Members of special police units and of formed units are identified by a number.

146. In North Rhine-Westfalia, the police officers are free to decide at their discretion whether or not to wear name tags on their uniforms (not on riot gear). Moreover, the Police Law (*Polizeigesetz*) for North Rhine-Westfalia was amended in December of 2016; this introduced identification badges allowing the individual police officers to be identified retroactively after their deployment in police task forces and alarm units.

147. Lower Saxony intends to introduce an “individualised, anonymised identification of the police forces where formed units are deployed.” Police officers are free to decide at their discretion whether or not to wear name tags on their uniforms (unless they are deployed as part of a formed unit). The Ministry of the Interior and for Sports of Lower Saxony expressly has called for this to be done.

148. Moreover, wearing identification badges is mandatory for police officers in Berlin, Brandenburg, Hessen, Saxony-Anhalt, and Thuringia. A range of varying exceptions apply (e.g. in cases in which wearing the identification badge would place the police officer concerned at excessive risk).

149. The *Land* government of Saxony-Anhalt introduced a draft bill to the *Land* Parliament of Saxony-Anhalt in December of 2016 on the obligation of police officers to wear identification (Official Record of the *Land* Parliament (LT-Drs.) 7/685). The bill specifically stipulates that police officers deployed as part of formed units are to wear suitable tactical identification from 1 January 2018 onwards allowing them to be identified retroactively. It is intended to significantly curtail the exemptions from wearing an identification badge allowing the identity of the wearer to be identified retroactively, which currently apply as a result of administrative regulations.

150. Since the beginning of 2015, the Land of Hessen has made wearing numerical identification mandatory for any police officers deployed as part of formed units (e.g. in the event of soccer games, events, and demonstrations). The numerical identification offers an additional means of clearly identifying the members of the task force. In justified cases, wearing this numerical identification may be dispensed with (e.g. the deployment of special units, deployment in the context of organised crime).

151. Bremen has introduced the individual identification of police officers deployed as part of formed units. Police officers are free to decide at their discretion whether or not they wish to wear name tags on their uniforms (outside of their deployment as part of formed units).

152. Likewise, it is planned in Thuringia to introduce mandatory identification for police officers deployed in formed units.

153. The following provisions apply in the other *Länder*:

154. Hamburg has identified a number of groups of police officers that are under obligation to wear identification badges. In all other groups, wearing the identification badges is voluntary. However, the political parties that entered into a coalition for the 21st legislative session of the Hamburg City Parliament (*Hamburgische Bürgerschaft*) have agreed, in the Coalition Agreement they concluded in 2015 on their collaboration, to expeditiously enter into negotiations with the police unions in order to review whether it is possible — and if so, how this can be achieved — to introduce the existing obligation to wear group-related identification also for the Hamburg police task forces (*Hamburgische Bereitschaftspolizei*). The consultations pursued in this regard have not yet been brought to a close.

155. In Baden-Württemberg, Bavaria, Mecklenburg-Western Pomerania, Saxony, and in Saarland, wearing identification is voluntary.

156. In Mecklenburg-Western Pomerania, it is intended to establish rules in the current legislative session (2016-2021) to the effect that police officers of formed units are to be given an individual identification for the duration of their deployment, which will allow them to be identified if this is required at a later time.

157. In Baden-Württemberg, identifying police officers fundamentally is enabled by identification being placed on the backs of their riot gear jackets (*Rückenkennzeichnung*) and by the comprehensive documentation of the deployments.

158. For all units of the police of Saxony deployed as formed units, a group-related identification has been introduced that is to be worn on the back of the riot gear jackets. In conjunction with a comprehensive documentation of the deployment, this fundamentally allows police officers to be identified. At present, it is not intended to place police officers under any further-reaching identification obligations.

159. A number of *Länder* have reported in the past that increasing numbers of police officers are voluntarily wearing identification badges.

160. For members of the public order support forces of the Federal Police (*Bundesbereitschaftspolizei*), it is possible to place group-related identification on the backs of their riot gear jackets for the corresponding deployment allowing the officers to be identified. It is not planned to provide any further-reaching individual identification of police officers when deployed.

161. An expert report prepared in 2008 by the Freie Universität Berlin (Prof. Klaus Rogall) analysed around 150 charges brought under criminal law against police officers and obtained the result that the investigations of these cases had not been seriously impeded by the lack of individual identification.

#### **Reply to the issues raised in paragraph 34**

162. The figures relating to complaints against the police — including the outcome of proceedings — have been set out in Annex 4 (see also the response provided to Question 23 d)).

#### **Reply to the issues raised in paragraph 35**

163. In all police authorities of the *Länder* and in the Federal Police, it is consistent practice to notify, respectively instruct, the affected parties immediately upon their having been taken into custody of the reasons therefor, on the one hand, and on the other as regards their rights and obligations. For this purpose, instruction sheets as a rule will be handed out to the person affected; these are kept available in the detention facilities in up to 34 foreign languages.

164. Any contacts the persons affected may have to family members, attorneys, doctors, or representatives of consular missions, and/or any visits by such persons, will be documented as a matter of principle and thus are retroactively traceable. As a rule, it is offered that the person affected may take recourse to legal advice, and where needed, it is warranted that a meeting with counsel can take place in an undisrupted setting.

165. In this regard, the Federal Government refers to its responses given to Questions 4 and 32.

166. When it comes to the Federal Police, the relevant legal provisions and police custody regulations are legally binding as regards the type and extent of information provided in respect of all procedures and measures relating to the detention of persons. The required information and documentation sheets relating to the detention of persons are available in the police stations and can be called up in several languages and can, as necessary, be completed electronically or on paper.

167. Once the information has been provided and the relevant sheets have been filled in, a record is made in the police station's custody record book.

168. In Baden-Württemberg, suitable measures serve to ensure that the persons taken into custody by police officers are given comprehensive instructions on their rights. Verbal instructions are given immediately, as a rule at the time at which the person affected is deprived of his or her liberty. At the next possible opportunity, written instructions are issued additionally. To this end, an instruction sheet is handed over to the persons taken into custody (if at all possible, in their native language). Where persons are taken into custody pursuant to the Police Law of Baden-Württemberg (*Polizeigesetz*, PolG BW), they are likewise instructed. In cases in which these instructions cannot be translated into the language of the detainee immediately, they will be subsequently issued in his or her native language in the near term. Where the person taken into custody is in a state ruling out the free exercise of his or her will, the instructions on the rights to which that person is entitled will be issued at a later time.

169. The practical implementation of the fundamental rights of the persons taken into custody and the measures taken to protect them against abuse by the police are documented. This includes information on contacts to family members and on consultations with physicians or attorneys, both those that are enabled and those that are demanded. The information documented in paper form or electronically is kept available in every institution of the police, thus allowing the treatment afforded to the persons taken into custody to be traced and the information provided in this regard to be retrieved at a later date.

170. In Bavaria, the guideline "Police Examinations in Investigation Proceedings under Criminal Law" (*Polizeiliche Vernehmung in strafrechtlichen Ermittlungsverfahren*) has been restated and promulgated on 3 April 2014. This makes the following stipulations, *inter alia*, on the practice of examinations and instructions by the police of/to accused parties (youth) who have been arrested/detained or taken into custody:

171. "Persons arrested, detained, or taken into custody shall be instructed as to their rights without delay, in other words prior to their examination being commenced, in writing and in a language they understand (section 114b StPO). Independently of immediate verbal instructions being issued, it shall be sufficient to instruct them in writing once they have been brought to the precinct. Where verbal instructions were provided in advance, it is to be documented in writing in the near term of when they were provided, where, and by whom."

172. Instruction forms in various languages, applicable uniformly across the Federal Republic, are available for retrieval in the "*Formularkatalog Bayern*" forms database (on the intranet of the Bavarian police) and are accessible throughout Bavaria to all staff members of the Bavarian police.

173. Also where measures depriving the person affected of his or her liberty, taken pursuant to the Law on Police Tasks (*Polizeiufgabengesetz* — PAG), are concerned, the instructions issued (Art. 19 (1) PAG) are documented and signed.

174. The Bavarian instruction forms are subjected to regular review and optimisation. Thus, for example, the form sheet "*Gewahrsam*" (Custody) recently was supplemented, at the recommendation of the National Agency for the Prevention of Torture, by a documentation field allowing the reasons to be provided for which the instruction sheet was not handed over in the case of measures depriving a person of his or her liberty pursuant to the Law on Police Tasks (PAG).

175. In Berlin, parties affected by measures depriving them of their liberty are verbally instructed, directly at the place at which they are so deprived of their liberty, on the grounds therefor and on the fundamental rights to which they are entitled. Moreover, instruction documents (*Belehrungsbögen*) are available in a range of languages that are to be handed over to the parties being deprived of their liberty; the fact of the documents having been handed over is to be confirmed, in the cases governed by section 114b StPO, by the signature of the party affected. Although there is no statutory obligation to do so, the person affected will be issued a copy of the instruction document in all cases. As a rule, language barriers will be overcome by involving members of staff able to speak the respective language, respectively interpreters. Where examinations are performed, interpreters are to be involved as a matter of principle.

176. Contacts to family members, attorneys, physicians or representatives of consular missions and/or visits by these persons are documented by the detention facilities and can be traced retroactively. Where the police take someone into custody, they will offer to the person so taken into custody to take recourse to legal advice and where needed will make arrangements for a meeting with counsel to take place in an undisrupted setting.

177. The fact of the instruction documents having been handed over pursuant to section 114b StPO is documented, *inter alia*, in the investigation files electronically. The law does not require any additional documentation to be included in the evidence on the placement of the person affected.

178. In Bremen, instructions are issued in the context of measures taken to deprive persons of their liberty in accordance with the stipulations of the Code of Criminal Procedure (*Strafprozessordnung* — StPO), respectively of the Police Law of Bremen (*Bremisches Polizeigesetz*). As a matter of principle, persons who are being deprived of their liberty are instructed on their fundamental rights by the police officers first taking action. The point in time at which such instructions were issued is documented in the course of preparing the police report; the instructions also include the note that it is possible to involve a court-appointed defence attorney already in the investigation proceedings, to notify, in the case of foreign citizens, the competent consular mission for purposes of representation, and the right to notify family members or trusted persons (provided this does not jeopardise the further investigations). Decisions by judges on the measures depriving the persons affected of their liberty will be obtained without undue delay and in keeping with statutory requirements. Should the detainees so wish, the information sheet will be handed over to them, which is available in several languages. Depending on the circumstances, an interpreter will be involved in order to issue the instructions verbally.

179. Based on the recommendations made by the CPT in 2013, the procedural instructions on the principles governing the handling of persons temporarily detained, respectively taken into custody, were once again revised and the corresponding training courses were updated in keeping with these amendments.

180. The provisions applicable in Hamburg continue in force unchanged and are as follows:

181. A person who has been detained is to be notified immediately of the occasion giving rise to his or her being deprived of his or her liberty. As a matter of principle, that person is to be handed an instruction form, completed by his or her particulars, in a language that person is able to understand.

182. The detainee is to confirm in writing that he or she has been instructed; should the detainee refuse to do so, this is to be documented. Where necessary, for example because the person affected is illiterate, the instructions are to be made verbally. Where the effort involved is proportionate, an interpreter is to be called in; reasons must be stated and added to the files where a person waives the right to call in an interpreter.

183. Moreover, a detainee is to be informed, respectively instructed, about his or her rights, such as the right to involve a trusted person or a legal adviser. The time at which this information, respectively instruction, on the detainee's rights is provided shall be documented in the context of preparing the report.

184. The Hamburg police is already following the recommendation by the CPT to use instruction documents for the instruction of detainees. The documents are available in German and in other languages. The originals of the instruction forms signed by the persons affected are included in the files; should the detainees so wish, a duplicate will be handed over to them.

185. The electronic detention ledger (*elektronisches Verwahrbuch* — EVB) already serves the Hamburg police as a means of putting into actual practice the fundamental rights and protective measures against abuse.

186. This electronic ledger records in a traceable manner the times at which a trusted person, a legal adviser or a physician was notified, or when a corresponding attempt was made. This is also documented in the course of preparing the report. Based on the applicable retention periods, these entries are available for several years.

187. In Mecklenburg-Western Pomerania, persons deprived of their liberty will be given a written instruction sheet informing them of their rights. The instruction sheet is to be signed by the person affected.

188. The treatment afforded to persons taken into custody in Lower Saxony has been provided for by section 20 of the Law of Lower Saxony on Public Safety and Order (*Niedersächsisches Gesetz über die öffentliche Sicherheit und Ordnung* — Nds. SOG), sections 114a et seqq. of the Code of Criminal Procedure (*Strafprozessordnung* — StPO), and, by way of supplementation, the Ordinance on Police Custody (*Polizeigewahrsamsordnung*) (circular order issued by the Ministry of the Interior of 15 December 2008). According to the Ordinance on Police Custody, any person so taken into custody is to be handed an “information sheet for the persons taken into police custody/temporarily detained” setting out that person’s rights in connection with the placement; this document is available in 17 languages. It is a matter of principle to hand over the information sheet immediately.

189. Following an arrest by the police, or once a person has been taken into custody, in the Rhineland-Palatinate, they are instructed in accordance with the forms having application throughout the Federal Republic. According to Clause 2.5.1 of the Ordinance on Police Custody for the Police of the Rhineland-Palatinate (*Gewahrsamsordnung für die Polizei des Landes Rheinland-Pfalz*) of 2 February 2013 (20 009-2/344), the person affected is to be notified immediately of the grounds for which he or she has been taken into custody, and in a language he or she is able to understand. To this end, the information sheet setting out the rights and obligations of persons in police custody is to be handed over. Pursuant to Clause 2.4.1 of the Ordinance on Police Custody, the record of admission (*Einlieferungsanzeige*) is to document all dates of events occurring, and all notifications issued, in the period in which a person is kept in custody, from their admission until they are released, brought before the custodial judge or placed elsewhere. Furthermore, any contact with, respectively any visit from, family members, an attorney or a physician will be documented. Pursuant to Clause 2.4.3, the records of admission are to be retained for a period of five years and are to be destroyed once this retention period has expired unless they continue to be required.

190. Inasmuch as the record concerns documentation forming part of the files kept by the public prosecutor’s office, it shall be transmitted to the judiciary once the police investigations have been completed. Only in certain exceptional cases will copies of the files (*Zweitakte*) be kept available after the dossier has been handed over to the public prosecutor’s office, as stipulated by the Joint Circular from the Ministry of the Interior and Sports (343/08 110-4) and the Ministry of Justice (4700-4-23) of 3 November 1997 (these exceptions being, to cite some examples, the likelihood of further investigations by the police being necessary, an order having been issued to detain the person affected in prison or to place him or her in an institution, serial offences, unknown perpetrator). The data are stored electronically in the dossier-processing system POLADIS in place with the police of the Rhineland-Palatinate. The general order instructing the institution of POLADIS (*Generalerrichtungsanordnung für POLADIS*) sets out the regulations for the data processing. This has been coordinated with the *Land* Commissioner for Data Protection.

191. The police of the Saarland uses instruction forms that are completed for persons who were deprived of their liberty. The forms used are retrievable both from the police dossier-processing system POLADIS and from the “Forms” section of the Intranet of the Saarland police. Moreover, the respective forms have been made available in several languages.

192. This topic was also addressed in the course of the visit by the Joint Commission of the *Länder* of the National Agency for the Prevention of Torture in May of 2015 in the Saarland. By way of following up on this visit, the headquarters of the *Land* Police Office (*Landespolizeipräsidium*) were instructed once again to raise awareness with superiors as well as with the employees responsible for the police custody and the services entailed by such police custody (*Gewahrsamsdienst*) for the recommendations of the Joint Commission of the *Länder*: By regularly performing the corresponding controls, it is to be ensured that instructions that initially were impossible to issue are to be issued as soon as possible, but at the latest upon the person affected being released. For purposes of control, the documents recording the custody are to suitably document whether or not these instructions were issued and when this was done.

193. At present, the documentation performed in the Saarland in connection with people being taken into custody is divided up into several parts. The Joint Commission of the *Länder* has discussed this practice of a divided documentation in place thus far on the occasion of its visit to the Saarland and has recommended that this practice be optimised. It is intended to review the suggestions in the course of updating the Ordinance on Police Custody (PGO).

194. The ministry competent for the police of Saxony-Anhalt has recast the administrative regulations governing police custody in April of 2016, in coordination with the ministry responsible for the correctional institutions of the *Land*. The subject matter addressed by this restated version specifically consists of the provisions made to instruct the party affected on his or her fundamental rights (Number 14 of the Ordinance on Police Custody (PGO)).

195. Number 9 of the Ordinance on Police Custody (PGO) has made comprehensive provisions regarding the documents regarding police custody that are to be kept in electronic format and those that are to be kept in paper format. The obligations to store and delete the personal data of the persons affected that are subsequently kept in electronic form have been provided for in a register of procedures (*Verfahrensverzeichnis*). This register has been coordinated with the *Land* Commissioner for Data Protection of Saxony-Anhalt. The filing regulations (*Aktenordnung*) in place with the direct *Land* administration of Saxony-Anhalt and the more detailed provisions made in their regard apply to paper documents. They stipulate that any documentation maintained in electronic form and in paper form is to be retained for one year and must be deleted and destroyed once this retention period has expired. Such deletion and destruction shall not be performed if there is reason to assume that this would impair the interests meriting protection of the person affected, or if the data are absolutely required in order to alleviate a lack of evidence.

196. The provisions made in Number 14 of the Ordinance on Police Custody (PGO) stipulate that the necessary instructions are to be issued without undue delay, both verbally and in writing. The forms to be used for such instructions call for the party affected to sign them and a copy to be handed over to him or her. In order to warrant that the person taken into custody in fact is able to understand his or her rights, it is incumbent on the police officers responsible for the services entailed by police custody (*Gewahrsamsdienst*) to comply with the regulations governing the ability of a person to be taken into police custody.

197. In issuing instructions when dealing with matters governed by criminal procedural law, the *Land* Police Office of Schleswig-Holstein uses the forms made available online (in several languages) by the Federal Ministry of Justice and Consumer Protection. They are available to every police officer in the precincts via an internet portal of the dossier-processing system “@rtus.” Also where deprivations of liberty under police law are concerned, an information sheet is available for retrieval from the above-referenced @rtus portal that sets out and explains the instructions and notices required by law. The Ordinance on Police Custody (PGO) provides for the procedural aspects of taking persons into custody

by the police. The admission into said custody is to be ordered in writing by the officer ordering the custody. This is done using the form “Pol SH 3.040” available from the dossier-processing system @rtus. The executions serving to document the police custody are to be collected chronologically in a file and are to be retained for a maximum of five years. The period for deletions from the dossier-processing system @rtus depends on the nature of the proceedings (criminal offence/prevention of a threat). The police officer responsible for the custody has the task of keeping a record of the custody (in the custody ledger). The custody record also comprises the documentation of the instructions issued. The custody ledger is to be retained for a term of five years (Clause 6 of the Ordinance on Police Custody (PGO) of 21 November 2016).

## **Article 15**

### **Reply to the issues raised in paragraph 36**

198. The prohibition presented in the latest State report continues in force, as before. It applies to all employees of the Federal Government — regardless of whether they are civil servants or have been awarded a contract in an individual case — in the situations in question.

### **Reply to the issues raised in paragraph 37**

199. The legal situation presented in the most recent State report (paragraph 71) has not changed.

### **Reply to the issues raised in paragraph 38**

200. The legal situation presented in the most recent State report (paragraph 67 et seqq.) continues to prevail unchanged.

## **Article 16**

### **Reply to the issues raised in paragraph 39**

201. The stipulations made in Book VIII — Children and Youth Services — of the Welfare Act (*Sozialgesetzbuch — SGB VIII*) have created a range of safeguards ensuring the best interests of children and youth are protected.

202. The organisation under public law responsible at the regional level for the institution concerned will review the concept, structural and infrastructural conditions, as well as the economic environment of the institution, along with the suitability of its management and other employees both in terms of their expertise and their personal abilities before any institution is permitted to accept children and youth (reservation of consent to the operation of an institution pursuant to section 45 SGB VIII). The Act Strengthening an Active Protection of Children and Youth (*Gesetz zur Stärkung eines aktiven Schutzes von Kindern und Jugendlichen — BKiSchG*), which entered into force on 1 January 2012, has restated the provisions governing the operating permit (*Betriebserlaubnis*) granted to institutions in which children or youth are looked after during the entire day or for a part of the day. In this context, the introduction of new minimum requirements placed on the concepts of the institutions should be highlighted. In order for them to be granted an operating permit, section 45 (2), second sentence, no. 3 of SGB VIII places the institutions under obligation to “apply suitable participation procedures and to have in place recourse mechanisms for personal matters in order to safeguard the rights of children and youth in the institution.” This express reference by the Child Protection Act (BKiSchG) to the application of participation procedures and recourse mechanisms as minimum prerequisites for an operating permit ties in with an already widespread practice. The Federal Government’s evaluation of said Act has obtained that its provisions have additionally legitimised and strengthened these developments. Besides the recourse mechanisms available internally within the institutions, children and youth have the option of turning to external complaints

bodies, such as the Land Youth Welfare Offices (*Landesjugendamt*) as the supervisory authority, or independent consultancy agencies serving as an ombudsman.

203. As a further precautionary measure, the Child Protection Act (BKisSchG) has now inserted the new provision into section 45 (3) no. 2 of Book VIII of the Welfare Act that the organisation responsible for the institution for which an operating permit is being sought is to “prove, by the application [...], as concerns the suitability of the staff, that it is assured that training certificates specific to the tasks to be performed and police certificates as to character pursuant to section 30 (5) and section 30a (1) of the Act on the Federal Central Register of Criminal Records (*Gesetz über das Bundeszentralregister*) will be submitted and reviewed.”

204. The ongoing operations of institutions will be supervised in particular on the basis of the reports submitted by the institutions (section 47 of Book VIII of the Welfare Act). The Child Protection Act (BKisSchG) has enhanced the reporting obligations of the institutions insofar as they are to report, without undue delay, any “events or developments suited to impair the best interests of the children and youths.”

205. Moreover, it is possible for the supervisory body to perform inspections on site pursuant to section 46 of Book VIII of the Welfare Act “as required by the individual case.”

206. Data concerning the number and the outcome of complaints filed regarding cases of mistreatment, violence, abuse, and neglect in state-run and privately operated children’s institutions are not collected comprehensively in all regions.

207. As a consequence of the shut-down of the institutions run by Haasenburg GmbH, the *Land* of Brandenburg has entered into intensive inter-disciplinary discussions regarding the problems that have arisen. In a working group in which numerous other *Länder* were represented, the provisions set out in Book VIII of the Welfare Act that serve to protect children and youth placed in institutions (section 45 SGB VIII) were reviewed in terms of their effectiveness and suggestions were made for necessary amendments to the law; these have been included in the considerations being pursued regarding the pending reform of Book VIII of the Welfare Act.

208. Moreover, the supervision as such of institutions in Brandenburg was improved by a greater number of staff being hired, and by structures and procedures being reviewed and innovated. Moreover, the organisations responsible for in-patient institutions providing child-rearing assistance (*stationäre Hilfen zur Erziehung*) have the opportunity, via an independent quality agency that has been granted partial funding as a model project for two years, to analyse paedagogical processes in their institutions and to launch quality enhancement processes with the assistance of experts. Furthermore, existing concepts on participation procedures and recourse mechanisms in the institutions were discussed at expert conferences and in workshops and were developed further. Together with children and youth, a participation format is being elaborated that is to also comprise recourse mechanisms.

209. Efforts are underway, with public and private youth service organisations, to develop further suitable forms of providing child-rearing assistance, and to improve the quality of the in-patient forms of such assistance, in order to look after children and youth in keeping with the specific deficits to which they are subject.

210. As a consequence of the charges of mistreatment raised against the former children’s homes operated by Haasenburg GmbH in Brandenburg, 104 investigation and review proceedings were initiated by the public prosecutor’s office starting in June of 2013. In the vast majority of cases, the suspicion raised has not been confirmed to the degree that is required for the preferment of an indictment, meaning these proceedings have been discontinued. In three investigation proceedings, the public prosecutor’s office of Cottbus has preferred indictments against former educators at the institutions: In one of these proceedings, for the sexual abuse of wards, the accused party was sentenced to a total term of imprisonment of one year and six months on probation; in another proceedings for the infliction of bodily harm, the accused was acquitted and this judgment in the meantime has become final and conclusive, and the third proceedings, for the sexual abuse of wards, was terminated by the local court against payment of a fine in the amount of EUR 1,500.

### Reply to the issues raised in paragraph 40

211. Prior to performing a medical measure such as, for example, surgical or other medical interventions, a physician must obtain the consent of the patient or, where the patient is unable to grant such consent, the physician must obtain the consent of the patient's legal representative. For this purpose, the physician must explain to the patient, respectively his or her legal representative, the entirety of all circumstances relevant for the patient's consent. They specifically include the nature, scope, implementation of the measure, the consequences to be expected and the risks that it entails, as well as its necessity, its urgency, its suitability, and its prospects of success with regard to the diagnosis or the therapy. This explanation must also address alternatives to the measure proposed if several customary methods exist that would serve the same medical purpose, and that would carry significantly divergent encumbrances, risks, or chances of recovery. The consent and the explanations are governed specifically by sections 630a et seqq. of the Civil Code (BGB).

212. The Federal Government has made it its objective to put an end to any existing discrimination against people based on their sexual identity, regardless of the societal sphere in which this may occur, and to evaluate the improvements and, as the case may be, further expand them that have resulted for intersex persons from changes to the laws relating to the civil status of persons.

213. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has taken on primary responsibility for coordinating these topics. In 2014, a general policy department was instituted on "Same-Sex Lifestyles, Gender Identity" (*Gleichgeschlechtliche Lebensweisen, Geschlechtsidentität*), thus giving an institutional backbone to this issue. In September of 2014, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth launched an inter-ministerial working group on "Intersexuality and Transsexuality" (*Inter- und Transsexualität*). The working group has set itself the goal of addressing the many and various questions and issues by facilitating the exchange of views with expert staff and interest groups, discussing suggestions for any legislative solutions and by publishing a concluding document.

214. The working group convenes regularly for discussions; in some instances, experts are called in. Current issues and debates are integrated into the work process, for example by the EU, the European Council, parliamentary enquiries or non-governmental organisations. These work tasks are processed in parallel by the competent ministries in the context of the usual inter-ministerial cooperation.

215. It is planned to issue a concluding document in the summer of 2017.

216. In light of the function of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth as a department responsible for social policy, it performs qualitative accompanying research, participatory exchanges among experts, and public relations work in parallel with the work done by the working group.

217. Intersexuality (in the sense of a difference (disorder) of sexual development) is no longer understood, as such, as a disorder/illness, and instead regarded as a variation of gender that is to be recognised; this has been stated both the 2015 statement of position by the German Medical Association (*Bundesärztekammer*) entitled "Care for children, youth, and adults with variants, respectively disorders, of sex development" (*Versorgung von Kindern, Jugendlichen and Erwachsenen mit Varianten bzw. Störungen der Geschlechtsentwicklung (Disorders of Sex Development, DSD)*) and the guidelines adopted in July of 2016 by the Association of the Scientific Medical Societies in Germany (*Arbeitsgemeinschaft der Wissenschaftlichen Medizinischen Fachgesellschaften*) "Variants of sex development" (*Varianten der Geschlechtsentwicklung*).

218. The German Ethics Council has suggested, in its statement on the topic of intersexuality, that the instances be reviewed in which the German legal order is premised on the category of gender.

219. These were among the questions that the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) addressed in its opinion, prepared on behalf of the Federal Family Ministry, on "Gender in the Law: Status Quo and Development of Statutory

Models for the Recognition and Protection of Gender Identity (*Geschlecht im Recht: Status Quo & Entwicklung von Regelungsmodellen zur Anerkennung und zum Schutz von Geschlechtsidentität*).”

220. A public debate among experts took place on 16 February 2017 regarding this opinion, along with another one commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The exchange of views among specialists and the opinion served to obtain an indication of where amendments to the law may be required, which will then be further discussed in the inter-ministerial working group on “Intersexuality and Transsexuality.”

221. The guideline of the Association of the Scientific Medical Societies in Germany cited above and the statement of position from the German Medical Association recommend to physicians that they perform surgical interventions on children unable to grant their consent only in those cases in which such measures are indicated in medical terms and serve to avert subsequent damage from the child.

222. The inter-ministerial working group on “Intersexuality and Transsexuality” tends, based on a current analysis of the factual and legal situation, to advocate a solution providing for mandatory consultancy, the details and structure of which still need to be discussed. The legal opinion commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on “Diversity of Gender in the Law” (*Geschlechtervielfalt im Recht*) likewise sets out suggestions in this regard and is retrievable online here: <https://www.bmfsfj.de/bmfsfj/service/publikationen/geschlechtervielfalt-im-recht/114072>.

223. In this context, the recommendations made by the Association of the Scientific Medical Societies in Germany in its “Variants of sex development” publication also should be taken into account. In cases in which an intervention seems absolutely mandated for medical reasons, the advice should go in the direction of performing the intervention such that the child’s later options of making a choice and taking a decision regarding her own gender manifestation and gender identity are restricted as little as possible.

224. Moreover, targeted public relations work and information campaigns should raise awareness, also in the healthcare sector, of the fact that, taken in and of itself, a physical variation of sex development as a rule will not require any treatment and that the right to develop one’s own gender identity should be respected.

225. The final recommendations by the inter-ministerial working group on “Intersexuality and Transsexuality” will be set out in the planned concluding document.

#### **Reply to the issues raised in paragraph 41**

226. Section 1905 of the Civil Code (*Bürgerliches Gesetzbuch* — BGB) governs the consent by a custodian to having the person under custodianship sterilised. Where the person under custodianship is capable of consenting at the time of the decision, it will not be permissible for the custodian to consent in his or her place. In this scenario, solely the decision of the person under custodianship will prevail. The capacity to grant consent is premised on the person under custodianship being able to understand the significance and potential effects of the decision to be taken, following a corresponding explanation by the physician, and on his or her being able to orient his or her will by this explanation.

227. Where the person under custodianship is incapable of granting consent, the custodian may consent to the sterilisation on behalf of the person under custodianship only subject to the strict prerequisites set out in section 1905 (1) Numbers 1 through 5 of the Civil Code (BGB). Pursuant to section 1905 (1) Number 1 of the Civil Code (BGB), the custodian may not consent to the sterilisation of the person under custodianship if this contradicts that person’s (natural) will. Accordingly, forced sterilisations are prohibited in Germany. In the sense of a supported decision-making process, it forms part of the tasks of a custodian to inform the person under custodianship, who is incapable of consenting, to advise him or her, and to establish that person’s actual will. If the custodian objects to the sterilisation, regardless of the form in which the objection is raised, then such sterilisation may not be performed. A special custodian must always be appointed for the decision on

consent to a sterilisation of the person under custodianship (section 1899 (2) of the Civil Code (BGB)). Moreover, the consent by the custodian requires the approval of the custodianship court (section 1905 (2) of the Civil Code (BGB)).

228. All of the prerequisites set out in section 1905 (1) Numbers 1 through 5 of the Civil Code (BGB) (not inconsistent with the intention of the person under custodianship; person under custodianship will permanently remain incapable of consenting; assumption that without the sterilisation there would be a pregnancy; as a result of this pregnancy a danger for the life of the pregnant woman or the danger of a serious adverse effect on her physical or psychological state of health is to be expected; precedent of other means) are exceptional cases. This is also evidenced by statistics showing that in the practice of the custodianship courts, sterilisations are playing an increasingly minor role. While in 2008, a sterilisation was approved in 91 cases throughout Germany, and the petition was rejected in 22 cases, the year 2014 saw a mere 36 cases in which a sterilisation was approved and 21 cases in which the petition was rejected. In this context, it is to be taken into account that an approval granted does not automatically mean that the measure in fact was performed. The figures for 2015 continue along this downward trend (26 approvals and 13 rejections). The Federal Government monitors this development on a continual basis.

#### **Reply to the issues raised in paragraph 42**

229. The second National Action Plan on the UN Convention on the Rights of Persons with Disabilities (NAP 2.0) of 28 June 2016 includes, *inter alia*, a field of action “Personal Freedoms.” The objective pursued by the Federal Government in this field of action includes the reduction and prevention of measures of coercion in institutions and in psychiatric care.

230. As part of the monitoring done on the “Action Plan of the Federal Government on the Protection of Children and Young People from Sexual Violence and Exploitation,” the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth currently is elaborating, together with ECPAT Germany e.V. (working group on the protection of children against sexual exploitation), the Nationwide Coordination Panel against Human Trafficking (*Bundesweiter Koordinierungskreis gegen Menschenhandel e.V.*, KOK), and the Federal Criminal Police Office, a concept for cooperation across Germany serving to improve the protection of victims in human trafficking in minors. The objective is to improve the inter-institutional collaboration also where minors are concerned. In this way, the awareness of all stakeholders will be raised for the identification of the girls and boys affected, which will contribute to ensuring that adequate measures are taken for protection and assistance.

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