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Committee against Torture

Seventh periodic report submitted by Germany under article 19 of the Convention, due in 2024*, **, ***

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* The present document is being issued without formal editing.

** The present document was submitted pursuant to the simplified reporting procedure. It contains the responses of the State party to the Committee's list of issues prior to reporting (CAT/C/DEU/QPR/7).

*** The annexes to the present document may be accessed from the web page of the Committee.

Foreword
Preliminary remarks

The Federal Republic of Germany would like to apologise once again for the delayed submission to the Committee against Torture of its responses to the list of issues prior to reporting (LOIPR).

The following responses to the list of issues were compiled by the German Federal Government. Unless otherwise indicated, they reflect the situation on 31 December 2022.

In the interests of readability, a number of summaries have been attached to this document rather than included in the body of the text.

Replies to the list of issues prior to reporting (CAT/C/DEU/QPR/7)

Articles 1 and 4

Reply to paragraph 2 of the list of issues

1. The Federal Government continues to hold that it is not necessary to provide for a specific offence of torture in German criminal law, as the acts set out in Article 1 are already criminal offences. The applicable criminal law provisions have not, therefore, been amended.

2. These criminal offences are subject to a statute of limitations. However, the limitation periods for serious offences are very long and can be started from zero after a relevant interruption (e.g. the first time an accused is examined). The only offences for which there is no statute of limitations are murder under specific aggravating circumstances (Mord), the most serious offence under the Criminal Code (StGB) (section 78 (2) StGB), and crimes under the German Code of Crimes against International Law (VStGB) (section 5 VStGB). Completely abolishing the limitation periods under criminal law for the offences in question would create considerable inconsistencies within the national criminal system.

Reply to paragraph 3 of the list of issues

Ensuring fundamental legal safeguards

3. To ensure fundamental legal safeguards against torture for persons who are arrested or detained, safeguards are explicitly laid down in Article 104 of the German constitution, the German Basic Law (GG). These include the prohibition of physical and mental ill-treatment; the rule that liberty may only be restricted pursuant to a formal law; the requirement of a judicial decision; a proportionality test; and the notification of a relative or another person whom the individual in custody trusts. The measures in place to ensure that these legal safeguards are implemented include informing the individual of their rights so that they are able to exercise them. The manner in which arrested accused are to be informed of their rights and the points to be covered are set out in section 114b of the German Code of Criminal Procedure (StPO). They are to be instructed without delay and in writing, in a language they understand, as to their rights, including their right to remain silent; their right to consult with defence counsel before being questioned; their right to a medical examination by a doctor of their choice; and their right to notify a relative or a person they trust. Additional notification obligations apply in proceedings under juvenile criminal procedure (cf. sections 67a, 70b and 70c (1) of the Youth Courts Act (JGG).

4. Under section 136 (1) sentence 2 in conjunction with section 163a (4) sentence 2 StPO, accused, irrespective of whether they have been arrested and/or detained, are always to be notified before questioning or examination that they have the right to either reply to an accusation or remain silent.

5. Another element of particular importance to ensuring legal safeguards against torture for persons in custody is the assistance of legal counsel. In 2021 stricter requirements were introduced governing the information to be provided to an individual upon their arrest: where accused wish to consult defence counsel before being questioned, investigation and prosecution authorities now have a duty to provide general information that will help them to do so, and to draw their attention to available emergency legal services (section 114b (2) sentence 1 no. 4 StPO). Accused now also have greater rights of access to existing legal counsel. Under section 168c (5) StPO, defence counsel is to be given prior notice of the dates for hearings or questioning to enable them to attend.

6. In 2019 the provisions governing court-appointed defence counsel were also reformed. The amendments considerably expanded the requirement for mandatory defence counsel in cases of deprivation of liberty and of decisions on the deprivation of liberty. Under section 140 (1) no. 5 and section 141 (2) sentence 1 no. 2 StPO, an accused who has been

deprived of their liberty – either in the proceedings at hand or in other proceedings – is now, in principle, always to be assigned court-appointed counsel immediately. Furthermore, under section 140 (1) no. 4 and section 141 (2) sentence 1 no. 1 StPO, an accused is also to be assigned court-appointed defence counsel if they are to be brought before a court for a decision concerning detention or provisional placement. As far as possible, the applicable provisions thus ensure that an accused in such situations has legal representation. Under juvenile criminal procedure, accused must always be assigned defence counsel before they are questioned; this applies not only in the cases indicated above but in all cases in which assistance of defence counsel is mandatory, and even when the individual in question has not requested defence counsel's appointment (sections 68a and 68b JGG). In cases in which the individual to be questioned is a juvenile (under the age of 18), their parents/guardians and legal representatives, or another adult able to protect the interests of the juvenile, must be permitted to be present (section 67 (3) JGG).

7. It is standard practice in the Länder to inform individuals who are taken into custody, without delay, of both the reasons for their detention and their rights in a language that they understand. This is usually done using information sheets, which are given to the individual in question. Detention facilities keep a supply of information sheets in up to 34 languages.

Monitoring compliance

8. Recourse to the courts is possible following any violation of the law by a public authority, and thus following any failure to comply with legal safeguards in connection with the deprivation of liberty (this legal remedy is enshrined in Article 19 (4) GG).

9. Extensive documentation obligations are also in place to monitor compliance with safeguards by law enforcement officials and prevent violations from happening. Officers are required to record, either electronically or using set forms, the fact that an individual has been instructed pursuant to section 114b StPO.

10. Officers' direct superiors check the records they have produced in line with the documentation requirements and can therefore see whether the mandatory instruction has been given. Individuals can also lodge a disciplinary complaint (Dienstaufsichtsbeschwerde) against police officers.

11. Some Länder have reviewed their relevant instruction and custody procedures for police officers and revised them in line with considerations relating to the prevention of torture, giving the Land police in those states a binding regulatory basis for custody situations. The relevant regulations and measures to be implemented in detention facilities are also regularly reviewed and updated in response to inspection reports and annual reports from the National Agency for the Prevention of Torture, as well as in response to visits and subsequent reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which examines compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. One Land, for example, has purchased special vans for transporting prisoners. The vehicles are fitted with state-of-the-art technology that records the actions of police officers whenever coercive measures are used. Numerous Länder now also have independent commissioners to whom police complaints can be directed.

Disciplinary measures

12. During the reporting period, one Land ordered a demotion (Zurückstufung) as a disciplinary measure for failure to ensure legal safeguards against torture; two other disciplinary proceedings ended with reprimands. No disciplinary measures were reported by the remaining Länder or by the Federal Police for the period up to 31 December 2022.

Reply to paragraph 4 of the list of issues

13. One third of the funding for the National Agency for the Prevention of Torture comes from the budget of the Federal Ministry of Justice (BMJ) and two thirds from the budgets of the Länder. Most recently, the Conference of Justice Ministers adopted a resolution to

increase the funding provided by 100,000 euros with effect from the 2020 financial year. The total annual budget of the National Agency is 640,000 euros. A further increase in light of current cost increases has been provisionally approved.

14. In 2022, the National Agency visited 66 facilities across Germany (including 24 forensic psychiatry facilities, 4 child and youth psychiatry facilities and 3 residential care/nursing homes).

15. In 2021 and 2022, the National Agency focused primarily on forensic psychiatric detention. This was because the National Agency had set itself the goal of visiting all of Germany's forensic psychiatry facilities by the end of 2023. In 2022 – as in 2021 – the National Agency scrutinised Land legislation on forensic psychiatric detention.

16. The National Agency highlighted the many cases of overcrowding it found in forensic psychiatry facilities as a particular problem in its 2022 annual report. Another problem observed by the National Agency and raised in the report concerns the custody of detainees whose condition the Agency found to have deteriorated due to a lack of psychiatric care. The National Agency considers that an in-depth investigation of this issue is urgently required. In 2023, the Agency is therefore to continue its focus on forensic psychiatric detention and take a closer look at how facilities respond to individuals with mental health issues.

17. During the Agency's visits in 2021, greater attention was paid to the implementation of constitutional requirements on the use of physical restraint in light of the Federal Constitutional Court (BVerfG) judgment of 24 July 2018.

18. Following its visits, the National Agency draws up a report, which it sends both to the competent Federation and Land supervisory authorities and to the facility visited. The supervisory authorities respond to the National Agency's recommendations and enter into a dialogue with the National Agency on implementation. The findings from visits by the National Agency are always published. However, privately-run facilities are still not named in the published findings. Given the large number of privately-run facilities and the limited number of inspections conducted by the National Agency, naming the facilities visited would risk putting them at an unfair disadvantage.

19. The inspection reports, annual reports and National Agency standards for the various types of detention facility at national and Land level are also evaluated, discussed and shared with all facilities, including those that have not been visited; all facilities are requested to observe the relevant requirements and recommendations. Alongside particular issues raised, the annual reports also set out many positive examples from practice so that these can be shared across the country.

20. In the area of forensic psychiatric detention in North Rhine-Westphalia, for example, the National Agency's reports are sent to the lower state authorities responsible for forensic psychiatric detention and to entities entrusted with the provision of forensic psychiatric detention with a request for information and, if necessary, for the implementation of appropriate measures.

21. The National Agency raised the issue of CCTV monitoring and a lack of privacy for confidential conversations on a visit in 2019. Since then, the Agency's recommendations have been followed and, indeed, incorporated into law as part of the North Rhine-Westphalia Act on Criminal Law-related Committal (StrUG NRW) (cf. sections 21, 44 and 45 StrUG NRW).

22. Each year, the National Agency also reports on its activities to the Federal Government, the governments of the Länder, the German Bundestag and the parliaments of the Länder. In its 2022 annual report, the National Agency emphasised that it was engaged in regular and constructive dialogue with many forensic psychiatry supervisory authorities, with the Central Customs Authority (Generalzolldirektion), with the Federal Ministry of Defence and with the Federal Ministry of the Interior and Community (BMI), and that this was making it possible to work towards nationwide implementation of its recommendations.

Reply to paragraph 5 of the list of issues

23. The German Institute for Human Rights (DIMR) is able to make submissions on human rights questions in selected proceedings before the domestic courts and before international decision-making bodies where: a case raises a question of fundamental significance to compliance with or implementation of human rights, and the Institute is also working on the topic. In light of this and of the fact that Germany provides comprehensive access to the courts for complaints relating to human rights violations, the Federal Government does not consider extending the powers of the DIMR to be necessary at this time.

24. The adoption of the Act on the Legal Status and Mandate of the German Institute for Human Rights (DIMRG) in 2015 created a legal framework for the status and role of the Institute. The Institute is accredited with A status in line with the Paris Principles. The Institute's financial position has been significantly improved. The annual budget was increased by 66% between 2021 and 2022 and is currently 5.17 million euros.

Reply to paragraph 6 of the list of issues

25. Please see the attached report from the Federal Government (Annex 1), submitted to the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) on the implementation in Germany of the Council of Europe Convention on Action against Trafficking in Human Beings. Investigation and prosecution figures can be found on pages 43–51.

26. The following information can be provided in addition to the figures on p. 44 of the GRETA report relating to convictions for human trafficking offences: for 2021, a total of 70 persons convicted of trafficking in human beings were recorded in Germany. Of these, 58 were male and 12 were female. According to the preliminary criminal prosecution statistics for 2022, 77 persons were convicted of trafficking in human beings and of these, 57 were male and 20 were female. These data have yet to be fully validated.

27. Since 2017, the national situation reports on trafficking in human beings issued by the Bundeskriminalamt (Federal Criminal Police Office, BKA) have provided information on the victims of trafficking in human beings, including information on victims' age, nationality and sex:

Sexual exploitation				
Year	*Number of victims*	*Of whom female (percentage of total)*	*Average age (years)*	*Most common nationalities of victims*
2018	430	96.0%	23	Germany: 79; Bulgaria: 66; Romania: 63; Nigeria: 61
2019	427	94.8%	26	Germany: 95; Thailand: 90; Romania: 72; Bulgaria: 40; Hungary: 31; Vietnam: 3
2020	406	93.8%	24	Germany: 131; Romania: 68; Bulgaria: 56; Hungary: 28; Vietnam: 13; Thailand: 11
2021	417	92.8%	27	Germany: 95; Bulgaria: 79; Romania: 67; China: 36; Hungary: 29; Thailand: 23
2022	476	95.2%	27	Germany: 133; Bulgaria: 72; Romania: 63; China: 38; Thailand: 35; Vietnam: 30; Hungary: 19

Exploitation of labour			
Year	*Number of victims*	*Of whom female (percentage of total)*	*Most common nationalities of victims*
2018	63	13.7%	Ukraine: 27; Vietnam: 9; Hungary: 8
2019	43		Ukraine: 13
2020	73		Romania: 21; Zimbabwe: 13
2021	147		Bosnia and Herzegovina: 68; Romania: 24
2022	1 019*	-	-

Source: BKA, Situation reports on trafficking in human beings.

* Significant increase resulting from the conclusion of a major court case involving 555 victims.

28. Please also see Annex 2 to the GRETA report ("14.3 THB victims"), which contains information on victims that is based on data from specialised counselling centres, trade unions and youth welfare offices. Details of the complaints mechanisms available to victims can be found on pp. 19 ff. of the GRETA report.

29. The Federal Government does not systematically record statistics on the provision of redress to victims of trafficking or data on the number of persons who have benefited from protection and support measures for victims, nor does the Federal Government systematically record information on compensation paid to victims of human trafficking in criminal proceedings.

30. The types of redress available to victims of human trafficking and how these can be accessed are set out in detail in the GRETA report (pp. 9–12 and 13–15). Details on protection and support measures for victims and the relevant figures can also be found in the GRETA report (pp. 21–24). Please also see the response to LOIPR 7.

31. In order to improve the quality and availability of data relating to human trafficking overall, Germany recently set up an independent reporting body, which is based at the DIMR. The reporting body began its work in November 2022 as part of a project funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and looks at all forms of trafficking in human beings. One of its tasks is to create a large body of reliable data that makes it possible to map trends and developments relating to human trafficking in Germany. The first report on the data situation on human trafficking in Germany was published in July 2023 and is available online here (in German): https://www.institut-fuer-menschenrechte.de/publikationen/detail/bericht-ueber-die-datenlage-zu-menschenhandel-in-deutschland.

32. The German NGO Network against Trafficking in Human Beings (KOK) has also been publishing data on human trafficking and exploitation in Germany (KOK reports) since the autumn of 2020. KOK brings together 43 specialised counselling centres for human trafficking victims, and other organisations that advocate for victims' rights and address the issues of human trafficking, exploitation and violence against migrants. The network is funded by the BMFSFJ. The KOK reports are an additional source of information alongside statistics from investigation and prosecution authorities, and offer a civil-society and human rights perspective. They are based on data from the various counselling centres. The 2022 KOK report,[1] for example, draws on data analysis for 733 registered cases. In the cases evaluated, the following counselling centre services were used particularly frequently: psychosocial counselling and support (87%); provision of information (84%); crisis intervention (56%); organisation of services providing access to means of subsistence (52%) and other official formalities (53%); and support during asylum proceedings (52%) and other residence proceedings (43%) (clients may have used more than one service; figures taken

[1] https://www.kok-gegen-menschenhandel.de/projekte-themen/menschenhandel-und-datenerhebung. The latest report from October 2022 is also available in English: https://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Publikationen_KOK/KOK_Data_Report_2022_web.pdf.

from the 2022 KOK report, p. 17). However, these data cannot be taken as an indication of the overall use of specific (state) services or measures (of protection).

Reply to paragraph 7 of the list of issues

Measures to combat (domestic) violence

33. The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) entered into force in Germany on 1 February 2018. This was only possible under German constitutional law because Germany had, by that date, already fulfilled the Convention requirements within its domestic law. Implementation of the Istanbul Convention by the parties is evaluated by GREVIO (the Group of Experts on Action against Violence against Women and Domestic Violence) on a regular basis. Germany submitted its first state report in August 2020 (see https://rm.coe.int/state-report-from-germany/pdfa/16809f59c6). Please see the details provided in that report for an overview of relevant measures for combating violence against women and girls. The next step was an evaluation visit to Germany by GREVIO in September 2021. On the basis of the German state report, of shadow reports from civil society organisations and of the interviews conducted by the delegation during its evaluation visit, GREVIO then produced a comprehensive report that was published in October 2022.[2] The Committee of the Parties adopted the most urgent of the recommendations for Germany in December 2022, and the Federal Republic will report on their implementation in 2025.

34. Alongside the measures set out in the 2020 GREVIO report, we would also highlight the following measures to combat violence against women and girls:

- As part of implementation of the Istanbul Convention, a national reporting body on gender-based violence was launched in Germany on 1 November 2022 and is based at the German Institute for Human Rights. A national coordinating body under Article 10 of the Istanbul Convention is also in the process of being set up. The Federal Government is currently working on an overall strategy for preventing and combating violence against women and domestic violence as it seeks to ensure policy coordination for all measures undertaken by the Federal Government to combat violence. The work of the reporting body is initially being funded by the BMFSFJ until 2026. The long-term plan is to establish a statutory basis for the reporting body and its work.
- Following an amendment to the law in 2021, protection orders under the Act on Civil Law Protection against Violent Acts and Stalking (GewSchG) can now be issued in cases of the violation of the right to sexual self-determination. An additional amendment introduced in 2021 increased the maximum prison sentence available under section 4 GewSchG from one year to two years to allow tougher sentences for the violation of protection orders.
- Alongside the protection already in place in the previous reporting period under general and specific criminal law provisions (section 174 et seqq. and section 226a StGB), a criminal offence of “violation of intimate parts of the body by taking photographs or other images” (section 184k StGB) was introduced in 2021. Criminal liability for stalking under section 238 StGB was also expanded in 2021 and the offence now explicitly includes types of digital stalking. The Act to Combat Sexual Violence against Children (Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder), which entered into force in 2021, has also revised the definitions of child sexual abuse offences and significantly increased the applicable penalties (section 176 et seqq. StGB).
- New legislation promulgated in August 2023 specifically provides for the inclusion of gender-based motives as potential aggravating factors to be considered under the sentencing principles set out in section 46 (2) StGB. This sends a signal to legal practitioners that such motives are to be given greater consideration in particular in

[2] https://www.coe.int/en/web/istanbul%20convention/-/grevio-publishes-its-report-on-germa-1.

cases of criminal offences against women, including in the context of personal relationships. In cases of homicide related to separation, in which the crime is driven by the man's patriarchal sense of control over and of ownership of a female partner who is seeking to end their relationship, "gender-based" motives – which are explicitly defined as motives evidencing contempt for humanity in the amendment to section 46 StGB – are to be taken by legal practitioners as grounds to consider, even more closely than before, whether the homicide is to be categorised as murder under specific aggravating circumstances (section 211 StGB) (BT-Drs. 20/5913, p. 65).

- The Federal Government has also taken a number of other legislative measures over recent years to support and protect women and children affected over the course of criminal proceedings. For example, since 2019, aggrieved parties in investigations into sexual offences may only be questioned by the investigating judge, and a video and audio recording of questioning is to be made if this can better safeguard the victims' interests meriting protection. The recording can then be used in the main hearing in place of an examination of the aggrieved party, to avoid re-victimisation.

35. Psychosocial assistance in court proceedings has also been available since 2017. Psychosocial assistance is a form of non-legal support in criminal proceedings provided for particularly vulnerable aggrieved persons before, during and after the main hearing by qualified professionals. Psychosocial assistance is available for individuals who have been victims of certain offences (section 406g (3) sentence 2 and section 397a (1) nos. 1 to 3 StPO). Those offences include crimes against sexual self-determination, attempted homicide and grievous bodily harm. Where the victim is an adult, proof of particular vulnerability is required before free psychosocial assistance is provided; this proof is not required where the aggrieved party is a minor or where the aggrieved party cannot themselves sufficiently safeguard their own interests (section 406g (3) sentence 1 and section 397a (1) nos. 4 and 5 StPO). Finally, as before, women and girls affected have the option of bringing a private accessory prosecution, and of accessing legal counsel to represent them during their questioning as witnesses.

36. The BMFSFJ, the BMI and the BKA are currently conducting a population survey on experiences of violence among both men and women. The survey will provide the evidence base for considerable improvements in the fight against and prevention of violence against women and girls. The field period began in July 2023 and initial findings will be available in 2025.

Protection and support services

37. In Germany, victim support is, as a rule, under the remit of the Länder. Each Land has a network of women's shelters, specialised counselling centres and other support services for women and children who have been affected by violence. Germany has around 400 women's shelters and more than 40 safe or refuge apartments with a capacity of over 6,000, and around 750 specialised counselling centres.

38. Examples of specialist support services and specific measures implemented in the Länder are set out in Annex 3; the list is by no means exhaustive. Alongside funding for women's shelters and counselling centres, measures include: the creation of victim protection commissioner posts; cooperation agreements between the police and counselling organisations; and guidelines and binding requirements for police officers on how to deal with situations of violence against women and girls, including domestic violence.

39. Work is also continuing at a national level to expand the support system in a way that meets needs on the ground. For example, the federal investment programme "Gemeinsam gegen Gewalt an Frauen" ("Working together to combat violence against women") (https://www.gemeinsam-gegen-gewalt-an-frauen.de/) is providing 30 million euros annually to help fund the construction and expansion of counselling centres and women's shelters across the country. The programme was launched in 2020 and is set to continue until the end of 2024. It is designed to address gaps in the support system for women affected by violence and their children. The aim is to ensure that more women are able to access support. Work is also underway at the BMFSFJ on federal legislation relating to the right to protection and counselling in cases of domestic and gender-based violence, with the aim of ensuring

that people affected by violence, and in particular women and their children, can easily access the right protection and support whenever they need it and wherever they are in the country.

40. At a national level, there are also 24-hour helplines and digital resources, for example the "Violence against women" helpline (tel. 08000 116 016) and the BMFSFJ's information booklet "Greater Protection in Cases of Domestic Violence" (https://www.bmfsfj.de/bmfsfj/service/publikationen/mehr-schutz-bei-haeuslicher-gewalt-81936), which is available in multiple languages and sets out the protection available under the GewSchG. Girls and women affected by violence can also access general victim support resources such as the online platforms www.hilfe-info.de and www.odabs.org, which provide information and point those affected by criminal offences to the right, local support services. These resources can also provide help with bringing claims for social compensation. More information on protection and support services that are currently available can be found in Germany's report to GREVIO.[3]

Statistics

41. The following figures for the years 2019 to 2022 relate to cases recorded by the police in which the victims were women or girls and the suspects were their (ex-)partners (the figures do not indicate whether the suspicion that an offence had been committed was subsequently confirmed, or how many cases were covered by one investigation):

Year	*Completed offences*	*Attempted offences*	*Total*
2019	113 069	4 205	117 274
2020	116 977	4 708	121 685
2021	112 697	5 141	117 838
2022	122 797	5 663	128 460

Source: Police crime statistics; victim-suspect relationship; partners (Polizeiliche Kriminalstatistik, Opfer-Tatverdächtigen-Beziehung, Partnerschaften) Further details such as the types of offence can be found in the police's publicly available crime statistics.[4]

42. The following figures for a selection of relevant categories of offence for the years 2019 to 2022 relate to cases (completed and attempted offences) known to the police in which the victims were female:

Year	*Offences of causing bodily harm*	*Offences against sexual self-determination*	*Offences against personal liberty (including kidnapping, stalking and forced marriage)*
2019	229 679	28 399	103 699
2020	230 317	28 131	107 313
2021	214 123	28 551	117 967
2022	245 586	35 684	134 325

Source: Police crime statistics; victims (Polizeiliche Kriminalstatistik, Opfer) Further details can be found in the police's publicly available crime statistics.[5]

43. The number of convictions specifically in gender-based violence cases is not currently recorded, as victim characteristics are not recorded. The Federal Government is endeavouring to address gaps in the recording of gender-based violence by creating a statutory basis for criminal justice statistics.

[3] https://rm.coe.int/state-report-from-germany/pdfa/16809f59c6, pp. 31–42.

[4] https:/www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/pks_node.html (see T921).

[5] https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2022/PKSTabellen/Zeitreihen/zeitreihen_node.html.

Trained personnel

44. Qualified and specially trained staff are essential to the effective prosecution and prevention of violence against women and girls.

45. That is why, firstly, the Land police forces follow (binding) procedures when handling criminal proceedings in this area; those procedures ensure a standardised and thus an appropriate approach based on relevant expertise, both in police work and in cooperation with the relevant bodies. Secondly, investigations into suspected offences of violence against women and girls are often handled by specialist units and specially trained staff in the police and public prosecution offices. This is the approach taken, for example, by the police authorities and public prosecution offices in Berlin, Hamburg, Rhineland-Palatinate and Lower Saxony in cases of sexual offences, stalking (section 238 StGB) and violations of the GewSchG, and domestic and intimate partner violence.

46. Basic training for law enforcement officers and those working within the justice system covers topics such as domestic violence and gender-based violence, and there are numerous professional development courses on investigating and prosecuting individuals for gender-based violence.

Article 3

Reply to paragraph 8 of the list of issues

47. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) – which in Germany has the status of a federal law – ensures that deportation is not permitted where there are substantial grounds for believing that the person concerned would face a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving state. This is also made clear by the provision in section 60 (5) of the Residence Act (AufenthG) which states that a foreign national may not be deported if the deportation is prohibited under the terms of the ECHR.

48. Each and every individual who applies for asylum in the Federal Republic of Germany has unrestricted access to an asylum procedure in which each individual application is carefully examined. The Federal Office for Migration and Refugees (BAMF) continued to ensure said unrestricted access throughout the COVID-19 pandemic. Applications could, as a rule, still be made in person. In places with high infection rates or outbreaks, the BAMF introduced a form-based application process to avoid delays in asylum applications' being lodged. Measures to prevent infection were put in place to allow the subsequent stages of the asylum process to continue, including in-person hearings.

49. The Federal Republic of Germany has made use of the option available to it under European Union law (Article 31(8) of Directive 2013/32/EU) and allowed accelerated (fast-track) procedures in certain cases under section 30a of the Asylum Act (AsylG). In fast-track procedures, each individual asylum application is carefully examined. If a careful examination is not possible within a week, the fast-track option is not pursued further.

50. The Asylum Act sets out certain categories of case in which action against the rejection of an asylum application does not automatically have a suspensive effect. These include the "Dublin cases" referred to in the Committee's concluding observations, and cases in which asylum applications from applicants from safe countries of origin have been rejected as manifestly unfounded. However, in accordance with the requirements set out in Article 46(6) and (7) of Directive 2013/32/EU, the applicant may apply to the court for their action to have a suspensive effect. Deportation is not permitted before the deadline for making such an application; if such an application is made, deportation is not permitted until the application has been rejected by the court (on Dublin cases cf. section 34a (2) sentence 2 AsylG and in general cf. section 36 (3) sentence 8 AsylG). Access to judicial protection is thus guaranteed.

51. Responsibility for the reception and accommodation of asylum-seekers lies with the Länder, which have developed a range of procedures for identifying vulnerable groups of

individuals during the reception process. Services providing advice on social and welfare issues and on the asylum process are available, as are medical examinations. Some specialised centres for identifying vulnerable groups have already been set up; others are at the planning stage.

52. In its official instructions for asylum processes, the BAMF sets out the duty to identify vulnerable individuals and the measures to be taken to ensure that their specific needs are taken into consideration.

53. A comprehensive explanation of how to identify and deal with potentially vulnerable individuals and take account of their specific needs throughout the asylum process is also provided in guidelines on the identification of vulnerable individuals in the asylum process (last updated: June 2022). These guidelines are binding for all staff at the BAMF. They provide detailed information on how to recognise specific needs and how to ensure the procedural safeguards that apply for the individuals in question. The document sets out both general information on identifying potential vulnerabilities and specific information for specially trained staff in this area (the specialised asylum officers for traumatised applicants and victims of torture).

54. Individuals in Länder reception centres have access to an independent expert service providing advice on social and welfare issues and on the asylum process. As well as identifying vulnerable individuals, this service is primarily aimed at providing comprehensive advice for asylum-seekers on their rights and obligations in the asylum process. Consultations also give asylum-seekers a detailed explanation of their options for consulting legal counsel.

55. The BAMF employs interpreters during the process of submission and assessment of asylum applications to ensure communication with applicants.

56. Interpreters are available for individuals lodging applications in person at a branch of the BAMF. Applicants are informed of their rights and obligations, and all important information is also provided to them in writing in their native language.

57. Interpreters also attend applicants' hearings by decision-makers at the BAMF. The language in which the applicant wishes to be heard or the language of which they have a sufficient command to present their case and follow the hearing is noted when their case file is created. Translation is generally into the "first language" specified by the applicant; usually their native language or the language of their country of origin.

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Asylum applications registered and asylum proceedings conducted in the 2019 to 2022 reporting period

			Of which:				
Year	*Total asylum applications*	*Asylum decisions*	*Right of asylum under Article 16a GG*	*Refugee status under section 3 (1) AsylG*	*Subsidiary protection under section 4 (1) AsylG*	*Deportation prohibited under section 60 (5)/(7) AufenthG*	*Total (all forms of protection)*
2019	165 938	183 954	2 192	42 861	19 419	5 857	70 329
2020	122 170	145 071	1 693	36 125	18 950	5 702	62 470
2021	190 816	149 954	1 226	30 839	22 996	4 787	59 848
2022	244 132	228 763	1 937	38 974	57 532	30 020	128 463

58. Statistics on the asylum grounds are not recorded. Data on asylum-seekers whose applications were accepted because they had been tortured or might be tortured if deported to their country of origin therefore cannot be provided.

59. Applicants can appeal decisions on asylum applications. They can then also appeal the court decision. Applicants are notified in writing of the available appeal mechanisms and

the applicable deadlines. For further details, please see the English website of the BAMF: https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/AblaufAsylverfahrens/Rechtsmittel/rechtsmittel-node.html;jsessionid=397DE2A3855E945548115FFB6029A87E.internet281.

60. Further court statistics on actions brought as well as statistical data regarding extraditions can be found in Annex 4.

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61. No statistical data regarding extraditions are available on these points. In the case of extraditions to states outside the European Union in particular, Germany generally requires assurances or sets conditions. The content and scope of those assurances and conditions depends on the situation in the requesting or requested state.

62. The Federal Government continues to hold that, in the context of extraditions, diplomatic assurances can be a means of avoiding the risk of violations of the Convention. This is also the position taken by the European Court of Human Rights (cf. CAT/C/DEU/ 6, paragraph 127). The Federal Government complies with the prerequisites listed by the European Court of Human Rights in the case cited, based on which assurances of this type are valid. The German missions in the countries in question monitor compliance with assurances given.

63. Work is currently underway on reforming the main piece of legislation governing extradition, the Act on International Mutual Assistance in Criminal Matters (IRG). The revised Act is to include a provision specifically defining the requirements governing assurances and conditions.

Articles 5 to 9

Reply to paragraph 11 of the list of issues

International crimes

64. The German law enforcement authorities continue to work on investigating international crimes committed in Syria and Iraq. The Federal Public Prosecutor General (Generalbundesanwalt, GBA) has since July 2019 (as at 31 December 2023) launched 167 investigations into suspected war crimes, crimes against humanity and genocide under the VStGB. The offences in question relate primarily to Syria or Iraq.

65. Investigations have already led to a number of convictions. Of particular note are two decisions of Koblenz Higher Regional Court (judgment of 24 February 2021, and judgment of 13 January 2022): prisoners in a Syrian prison in which the defendants had worked had been systematically subjected to brutal torture, and 27 people had been murdered.

66. Another man was convicted by Frankfurt Higher Regional Court of genocide against the Yazidi people and other serious crimes, and sentenced to life imprisonment in a judgment handed down on 30 November 2021. On 27 July 2022, the Hanseatic Higher Regional Court convicted a female defendant of crimes including aiding genocide. This was the first conviction of a female member of IS for aiding the genocide against the Yazidi.

Extradition and mutual legal assistance

67. The Federal Republic of Germany does in some cases provide legal assistance to countries with which it does not have an extradition treaty. The legal basis for legal assistance in such cases is the IRG. Under section 2 et seqq. IRG, extradition for prosecution or for the enforcement of a sentence is, in principle, possible where a foreign national is being prosecuted for or has been convicted of an offence in a foreign state that is punishable in that state.

68. Extradition is only permitted if an extraditable offence has been committed: if the offence in question is punishable under German law with a maximum sentence of at least one year's imprisonment or would incur such a sentence under German law were the facts of the case to be transposed (section 3 IRG).

69. Extraditable offences as a rule include those listed in Article 4 of the Convention, which in Germany incur sentences that meet the above threshold.

70. Germany is complying with its obligation to extradite or prosecute (aut dedere aut judicare): German criminal law is applicable to acts within the meaning of Article 4 of the Convention that are committed abroad, and criminal prosecution by German authorities is thus possible in such cases if: the act in question is a criminal offence at the place of its commission or that place is not subject to any criminal law jurisdiction; and: the act was committed against a German national, or the perpetrator was a German national at the time of the offence or became a German national after its commission (section 7 (1) and section 2 no. 1 StGB). Germany is also deemed to have jurisdiction in cases in which these conditions are not met but the foreign perpetrator is not extradited by Germany despite the fact that extradition would, in principle, be permissible under extradition law (section 7 (2) no. 2 StGB).

71. The Federal Republic of Germany is also a party to a number of multilateral and bilateral agreements on the basis of which it can provide legal assistance in criminal matters.

72. Two major multilateral agreements in this area are: the Council of Europe European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (ETS 030), and the European Union Convention of 29 May 2000, established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States. Member States of the European Union also provide mutual legal assistance on the basis of Directive 2014/41/EU regarding the European Investigation Order (EIO) in criminal matters.

73. The Federal Republic of Germany did not enter into any new international agreements relating to extradition during the reporting period.

74. Within the scope of its jurisdiction, the Federal Republic of Germany continues to work to help bring an end to impunity for crimes of torture at the former Colonia Dignidad in Chile. The Federal Government is also in dialogue with the Chilean government in the Chilean-German Mixed Commission to Address the History of Colonia Dignidad and Integrate its Victims into Society.

75. Germany has, furthermore, specifically chosen not to renew its reservations in respect of the Istanbul Convention and has widened the applicability of its criminal law, for example with the above-mentioned Act Reforming Sentencing Law, so that German law applies to the offences of sexual violence, forced marriage, genital mutilation, forced abortion and forced sterilisation when these are committed abroad even when the perpetrator is a non-German national or is stateless, provided they are habitually resident in Germany and the offence in question is not punishable at the place of its commission.

Article 10

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76. The physical and psychological impact of criminal offences is a matter that is covered at various points in both training and professional development courses for judges and public prosecutors.

77. In certain Länder, judges and public prosecutors have a statutory obligation to engage in professional development; however, what precise form this takes is a matter for each individual. Other Länder impose no such obligation. A "mandatory training" approach for judges has to be reconciled with the constitutional principle of judicial independence (cf. Article 97 (1) GG). However, a willingness to provide (access to) training programmes, and an ongoing commitment to encouraging staff to use that resource, is an integral part of the

targeted professional development of judges and prosecutors. In Schleswig-Holstein, for example, those working in the justice system are encouraged to attend the various training courses in this area offered at a national level by the German Judicial Academy (Deutsche Richterakademie). Those courses include courses on psychology and psychiatry in criminal proceedings, political extremism, current asylum and immigration law issues, and psychological and social issues in family law, all of which cover questions relating to torture.

78. Medical staff employed in the prison service will generally have attended lectures on the detection of various physical and psychological sequelae of trauma as part of their previous professional training. Prison staff attend regular internal training events at their institution to bring them up to date with relevant new findings in this field. Conferences of prison doctors and dentists also regularly cover the Istanbul Protocol and the details on how doctors can detect signs of torture, and the procedures to follow in such cases. Treatment for illnesses resulting from experiences of abuse and violence is part of psychiatric and psychological healthcare provision. Crisis intervention and therapy sessions are provided in particular to address trauma-related disorders such as post-traumatic stress disorder.

79. All staff in those areas of the public service in which the use of force is, in principle, lawful are given in-depth information on when its use is and is not admissible. A central aspect of that training is that there is an absolute prohibition of torture in any form. It is made clear that the use of methods of torture and the excessive, disproportionate and thus potentially unlawful use of coercive measures constitute criminal offences that are subject to mandatory prosecution.

80. All Länder and the Federal Police give their police officers regular training in the basics of the use of force and the use of firearms. The relevant regulations are subject to continuous evaluation and review by the training institutions. Police intervention is based on the principle that conflict is to be resolved without the use of force if possible. At the same time, all police officers must be familiar with the statutory basis for the use of force and with the regulations governing the use of service weapons.

81. Questioning is covered as a topic in its own right in vocational training and degree programmes, and in professional development courses for all Land police personnel who carry out questioning. Classes/courses on questioning address the issue of prohibited methods of interrogation (including the prohibition of torture) and cover non-coercive investigation techniques.

82. Article 10 paragraph 2 of the Convention has been given effect through, for example, the enshrining in law of the prohibition of torture and other cruel, inhuman or degrading treatment as part of provisions governing police custody and information/instruction obligations (see for example sections 136 and 136a StPO). Relevant internal regulations and procedures are regularly updated and communicated. As regulations and procedures require adherence to the law, they ultimately include the prohibition of torture even where it is not explicitly mentioned.

Article 11

Reply to paragraph 13 of the list of issues

83. Please see the response to question 3 regarding questioning and custody.

Identification requirements

84. With a legislative initiative launched in 2023, the Federal Government is planning to introduce pseudonymised identification for officers of the Federal Police. The aim is to make the actions of the police more transparent for all citizens.

85. On this point, it should also be noted that a 2019 Federal Administrative Court ruling found Brandenburg's statutory requirement for police officers to wear identification to be constitutional.[6]

86. At a regional level, the Länder of Baden-Württemberg, Hamburg, Mecklenburg-Western Pomerania and Rhineland-Palatinate have each introduced a requirement for police officers in operational units to wear individual, pseudonymised badges that can later be used to identify them. The rules in Hesse go further: section 98a of the Hesse Act on Public Safety and Order (HSOG) introduced in principle a requirement for police officers not in operational units to wear name badges. In Thuringia, too, police officers not working in operational units wear name badges on their uniforms. Police officers in Saxony-Anhalt, Rhineland-Palatinate and Berlin are, as a rule, required to wear a name badge when performing their duties. In some cases, they wear a number that allows their subsequent identification. A tactical unit ID allows subsequent identification of the tactical unit. In Bavaria, Lower Saxony, North Rhine-Westphalia, Schleswig-Holstein, Saxony and Saarland, identification is worn by police officers on a voluntary basis. Police officers in operational units in Bavaria, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein do, however, wear a numerical ID on their uniform that allows the identification of their unit.

Racial profiling

87. At a national level, section 22 (1a) of the Act on the Federal Police Force (Bundespolizeigesetz) is to be amended. The legislative initiative mentioned above provides for an amendment to the effect that it is unlawful to select an individual for questioning on the basis of any characteristic set out in Article 3 (3) GG where there are no objective grounds for that individual's selection that are justified in light of the purpose of the questioning. The amended provision is designed to make the process more citizen-centred and to improve transparency and acceptance of the power to question as the situation requires ("lageabhängige Befragung"). The change supplements and provides clarification on the general rules on proportionality and the exercise of discretion. Any individual questioned has the right to demand the issuance, without delay, of a record of their questioning and the reasons why they were questioned. The individual in question is to be informed of this right.

88. The following measures are examples of steps taken at Land level to address racial profiling: in Berlin, a statistical record of allegations of racial profiling has been kept since 1 January 2020. As at 31 December 2022, a total of 14 cases had been registered. The Hamburg Police Force has set up a complaints body that focuses on the examination of accusations of racially motivated police misconduct. In Saxony-Anhalt, a more extensive reporting obligation introduced in 2020 requires the immediate reporting of any accusations or suspicions of racism raised in complaints or reports to the police or through other channels. All incidents, accusations and claims (including those made anonymously) against officers of the Land police force are recorded. Incidents linked to racial profiling are therefore recorded in the statistics. "Racism" was also one of a number of categories added to the list of complaint types for Saxony-Anhalt police complaints in 2021. The category covers cases in which (excessive) police action has been taken against an individual on the grounds of actual or assumed (external) characteristics such as skin colour, name, language, religion, background, customs, etc. Since the 2021 reporting year, the statistics for all such complaints received by the Land police force have been published in an annual report from the Central Complaints Body (Zentrale Beschwerdestelle) at the Saxony-Anhalt Ministry of the Interior.

[6] Federal Administrative Court, judgment of 26 September 2019, BVerwG 2 C 33.18.

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89. Please see below for data on remand prisoners and convicted prisoners, and on occupancy rates:

		Actual occupancy									
				By sex		*By age*		*By type of detention*			
Date	*Capacity*	*Total*	*Occupancy rate*	*Of whom men*	*Of whom women*	*Of whom adults*	*Of whom juveniles*	*Prison*	*Remand detention*	*Preventive detention*	*Other form of deprivation of liberty*
31 May 2019 *	73 107	65 060	88.99%	61 295	3 765	64 136	766	49 704	13 321	579	1 326
31 May 2020 *	73 112	57 766	79.01%	54 555	3 211	56 894	718	44 193	11 840	599	1 002
31 May 2021 *	72 368	57 440	79.37%	54 171	3 269	56 836	569	43 993	11 502	599	1 341
31 May 2022 *	72 316	56 126	77.61%	52 940	3 186	55 454	626	42 443	11 766	608	1 308
31 May 2023	72 481	58 419	80.60%	55 045	3 374	57 599	785	43 675	12 776	605	1 364

Source: Federal Statistical Office (*Statistisches Bundesamt*) (Ed.) Total number of prisoners and persons in remand detention in German prisons, based on the number of prisoners in open and closed prisons.

Reduction in prison overcrowding

90. Responsibility for the prison service lies with the Länder.

91. With only a few exceptions, there has been no overcrowding in the Land prisons in recent years (as at 31 December 2022). If and when overcrowding does occur in individual prisons, the Länder respond with temporary or permanent changes to the applicable detention plan and/or by moving prisoners to other prisons with free capacity.

92. The Länder are nonetheless continuing their work on increasing capacity to reduce occupancy rates. For example, a programme of work is currently being implemented in North Rhine-Westphalia covering 2,728 prison spaces at various sites (modernisation and new builds).

93. In Baden-Württemberg, the plan is to increase capacity by around 1,000 in the short to medium term. Three extensions on existing sites providing up to 360 additional spaces went into operation in 2023 as part of this project. An existing building with a capacity of around 300 also went back into operation in early 2024 following refurbishment. The planned new build for Rottweil Prison will be a modern facility with 500 spaces, with better disabled and wheelchair access.

Improvements in conditions at Karlsruhe, Schwäbisch Hall and Tegel prisons

94. A total of more than 550 new posts across nearly all prison roles have so far been created since 2016 in a drive to ensure that prisons including Karlsruhe and Schwäbisch Hall have the right and sufficient human resources to address needs on the ground. Up to 270 training posts are available each year for prospective mid-level general prison and job management/prisoner training staff with a view to filling these new posts and dealing with staff turnover.

95. Ongoing projects in Baden-Württemberg aimed at preventing and reducing periods of default imprisonment for failure to pay fines should also result in a sustainable reduction in prison occupancy rates. One of those projects, launched in 2021, is entitled “Proactive social work to prevent default imprisonment”. The project provides information on the options of instalment payments and community service for individuals who owe fines to help them

avoid default imprisonment. Since 1 June 2021, the legal framework has also been in place to allow those already serving a period of default imprisonment to have that period reduced by undertaking voluntary work ("freie Arbeit") inside or outside the prison.

96. The following work at Tegel Prison in Berlin is set to achieve a considerable and lasting improvement in the quality of accommodation: a new build for Complex I (work to start in late 2025; total costs as calculated in 2023: 36.4 million euros); the planned remodel and the complete renovation of Complex III, a listed building (including the training centre and healthcare facility; work to start in 2026; total costs as calculated in 2023: 122.6 million euros); and the planned remodel and complete renovation of Complex II, a listed building (work to start in 2029; total costs as calculated in 2021: 40.2 million euros). Although the extensive renovation and remodel of Complex II have not yet begun, a number of specific structural and technical measures have been ongoing since 2023 (and are due to be completed in mid-2025). Alongside improvements to structural fire safety and a number of measures to remove hazardous materials, the work is mainly focused on modernising various food distribution and serving points and moving certain posts to improve safety and security and to increase the staff presence. Sports equipment has already been installed in the Complex II exercise yards.

Access to appropriate mental health care in places of detention

97. Individuals held in places of detention have a statutory entitlement to receive necessary, sufficient and appropriate medical care, and that includes mental health care.

98. New prisoners have a reception/admission meeting, which is generally with trained, specialist staff. Most facilities also screen new arrivals for suicide risk (cf. response to question 15). Inmates undergo a medical examination shortly after their admission, and this covers potential mental health issues as well as physical health. Many prisons also have an assessment process for prisoners involving in-depth discussions with the inmate and procedures for establishing their background and previous delinquency, including, specifically, issues relating to violence, sexuality or addiction and any other mental health issues.

99. If the initial assessment or subsequent assessment identifies a need for action, the various services available in the prisons will be brought on board as necessary and any treatment required will then be set out in the individual plan to be drawn up for the prisoner, or other health care measures will be initiated.

100. The Land prisons have a sufficient infrastructure in place for mental health care provision. Care is provided either as required or at regular consultations with – depending on the facility – prison doctors, psychotherapy services/psychological and social work services, consultant psychiatrists, social therapy services or, where necessary, external psychologists.

101. Any inpatient treatment required is generally provided in special units at the given prison or in a prison hospital; in some cases, inpatient treatment may also be provided in non-prison hospitals. As a result of the growing number of inmates with mental health issues, inpatient psychiatric treatment capacity for prisoners is now tight in some Länder; work is already under way on increasing that capacity. Baden-Württemberg, for example, is building a new multidisciplinary prison hospital with specialist psychiatry provision as it seeks to improve inpatient treatment options for inmates with psychiatric disorders. The new hospital is to have a capacity of around 205. Bavaria is also planning to set up a third psychiatric unit at Munich Prison. Schleswig-Holstein is to build an inpatient unit with a capacity of 25 at Lübeck prison by 2026. Telemedicine is used in a number of Länder to enable the provision of additional psychological and psychiatric services.

Solitary confinement in line with international standards

102. The Länder implement the United Nations Standard Minimum Rules for the Treatment of Prisoners in their own prison acts.

103. As a rule, solitary confinement as defined in Rule 44 is not used. Inmates may only be segregated as a special security measure that is subject to very strict statutory requirements. Segregation is only used as a necessary measure of last resort to avert a risk and can only be

ordered for longer than 24 hours if this is necessary in light of a risk posed by the person of the prisoner (commonly: the risk of escape; the risk of violence against people or property; or the risk of self-harm or suicide). Each and every case of segregation is closely monitored by the prison, usually with the involvement of the competent medical and psychological services.

104. Segregation is regularly reviewed to assess whether it remains necessary, and in particular whether it remains proportionate. For segregation lasting longer than certain, set periods, there is commonly also a duty to report to the competent supervisory authority, which in some cases must approve the continuation of segregation beyond a defined duration. In some Länder, both the medical and the psychological services can recommend changes to the measure at any time to ensure that solitary confinement does not lead to a deterioration in the general health of the inmate or to the exacerbation of a mental or physical disability.

105. A number of Länder have also specifically responded to the Committee's concluding observations by rethinking how they use segregation in practice. For example, under Lower Saxony's new regional guidelines, there is to be a focus on communication in daily prison routine, and every opportunity to engage with segregated individuals is to be taken. Interpersonal contact is to be possible for a total of at least 120 minutes every day. Weekly sessions to discuss stress and concerns and as many visits and as much telephone and video call time as possible are offered to individuals in segregation. Segregated inmates can also work or engage in other activities to the extent that space in the prison allows.

106. Alongside segregation as a preventive measure, disciplinary confinement is another measure available in all Länder with the exception of Brandenburg. It can only be used as a last resort on a case-by-case basis in the event of serious or repeated breaches of the rules. Young prisoners may not be confined for more than two weeks.

Physical restraint

107. Statutory rules on physical restraint in prisons, psychiatric facilities, youth detention facilities and other places of detention are largely defined in the relevant Land legislation in line with the defined areas of responsibility.

108. The relevant legislation strictly follows the constitutional requirements set out by the BVerfG in its judgment of 24 July 2018 (– 2 BvR 309/15, 2 BvR 502/16) regarding the use of physical restraints on persons confined under public law. The BVerfG found that physical restraint for longer than merely a short period of time qualifies as a deprivation of liberty requiring a judicial decision under Article 104 (2) GG, and that the legislature had a regulatory duty to enact provisions specifying the requirement of a judicial decision in procedural terms. A number of Länder amended their relevant legislation in light of this ruling; cf. response to question 17.

109. Physical restraint is only permitted as a measure of last resort to avert risks in cases in which less severe measures have no prospect of success. Such risks are commonly: a risk of violence towards others, a risk of suicide, or a risk of serious self-harm; as a rule, medical opinions confirming that physical restraint is necessary are also required. Physical restraint that is likely to last longer than half an hour is also subject to a court order. In cases of imminent danger, physical restraint may provisionally be ordered by certain individuals at the facility in question; a court decision is then to be obtained without delay.

110. The facilities are required to keep comprehensive records of when physical restraint is ordered and the reasons why, and on the period of restraint itself, including documentation of the type of monitoring and supervision. Once the period of physical restraint is over, prisoners and detainees are also to be informed of their right to have a court review the lawfulness of the measure.

111. The individual concerned is supervised particularly closely throughout the period of physical restraint, and is under constant monitoring by staff who have been trained in this role by medical professionals and who have the individual in their direct line of sight. Physical restraint is also always carried out under close medical scrutiny, and items used for the purpose of restraint must be appropriate in medical terms.

112. In addition to the statutory regulations, the various facilities also have their own procedures, guidelines, instructions and similar internal regulations setting out wide-ranging rules that cover: prerequisites for physical restraint; what items and equipment may be used; how physical restraint is to be carried out; respect for the dignity of the individual concerned; medical supervision; documentation and discussion of the measure with the prisoners and detained persons concerned; staff training; and obligations to report to the supervisory authority.

Reply to paragraph 15 of the list of issues

113. Responsibility for legislating on the execution of custodial sentences and psychiatric detention and for the administrative aspects of implementation lies with the Länder (cf. Article 30 and Article 70 (1) GG). The Federation thus has no supervisory role vis-à-vis the Land justice departments in this area.

Deaths

114. Figures from the Länder on deaths in prison recorded using a standard nationwide procedure can be found in Annex 5.

115. Statistical data from the Länder on deaths in police custody and in forensic psychiatric detention and on the findings of the corresponding investigations can also be found in Annex 5 where available; not all of these data were collected using the same system.

116. In order to prevent deaths in police custody, a number of Land police forces assess beforehand whether custody is appropriate for a given individual. This approach allows sufficient consideration to be given to any existing medical conditions and non-visible injuries. If medical issues are discovered, the individual is monitored more closely. In some cases, structural measures have been taken in response to suicides in custody.

117. All Länder are making considerable efforts in the area of suicide prevention both in prisons and in forensic psychiatry facilities. Efforts include work to recognise suicide risk when an individual is admitted (suicide risk screening); subsequent monitoring (risk monitoring); and appropriate support and/or treatment or therapy. All these steps generally follow set standards and procedures. Facilities commonly have suicide prevention and safety cells that are specifically designed for monitoring prisoners and for the stabilisation of suicidal inmates. Land prison staff also receive extensive training and professional development on how to recognise the signs of suicide risk and to respond appropriately. A number of Länder have created specialist roles within their detention facilities, for example the post of suicide prevention officer.

118. In many Länder, case conferences are held to address and discuss each case of suicide. In some cases, suicides are also reported to the Land parliaments.

119. The various measures and strategies in place for suicide prevention are reviewed and, where necessary, updated on an ongoing basis in the light of new findings and of experience and suggestions from prison practice. Those review processes draw heavily on the work of Land working groups and dialogue at federal level in the Suicide Prevention in Prisons national working group. As well as providing a forum for sharing experiences of different intervention strategies across the country, the national working group develops suicide prevention guidelines and issues joint recommendations for practice in the individual Länder. Suicide prevention measures in the Land prisons draw on these findings.

120. In all Länder, deaths in detention or custody must immediately be reported to the competent public prosecution office, which then launches an independent investigation.

121. There is no record of any compensation payments to relatives of deceased individuals.

Violent incidents

122. The available statistical data on the frequency of inter-prisoner and staff violence and the results of the relevant investigations during the reporting period can be found in Annex 6.

123. All facilities have an obligation to report incidents involving actions that could constitute criminal offences to the competent public prosecution office. The competent public prosecution office then launches an independent investigation. In many Länder, facilities also report violent incidents to the competent supervisory authority.

Reply to paragraph 16 of the list of issues

Detention of asylum-seekers and undocumented migrants

124. Individuals seeking asylum are permitted by law to remain in the country for the duration of their asylum application process (cf. section 55 AsylG). No foreign nationals are placed in detention or in custody pending deportation on the grounds that they have submitted an asylum application. Only in the following cases does an asylum application not, exceptionally, preclude custody pending deportation being ordered or continued: the foreign national is already in remand detention, in prison, in custody pending deportation or in custody to secure departure at the time of submitting the asylum application (cf. section 14 (3) AsylG).

125. A foreign national must be subject to an enforceable obligation to leave the country before their detention can be ordered under immigration provisions. An individual may only be detained on the order of a court and solely for the purpose of deportation. Custody pending deportation is a measure of last resort used to ensure that deportation can be carried out, and a corresponding application to the competent local court is only made if it is to be expected, in light of the conduct of the individual in question, that they will otherwise abscond. In line with the principle of proportionality, the immigration authorities will generally check before applying for custody pending deportation whether deportation is possible and whether other, less severe measures (such as a duty to report to the authorities; the provision of a security; or restrictions on movement) offer an alternative, effective way to ensure that the individual in question is where they are supposed to be on their scheduled deportation date and they do not evade deportation by absconding or changing their place of residence without authorisation.

126. The requirement for custody pending deportation to be ordered by a court also guarantees an independent assessment of whether custody is proportionate and whether less severe measures are possible; it thus ensures that custody pending deportation is only ordered as a measure of last resort to secure the enforcement of an enforceable requirement to leave.

127. Cases relating to custody pending deportation are required to be handled in an expedited manner. This means that the period of custody is to be kept to a minimum and those in custody are to be deported without undue delay.

128. Where detention for the purpose of transfer to another EU Member State under the Dublin system has been ordered, the provisions of the Dublin III Regulation (Article 28) apply. The Regulation specifically provides for detention in order to secure the transfer procedure as a measure of last resort only, and also explicitly states that detention is to be for as short a period as possible (Article 28 of the Dublin III Regulation).

Independent complaints mechanism

129. Individuals have a right to lodge an appeal against a court decision ordering their custody pending deportation. Most Länder also have independent detainee advisory services and/or complaints bodies/councils, and these are often based at the custody facilities (cf. section 40 of Saxony's Act on the Execution of Custody Awaiting Deportation (SächsAHaftVollzG) and section 22 (2) of Schleswig-Holstein's Act on the Execution of Custody Awaiting Deportation (AHaftVollzG SH), for example). In some Länder, the entitlement to free general legal advice (an initial consultation with a lawyer) is enshrined in statute (cf. section 7 (3) of North Rhine-Westphalia's Act on the Execution of Custody Awaiting Deportation (AHaftVollzG NRW), for example). Many recognised refugee support organisations also provide an independent advisory service for detainees. Individuals in the detention facilities of the Länder have extensive means of communication (for example

telephone and in some cases Internet access, etc.), which they can use to contact independent advisory services, for example.

End to placement in prisons

130. Article 16 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (the EU Return Directive) requires individuals in custody pending deportation to be held separately from prisoners.

131. The Second Act to Improve Enforcement of the Obligation to Leave Federal Territory (Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht) set aside in some cases the absolute requirement for separation under which special detention facilities are to be used for custody pending deportation. For a transitional period (ending on 30 June 2022), it was, in compliance with European law, possible to hold individuals in custody pending deportation in normal prisons, provided the deportees were not held together with convicted prisoners. With the end of the transition period on 30 June 2022, the Länder stopped the practice of using space in normal prisons for custody pending deportation.

132. Most of the Länder have set up special facilities for custody pending deportation, which are separate from prisons.

133. Now, prisons are only used for custody pending deportation in exceptional cases in which the individual in question poses a significant threat to significant legally protected internal security interests or to the life of or of physical injury to others (cf. section 62a (1) sentence 2 variant 2 AufenthG) and that threat cannot be appropriately addressed in a facility for custody pending deportation; the individual is then held separately from the prisoners.

134. In its judgment of 10 March 2022 (C-519/20), the European Court of Justice reiterated that the second sentence of Article 16(1) of the EU Return Directive authorises the Member States, in exceptional circumstances, and other than in those expressly referred to in Article 18(1) of the EU Return Directive, to detain illegally staying third-country nationals in prison accommodation, provided that they are separated from ordinary prisoners, for the purpose of removal, where, owing to the particular facts of the case, the Member States cannot comply with the objectives pursued by the Directive by detaining the individuals in question in specialised detention facilities. The Court held that the detention of a third-country national in prison accommodation for the purpose that individual's removal is thus permitted where they pose a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State concerned, provided that they are separated from ordinary prisoners.

Reply to paragraph 17 of the list of issues

135. National statistics for forensic psychiatry facilities and other institutions i.e. psychiatric hospitals and care homes cannot be provided, as there is not currently comprehensive data collection across the country in this area or a standardised national system for such data collection. Relevant data are only available from certain Länder or for certain facilities, and have therefore not been provided here as they cannot provide a useful picture for the country as a whole.

Reducing overcrowding

136. The Länder take action whenever general psychiatric units become or threaten to become overcrowded. Measures include:

- Assessing whether inpatient treatment is required and how to enable a patient to be transferred to a day clinic/outpatient setting as soon as possible; transfer and discharge programmes to reduce the strain on closed wards; and increasing the availability of outpatient treatment, for example by extending consultation hours in outpatient psychiatric clinics.
- Collaboration with other facilities in the area such as care homes to find solutions for long-term patients who are not in need of acute hospital care.

- In some cases, plans for increasing capacity by modernising existing buildings or building new facilities, with a corresponding increase in treatment options – for example, as at January 2024, Bavaria is planning a total increase in capacity (inpatient and combined hospital and home care) of 231 beds and 277 spaces in psychiatry and psychotherapy.

137. There have in recent years (as at 31 December 2022) been some cases of overcrowding in forensic psychiatry facilities in some Länder. Measures taken by the Länder to reduce overcrowding/occupancy include:

- Increasing treatment capacity by renovating/modernising/building new care and treatment facilities and other infrastructure.
- Expanding available services.

Reform of section 64 StGB

138. The Act Reforming Sentencing Law entered into force on 1 October 2023. A central aspect of the Act is a reform of the law governing placement in an addiction treatment facility under section 64 StGB. Above all, the Act seeks to focus placement once again on convicted individuals who genuinely require treatment in such facilities as a result of their drug or alcohol abuse and the risk this poses of their committing criminal offences. At the same time, the aim is if possible to halt, and at the least to slow, the steady rise in the number of people in such facilities that has continued for years, and thus prevent overcrowding.

139. This is to be achieved by introducing greater, albeit moderate, restrictions on placement criteria; by removing incentives for offenders who are not in genuine need of treatment to seek placement in such a facility alongside their (long) custodial sentence; and by providing legal clarity in the statutes to enable prompt transfer or return to prison in cases in which treatment has been unsuccessful.

Physical restraint

140. Please see the response to question 14; the information on the statutory rules on physical restraint and the implementation of the BVerfG judgment of 24 July 2018 also applies to psychiatric hospitals.

141. As regards implementation in the specific Länder referred to in the LOIPR: Saarland's Ministry of Justice is currently working on a comprehensive reform of the Land Act on Forensic Psychiatric Detention. The revised legislation is to include provisions on physical restraint that better meet the requirements set down by the BVerfG. The intention is to launch the legislative process by mid-2024.

142. In the Free State of Thuringia, the Act Amending the Thuringian Mental Health Act and the Thuringian Act on Forensic Psychiatric Detention (Gesetz zur Änderung des Thüringer Gesetzes zur Hilfe und Unterbringung psychisch kranker Menschen und zur Änderung des Thüringer Maßregelvollzugsgesetz) of 22 October 2022 brought the relevant statutory provisions into line with the aforementioned BVerfG ruling (cf. for example section 26 (1) sentence 1 no. 5 and section 26 (3) of the Thuringian Act on Forensic Psychiatric Detention (Thüringer Maßregelvollzugsgesetz)).

143. In psychiatric hospitals in Berlin, any measures involving the deprivation of liberty are employed in strict accordance with the applicable rules and statutory regulations (placement order; medical staff in attendance; record of measure; continuous observation by a member of staff in the immediate vicinity; and one-on-one supervision). In most cases, a brief period in a time-out room is used instead of physical restraint. If it becomes apparent that physical restraint is going to last longer than 30 minutes, Berlin Mitte Local Court is notified by fax. The processes to follow are set out in detailed procedures and social-psychiatric services exercise a supervisory function. Since March 2020, Berlin has used judge standby duty schedules to implement the requirement for a judicial decision for physical restraint lasting longer than 30 minutes. Visiting committees visit each hospital and clinic at least once a year to assess compliance with the statutory requirements as set out in Berlin's Mental Health Act (PsychKG Berlin). The Berlin Mental Health Act also provides for a right of objection and review for individuals affected.

144. In Lower Saxony, the Land Mental Health Act (NPsychKG) was amended in 2019 to bring it into line with the requirements set down by the BVerfG. Inspections are carried out by the body with supervisory responsibility to monitor compliance.

145. The Act on the Use of Coercive Treatment and Physical Restraint in Connection with Measures Involving Deprivation of Liberty (Gesetz zur Durchführung von Zwangsbehandlungen und Fixierungen im Zusammenhang mit dem Vollzug freiheitsentziehender Maßnahmen) in Saxony-Anhalt entered into force on 25 March 2021. It added a new section 20a to the Saxony-Anhalt Act on Forensic Psychiatric Detention (MVollzG LSA). The statutory regulations on the use of physical restraint in forensic psychiatry facilities in Saxony-Anhalt are in line with the requirements set down by the BVerfG in its judgment of 24 July 2018. Continuous monitoring by a member of staff in the immediate vicinity of any individual being physically restrained is now standard practice in Saxony-Anhalt's forensic psychiatry facilities. No use has been made to date of the exception permitted under section 20a (4) sentence 4 of the Saxony-Anhalt Act on Forensic Psychiatric Detention. A potential amendment to section 20a (4) sentence 4 will be part of the project to reform the Saxony-Anhalt Act on Forensic Psychiatric Detention, which is to be undertaken during the current legislative period (2021–2026).

146. It should also be noted that Hesse enshrined in law a duty for psychiatric hospitals to report coercive measures; this duty is set out in section 14 of Hesse's 2017 Mental Health Act (PsychKHG). Under that provision, psychiatric hospitals have an obligation to report to the supervisory authority on a range of points relating to the placement of individuals under the Mental Health Act and the German Civil Code. This information is analysed and published in a report in accordance with section 14 of the Hesse Mental Health Act. The report is a useful tool for monitoring coercive measures in psychiatric facilities.

Treatment

147. Alternative forms of treatment are offered in the general psychiatric units at a number of psychiatric hospitals in the Länder. These include community-based rehabilitation and other forms of outpatient treatment, for example combined hospital and home care, alternative forms of accommodation such as assisted living in shared accommodation, multi-generational living, and assisted communal living for people with dementia. In the event that a user of one of the above types of accommodation requires care, home care services can provide additional support. In Berlin, for example, it has also been possible since 2019 to replace inpatient acute treatment with home treatment.

148. In the case of forensic psychiatric detention, it is not possible to fall back on the same alternative forms of treatment given the reasons for which an individual has been detained. Nonetheless, individuals who have been placed in forensic psychiatry facilities may only ever have their freedom restricted to the extent that is required and proportionate. As soon as reasonable in the light of the risk an individual poses, detention conditions are therefore to be relaxed. Often, individuals can be housed outside the forensic psychiatry facility, for example in residential groups, as part of the progressive relaxation of detention measures. In Mecklenburg-Western Pomerania, there are also partnerships in place with facilities governed by care home law to enable patients to be moved for further rehabilitation and to shorten the period in forensic psychiatric detention.

Articles 12 and 13

Reply to paragraph 18 of the list of issues

Statistical data

149. Statistical data on the number of disciplinary proceedings and the type of disciplinary measures imposed are not uniformly collected at the national level. As far as the Federal Police is concerned, it can be reported that during the period in question, no disciplinary measures were imposed on officers of the Federal Police for withholding fundamental legal safeguards from persons deprived of their liberty.

150. Data on the offences of "causing bodily harm in the course of official duties" (section 340 StGB) and "extorting a statement" (section 343 StGB) are recorded both in the crime statistics collected by the police, and in the criminal prosecution statistics collected by the judicial system. However, it should be noted that the statistics on "causing bodily harm in the course of official duties" also cover bodily harm caused by public officials other than police officers. Moreover, this offence is not limited to acts committed against persons deprived of their liberty. The offence of extorting a statement applies only to public officials involved in specific proceedings who, using specific means, seek to coerce a person into either testifying or declaring something in the proceedings, or refraining from doing so. The figures regarding these offences, which are provided in Annex 7, are therefore only conclusive to a limited extent.

151. Additional data supplied by the Länder on proceedings involving potential police misconduct are provided in Annex 8 where available.

Independent complaints bodies

152. The authority to direct criminal investigation proceedings lies with the public prosecution offices. Investigation and prosecution authorities are required, of their own motion, to investigate a matter whenever there are grounds to believe that a crime has been committed.

153. As a rule, safeguards are in place in the Länder to ensure that the necessary concrete investigations are transferred to another police station than that against whose staff the allegations have been made. The same applies to incidents in the prison system. Moreover, almost all Länder have independent complaints bodies or public services ombudsmen enabling citizens to have their concerns regarding the public authorities of a given Land examined by an independent body or official. In some cases, these bodies are affiliated with the Land parliaments, and in others with the Land administrations. There are bodies of this kind in Berlin, Bremen, Hesse, Mecklenburg-Western Pomerania, Schleswig-Holstein, Brandenburg, Lower Saxony, Rhineland-Palatinate, Hamburg, North Rhine-Westphalia, Saxony, Saxony-Anhalt and Thuringia.

154. At the Federal level, the Act on the Federal Police Complaints Commissioner at the German Bundestag (PolBeauftrG) was recently adopted. The Federal Police Complaints Commissioner will handle complaints both from officers of the federal police authorities (namely the Federal Police, BKA and the Police of the German Bundestag) and from ordinary citizens.

155. A central office to handle disciplinary proceedings has been set up within the BKA. In view of the negligible number of cases to date, no statistical data are available. In addition, in 2021 the BKA appointed a Values Commissioner tasked with coordinating a broad range of measures to strengthen democratic resilience within the BKA. The tasks of the Values Commissioner include taking action in specific individual cases where serious violations of fundamental constitutional values are apparent. The Values Commissioner belongs to the senior staff of the BKA and has the right to be heard directly by its president.

156. Ordinary citizens can submit complaints against the Federal Police to any office of the Federal Police by post, online (www.bundespolizei.de), in person, in writing or by telephone at any Federal Police station. Employees of the Federal Police can also submit complaints and tip-offs directly to the confidential reporting unit (Vertrauensstelle) of the Federal Police at the Federal Police Headquarters. A transparent complaint management system ensures that all incidents are objectively investigated and assessed. Criminal investigations are delegated to the appropriate authorities in the Länder to safeguard the independence of investigation proceedings. Preliminary investigations to establish the existence of possible misconduct are generally conducted with the involvement of the internal affairs units of the Federal Police. The complaints/confidential reporting unit of the Federal Police ensures that the matter is investigated impartially. Where misconduct or improper execution of a given measure are identified, disciplinary or criminal measures are promptly initiated by the competent officials. In order to verify the efficiency of the complaint management system, regular evaluations and administrative and expert reviews are conducted, and corresponding action taken where appropriate.

Reply to paragraph 19 of the list of issues

157. On 19 July 2005, Zweibrücken Public Prosecution Office, which has jurisdiction over Ramstein, opened a criminal investigation into the case of Abu Omar. The investigation was suspended on 21 January 2008 for lack of an identified perpetrator. In early 2011, Zweibrücken Public Prosecution Office reopened the investigation in the wake of media publications, in particular the book "Kidnapping in Milan" by Steve Hendricks. It was suspended once again on 5 September 2011, as the facts of the case could not be verified in spite of these reports.

158. On 13 June 2008, GBA opened an investigation into the case of the overflight of an aircraft transporting two CIA detainees from Stockholm to Egypt in December 2001 on suspicion of abduction. This investigation was suspended on 18 May 2012.

159. The GBA launched an investigation into whether there had been secret prisons on German territory. As no confirmation could be found, the investigations were suspended on 2 February 2007.

160. In the case of El-Masri, Memmingen Public Prosecution Office initiated criminal proceedings that were subsequently taken over by Munich Public Prosecution Office. In January 2007, Munich Public Prosecution Office obtained arrest warrants against 13 CIA officers on strong suspicion of unlawful imprisonment and causing bodily harm by dangerous means. The Federal Government applied for international arrest warrants, triggering a wanted persons notice. No extradition requests were submitted to the US, as the US had previously made it clear that it would not comply with any such requests. Legal action by El-Masri to compel the Federal Government to request extradition of the individuals in question was dismissed by Cologne Administrative Court. In 2017, Munich Public Prosecution Office suspended investigations into the CIA officials due to expiry of the limitation period.

161. Also regarding the El-Masri case, it should be noted that Mr El-Masri lodged an application with the ECtHR against North Macedonia. In December 2012, the ECtHR found that North Macedonia had violated the ECHR, awarding Mr El-Masri 60,000 euros in compensation. The Federal Government monitored the implementation of the judgment in the Committee of Ministers of the Council of Europe, and supported North Macedonia with the transfer of the amount to Mr El-Masri. Implementation of the judgment at the Council of Europe has also since been concluded.

162. The case was extensively examined in the German Bundestag by the Committee of Inquiry into the Federal Intelligence Service. No responsibility on the part of the Federal Government for the injustice suffered by Mr El-Masri – and documented e.g. in the ECtHR judgment – could be determined (Bundestag Printed Paper 16/13400).

Article 14

Reply to paragraph 20 of the list of issues

163. Persons whose health has been harmed as a result of torture are entitled to claim Social Compensation (until 31 December 2023: under the Victims Compensation Act [OEG]; from 1 January 2024 under Book Fourteen of the German Social Code [SGB XIV], see also in this regard the reply to question 26). Implementing the provisions of the SGB XIV falls within the remit of the Länder. No data are available at the national level on the number of torture victims that have received benefits under the OEG. The same applies to the nature and extent of benefits provided. In most Länder, no statistical analysis is performed.

164. Reference is made to a statistical analysis from Mecklenburg-Western Pomerania by way of example: in the period from 2017 to 2021, two applications were submitted for victims' pensions under section 3 OEG for health damage resulting from ill-treatment in prisons abroad.

165. Victims of criminal offences may also assert a pecuniary claim against the accused in the course of criminal proceedings under section 403 et seqq. StPO. The amount of damages

awarded by the courts in adhesion procedures of this sort is not statistically recorded and the statistics on adhesion procedures do not differentiate between offences. Thus, the requested information cannot be provided.

Article 15

Reply to paragraph 21 of the list of issues

166. Evidence obtained through torture or ill-treatment is inadmissible pursuant to section 136a (3) sentence 2 StPO. The use of such evidence is explicitly prohibited even where the accused has consented to its use. The prohibition also applies to the examination of witnesses (section 69 (3) StPO).

167. Whenever it becomes apparent to the competent authorities, on the basis of documents in the case file or otherwise, that evidence was obtained through torture or ill-treatment, steps will be taken to ensure that this evidence is not used, if possible as early as the investigation proceedings.

168. The Federal Government is not aware of any examples of criminal proceedings dismissed by the courts due to evidence or statements having been obtained through torture or ill-treatment.

Article 16

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Structural/strategic measures

169. During the 19th legislative term, the Federal Government achieved two important milestones in the fight against right-wing extremism and racism with the Package of Measures to Combat Right-Wing Extremism and Hate Crime, and the Catalogue of measures of the Cabinet Committee on Combating Right-Wing Extremism and Racism. Building on these successes, in the 20th legislative term an agreement was reached to formulate a comprehensive strategy against extremism at national and European level comprising prevention, deradicalisation and risk mitigation measures, as well as a strategy for social cohesion, promotion of democracy and prevention of extremism. These two strategies are to be combined into a single comprehensive strategy to combat extremism and strengthen democracy. Also planned for the current legislative term are amendments and refinements to the measures of the National Action Plan against Racism and the Cabinet Committee on Combating Right-Wing Extremism and Racism. Additionally, the Federal Government Commissioner for Anti-Racism, who was appointed by Cabinet resolution on 23 February 2022, is also available as a central point of contact for people affected by racism. Among other things, she supports existing counselling services by developing a professional community-based counselling system in migrant organisations and other institutions with community ties so as to establish easily accessible contact points for victims of racism, while at the same time closing gaps in the wider counselling landscape. In addition, she supports a broad range of pilot projects devoted to combating racism, and funds research into structural racism.

170. Furthermore, on 15 March 2022 the BMI announced an Action Plan against Right-Wing Extremism. The plan comprises an effective bundle of short-term enforcement and prevention measures. The enforcement measures include enhanced efforts to confiscate weapons from right-wing extremists, redoubled investigations into financial activities with a view to dismantling right-wing extremist networks, forceful and systematic prosecution of online dissemination of unlawful content, and simplified procedures for the removal of right-wing extremists from public service. The preventive measures include strengthening political education, particularly where responding to conspiracy theories (in real life and online) is concerned, and promoting a democratic culture of debate. In addition, support is offered to

those seeking to disengage from extremist conspiracy theories. Further measures are concerned with protecting elected officials at the municipal level, and addressing the concerns of victims of right-wing extremism.

171. The individual Länder also have numerous measures in place, some of which are enshrined in Land action plans. In Schleswig-Holstein, for instance, a "Central Contact point for Anti-Racism and Values" was established in the Schleswig-Holstein police force as a part of the Land Action Plan against Racism. The task of this agency is to highlight and proactively address the issues of values, anti-racism and democracy promotion within the Land police. The focus of its work is on awareness-raising, both within the police and beyond, in the thematic areas of anti-racism and values; adapting police training materials to this end and supporting the Land police in (further) developing and implementing values-based approaches; analysis of structures and procedural channels in terms of their potential to promote racism; provision of a point of contact for concerns or complaints relating to the issues of anti-racism or values in connection with police work; and referral counselling.

Criminal prosecution

172. Racist attacks are resolutely prosecuted in Germany, regardless of whom they are directed against. Comprehensive criminal law provisions are in place to this end. Germany continuously monitors whether the offences defined in the applicable provisions of criminal law and the corresponding sentencing ranges are appropriate to crimes involving hate speech and racist behaviour so as to identify any need for further legislative action. For instance, the Act to Combat Right-Wing Extremism and Hate Crime, which came into force on 3 April 2021, introduced expanded definitions and in some cases harsher punishments for the offences of rewarding and approving of offences (section 140 StGB), insult (section 185 StGB) and threatening to commit a serious criminal offence (section 241 StGB). In 2021, the qualifier "antisemitic" was included in the list of sentencing factors provided in section 46 (2) sentence 2 StGB, explicitly emphasising that antisemitic motives can be considered an aggravating factor. A further law that entered into force in 2021 introduced the offence of hate-mongering insult, defined in section 192a StGB, thereby enhancing protection against disparagement on the basis of national, racial, religious or ethnic origin, ideology, disability or sexual orientation.

173. Both in the Länder and at federal level, criminal investigation and prosecution of racist and xenophobic attacks and politically motivated crimes are for the most part conducted by special organisational units of the police and public prosecution office.

174. For instance, with effect from 1 April 2022, Berlin police officially transferred the processing of hate crime to a "Central Office for Hate Crime" affiliated with a unit of the national security department of the Land Criminal Police. An example of a specialised unit associated with a public prosecution office is the Central Office to Combat Hate Crime established at the Rostock Public Prosecution Office in Mecklenburg-Western Pomerania with effect from 1 August 2021. Comparable offices exist in many other Länder. Many Länder have also appointed a Commissioner for Antisemitism within their respective public prosecution offices; these commissioners are connected by a nationwide network.

175. In connection with the comprehensive critical appraisal of the series of murders by the right-wing extremist group known as the National Socialist Underground (NSU) that was undertaken at federal and Land level, numerous measures were implemented to promote cooperation across Länder, with an impact that extends beyond these specific cases. Where deficits were observed with regard to information sharing and the coordination of measures, appropriate corrective action was taken. The creation of the Joint Counter-Extremism and Counter-Terrorism Centre (GETZ), the introduction of enhanced reporting obligations and events such as the "Regional Conferences" held at regular intervals by the office of the GBA have given rise to a network of competent judicial experts providing an effective framework for the timely detection and concerted eradication of existing right-wing terrorist structures.

176. Thematic training courses for investigation and prosecution authorities are regularly administered in a broad range of events in the relevant Länder to provide staff with the necessary training and awareness to ensure effective criminal prosecutions. For instance, the antisemitism commissioners of the Berlin Public Prosecutor General's office and Berlin

police, tasked with tackling antisemitic crime, maintain regular dialogue between investigation and prosecution authorities and Jewish institutions in Berlin, as well as relevant NGOs and victims. They provide specialised training and advice on the causes, manifestations, impact and potential avenues for prosecution of crimes driven by antisemitic motives and on appropriate handling of victims. To this end, a "Guideline for the prosecution of antisemitic crimes" was collaboratively drafted. Other Länder such as Schleswig-Holstein and Saxony also have comparable guidelines in place.

Digital violence

177. To date, a key element in the fight against hate crime on social networking platforms in Germany has been the Act to Improve Enforcement of the Law in Social Networks (NetzDG). Social network providers are obliged to remove or block unlawful content that constitutes one of the offences listed in the Act whenever a complaint to this effect is made. This rule applies, for example, when the content in question takes the form of an insult, defamation, malicious gossip, a threat, or images that constitute a violation of intimate privacy. The NetzDG served as a model for the EU's Digital Services Act (DSA), in particular with regard to notice and action mechanisms. In the EU, the provisions of the DSA came into force for very large online platforms (X, TikTok, Facebook, Instagram, YouTube, etc.) on 25 August 2023, and for all other providers on 17 February 2024; having been largely superseded by the DSA, the German legislation is no longer applicable, with the result that for the first time, unlawful content on the Internet is governed by EU-wide uniform rules.

Available data

178. In order to gain deeper insights into hate crime in general and racist, antisemitic and xenophobic violence in particular, nationwide statistics on politically motivated crime have been kept since 2001. The police forces of the Länder report relevant cases to the BKA via the Land criminal police offices Länder when investigations are launched.

179. On the basis of the perpetrator's motives and the circumstances of the offence, politically motivated crimes are classified by thematic area (into subcategories such as "xenophobic" or "antisemitic" within the superordinate category "hate crime"), and assigned to one of the following areas of crime according to the apparent ideological background: "politically motivated crime – right-wing", "politically motivated crime – left-wing", "politically motivated crime – foreign ideology", "politically motivated crime – religious ideology" and "politically motivated crime – unclassified" (renamed to "other categories" from 1 January 2023). The number of cases of politically motivated crime recorded in each category annually can be viewed on the website of the BMI.[7] The figures for 2020 and 2021 can be found below:

Type of offence/ classification		*2020*	*2021*	*Comment*
Xenophobic offences	**Total**	**9 420**	**9 236**	
	Of which classified as "politically motivated crime – right-wing"		88%	
Racist offences	**Total**	**2 899**	**2 782**	
	Of which classified as "politically motivated crime – right-wing"		95%	
Antisemitic offences	**Total**	**2 351**	**3 027**	
	Of which classified as "politically motivated crime – right-wing"		84%	
	Of which constituting incitement to hatred	21%	61%	Around half of the offences were committed online

[7] https://www.bmi.bund.de/DE/themen/sicherheit/kriminalitaetsbekaempfung-und-gefahrenabwehr/politisch-motivierte-kriminalitaet/politisch-motivierte-kriminalitaet-node.html.

Type of offence/ classification		*2020*	*2021*	*Comment*
Islamophobic offences	**Total**	**1 026**	**732**	
	Of which classified as “politically motivated crime – right-wing”		80%	

180. In parallel to the statistics recorded by the police, statistical surveys of criminal proceedings relating to hate crime have been conducted in all Länder since 2019 in order to gain a clearer picture of the extent and evolution of hate crime that also takes judicial data into account. The data are then aggregated by the Federal Office of Justice to provide an overall result for the whole country. The purpose of these data is to provide a meaningful basis for decision-making on measures and instruments to combat hate crime. For the purposes of this survey, criminal offences are classified as hate crime if, upon assessing the circumstances of the offence and/or the attitude taken by the perpetrator, there are indications that they are directed against a person on the basis of that person’s actual or assumed nationality, ethnic origins, skin colour, religion, beliefs, physical or and/or psychological disability or impairment, sexual orientation and/or sexual identity, political position, political views and/or political involvement, outward appearance, or status in society, and the offence is causally related to this or is committed in this context against an institution/object or other entity. This definition is based on the one used by the police for its statistics on hate crime. It should nevertheless be noted that the classification of offences in these statistics is performed solely by the judicial system. The classification used by the police is not adopted. Statistical progressions cannot be inferred from the data. The statistics for 2019 and 2020 are attached as Annexes 9 and 10.

Other issues

Reply to paragraph 23 of the list of issues

Measures taken in response to the threat of terrorism

181. In order to resolutely fight all forms of terrorism, the Federal Government engages in prophylactic measures to prevent people from turning to terrorism in the first place, implements protective measures, ensures effective cross-border prosecution and responds to terrorist attacks in such a way as to minimise their impact, in particular where the victims are concerned.

182. During all steps taken to combat terrorism, compliance with human rights is ensured by mechanisms such as an appropriate statutory framework, procedural safeguards and judicial review.

183. In order to preventively restrict access to weapons by extremists to the greatest possible degree, the EU firearms directive was amended, and the amendments transposed into national firearms law. Most of the amendments entered into force in 2020. Additionally, regulations were introduced whereby individuals belonging to an anti-constitutional organisation (including those that have not been banned) are generally considered to be unreliable for the purposes of firearms legislation, and are therefore barred from acquiring firearms. Furthermore, in the course of the reliability assessment a query must be made to the Federal Office for the Protection of the Constitution to determine whether the person in question has a record of extremism.

184. Especially in the Länder, numerous projects are in place to eliminate the root causes of extremism. Examples include Lower Saxony’s “Land Programme Against Right-Wing Extremism – for Democracy and Human Rights”, which fosters attitudes and behaviours aligned with liberal democratic values and human rights in order to counteract politically motivated extremism or inhibit ongoing radicalisation processes, and the “Land Programme for the Prevention of Islamist Extremism”.

185. To enable early detection of terrorist threats and an appropriate response in terms of both public security and criminal prosecution, a comprehensive information sharing arrangement is in place between the BKA and the Criminal Police Offices of the Länder. An important role in this arrangement is played by two cooperation and communication platforms: the Joint Counter-Terrorism Centre (GTAZ) and the Joint Counter-Extremism and Counter-Terrorism Centre (GETZ), each comprising over 40 national authorities in the field of domestic security.

186. In addition, the Federal Republic has implemented numerous legislative measures to allow more effective criminal prosecution of terrorist acts. These include procedural measures such as enhanced investigative powers[8] and reforms concerning the confiscation of criminal assets.[9]

187. Corresponding measures in criminal proceedings and measures in the field of public security that interfere with human and fundamental rights are subject to judicial oversight.

188. Firstly, in the case of intrusive investigatory measures and powers, a court order is generally required in order to ensure compliance with fundamental and human rights at the procedural level; this is the case, for instance, for electronic monitoring with an ankle tag under section 56 of the Act on the Bundeskriminalamt and the Cooperation between Federal and State Authorities in Criminal Police Matters (BKAG), or for measures involving telecommunications surveillance, source telecommunications surveillance or covert remote search of information technology systems (see e.g. section 100a (1) sentence 1 and 2 and section 100b in conjunction with section 100e (1) and (2) StPO). In principle, any interferences with fundamental rights involving the deprivation of liberty require prior judicial authorisation.

189. Secondly, affected persons can demand a judicial review of measures that interfere with their rights. Where covert measures are concerned, the affected individuals must generally be informed of the measures as soon as feasible without endangering the purpose of the investigation (see e.g. section 101 StPO).

190. Additionally, legislative amendments have been made with a view to safeguarding fundamental and human rights. In 2017, for instance, the BKAG was overhauled and adapted to comply with a decision by the BVerfG of 2016. In that decision, the court held that while the powers of the BKA to conduct covert monitoring to avert threats posed by international terrorism were essentially in line with fundamental rights, the concrete provisions authorising the interventions were not fully compatible with the principle of proportionality. This resulted in new regulations to protect the core of private life and regulate the transmission and deletion of data, and stricter rules on measures to avert threats posed by international terrorism.

191. An evaluation is currently under way as to whether amendments to the German legislation implementing Directive (EU) 2016/681 of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime are needed to reflect the narrow interpretation of the Directive expressed in the CJEU ruling of 21 June 2022.

192. To support the systematic and effective criminal prosecution of terrorist acts, specialised units have been in place in the various Länder for a number of years. Almost every Land has a “competence centre for national security”. These central offices serve as coordinators and points of contact for fundamental issues and overarching problems in the field of terrorism and extremism. They analyse current developments and emerging structures in this crime area, and develop strategies for criminal prosecution and prevention. In some Länder, they have investigative powers of their own with regard to certain criminal

[8] The Act to Increase the Effectiveness and Viability of Criminal Proceedings of 2017 added new powers to the StPO: section 100a (1) sentence 2 and 3 (Source telecommunications surveillance) and section 100b (Covert remote search of information technology systems).

[9] In 2017, rules on criminal asset recovery were comprehensively reformed by the Act to Reform Asset Recovery under Criminal Law. In particular, the revised section 76a StGB introduced a new mechanism for asset recovery in the fight against terrorism and organised crime: illegally obtained assets of unclear origin can be confiscated without the need to prove that a specific criminal offence has been committed.

proceedings involving terrorist activity. In other Länder, this task is often performed by specialised public prosecution units. The resulting specialisation also ensures that all criminal prosecution measures deployed to combat terrorism are compatible with the obligations of the State under international law, in particular the Convention.

193. Also worthy of note are the numerous efforts in support of deradicalisation and disengagement pursued in projects at both federal and Land level. The prison system plays an important role in this regard. In the course of a project for the prevention of extremism in Schleswig-Holstein, for instance, over 700 employees of the prison system, probation services and court assistance agencies received training in the areas of Islamist extremism and right-wing extremism.

194. Also of key importance are online prevention measures. For example, since 2023, North Rhine-Westphalia's comprehensive network of counselling centres funded by the Ministry of the Interior has been complemented by the online component of the programme "Wegweiser – Stark ohne islamistischen Extremismus" ("Signpost – Flourishing without Islamist extremism").

195. Finally, with regard to the prison system it should also be noted that individuals detained due to (or on suspicion of) terrorist offences are, without restriction, subject to the same statutory provisions as other detainees, and are not accommodated separately. The conditions of detention are wholly compliant with the requirements set out in Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Nelson Mandela Rules.

Victim protection

196. Germany boasts a broad network of well-established and sophisticated victim protection and victim support structures. State and non-state actors alike work closely together at federal, regional and municipal level to provide assistance to victims of terrorism according to their individual needs, including emotional and psychological support. A decision of the Federal Cabinet of 11 April 2018, most recently renewed on 12 January 2022, gave rise to the post of "Federal Government Commissioner for the Victims and Bereaved of Terrorist Offences committed on National Territory" ("Federal Victims' Commissioner"). The Victims' Commissioner is the central point of contact for the concerns of anyone affected by a terrorist act committed on national territory (injured or bereaved persons and eyewitnesses). Immediately after a terrorist attack on national territory, the Federal Victims' Commissioner activates a 24/7 hotline. This toll-free hotline is open to anyone who feels they have been affected by an attack. Its purpose is to provide emotional stability and psychological support for affected persons.

197. Book Fourteen of the German Social Code, which regulates social compensation, introduced further improvements for the victims of violent acts and terrorism (see also the reply to question 26).

198. A key component of the system of financial support for victims of terrorism is the system of hardship payments for victims of terrorist offences or extremist attacks, in place since 2001. Following a terrorist or extremist attack, injured persons can initially receive emergency aid in the amount of 3,000 or 5,000 euros, depending on the degree to which they are affected. Thereafter, injured persons may receive ongoing or final hardship benefits in respect of specific injuries. Career disadvantages caused by the attack can also be taken into account in the assessment of hardship payments, resulting in compensation of up to 20,000 euros. Bereaved persons such as spouses, children or parents of a person killed in a terrorist or extremist attack receive 30,000 euros in hardship benefits. Siblings receive 15,000 euros. Surviving relatives may also receive a one-off fixed sum to mitigate any loss of maintenance payments. This amounts to 25,000 euros for surviving spouses and between 25,000 euros and 45,000 euros for surviving children, depending on their age.

Training

199. Law enforcement officers in Germany receive comprehensive training in the field of counter-terrorism. It is important to note in this regard that terrorism occurs and propagates

in a wide variety of forms. This is reflected by the diversity of professional development courses available.

200. At the national level, members of the judiciary can benefit from training opportunities such as those offered by the German Judicial Academy. Notable examples include the conferences “Right-wing radicalism and neo-Nazism – continuities and recent trends”, “The justice system and Islam”, “The justice system and Judaism”, “Racism – a challenge for the judicial system” and “Right-wing extremism in Germany – continuities and recent trends”.

201. Since 2022, the core training syllabus of the BKA has included the two-day seminar “Police in democracy, police in dictatorship”, administered in collaboration with the House of the Wannsee Conference memorial and educational site. The aim of the seminar is to educate participants on the history of the police in the Weimar Republic and the Nazi regime, its role in the murder of European Jews, and the discourse on these events after 1945. In addition, in January 2023 the BKA concluded a cooperation agreement on professional training with the Central Council of German Sinti and Roma, comprising a range of courses addressing anti-Gypsyism as a specific form of racism, as well as contemporary and historical perspectives on Sinti and Roma.

202. However, training for members of the police and the judiciary is to a large extent the remit of the Länder. In the course of professional training administered to the police forces of the Länder, all officers acquire a fundamental understanding of the various crime areas. This is generally achieved not just by expounding on the phenomena involved, but by explicitly reflecting on the liberal democratic basic order, and emphasizing the incompatibility of these offences with the core values of the Basic Law – the constitution of the Federal Republic of Germany. In the judicial system too, knowledge in this area is a component of both introductory and advanced training; also covered is the precedence of human rights safeguards over counter-terrorism efforts. Some elements of this training are compulsory.

Convictions, legal remedies and safeguards, complaints

203. The “legislation adopted to combat terrorism” of relevance to the Convention concerns the offences defined in sections 89a to c and section 129a and b StGB, and the offences defined in the VStGB. In the period from 1 July 2019 to 31 December 2023, a total of 77 individuals were convicted with final and binding effect of Islamist-motivated crimes in criminal proceedings conducted by the GBA. Of these, 19 were convicted of terrorist offences under the StGB and violations of the VStGB, 56 were convicted (only) of terrorist offences under the StGB (sections 89a to c or 129a and b), and two (only) of violations of the VStGB.

204. Specific figures on proceedings in the individual Länder can be found in the attached overviews of criminal investigations and court proceedings involving offences against national security in 2019 and 2020 (Annexes 11 and 12).

205. The Federal Government is not aware of any concrete complaints about non-compliance with international standards in the form of violations of the prohibition of torture and other cruel or degrading treatment.

206. Like all other accused, individuals being prosecuted for terrorist offences are entitled to the legal remedies provided for in the StPO, which reflect the guarantees enshrined in the ECHR. These include access to legal representation, complaints mechanisms against individual measures in the investigation proceedings, and access to the general remedies after a conviction.

Reply to paragraph 24 of the list of issues

207. In its response to the COVID-19 pandemic, taking account of the latest infection rates and risk levels, the Federal Republic of Germany implemented numerous measures aimed at protecting health and maintaining public order, some of which involved considerable restrictions to various constitutionally protected freedoms. Such restrictions to the fundamental rights enshrined in the Basic Law may only be imposed in accordance with the

relevant constitutionally prescribed requirements, compliance with which is subject to judicial scrutiny. Every interference by the State with fundamental rights – such as the right to general freedom of action, in the form of contact restrictions or curfews, was firmly grounded in law and formulated in strict observance of the principle of proportionality. Accordingly, all measures were kept to a necessary minimum in terms of their duration and intensity. They were designed to be as flexible as possible, and regularly adapted in view of changing circumstances and findings. The lawfulness and constitutionality of these measures were carefully scrutinised in numerous proceedings before the courts, among them the BVerfG, and in specific cases individual measures were revoked.

208. Both the inviolability of human dignity enshrined in Article 1 GG and the absolute nature of the prohibition of torture were ensured at all times during the pandemic.

Police custody

209. In March 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic". Some Länder reported that this statement of principles was circulated to the Land police stations.

210. All existing rules and provisions concerning the protection of human dignity and the prevention of torture continued to be observed throughout the pandemic in respect of persons in police custody. All Länder responded to the pandemic with additional general measures to prevent infections alongside the obligatory hygiene measures in custody cells (e.g.: provision of hand sanitizer and disposable gloves; stocking of hygiene sets; suspension of the use of multi-occupancy cells to detain more than one person; unscheduled cleaning and disinfection of custody areas as required).

211. Aside from steps to comply with the hygiene rules currently in force, the COVID-19 pandemic did not generally result in changes to the practical procedures employed in connection with the treatment of persons in police custody. In line with the Ordinance to Contain the Spread of the COVID-19 Pandemic in force at the time, contrary to the otherwise applicable provisions, in the period from November 2020 to April 2022 detained persons were held in single cells where possible. This applies to both transport and detention. Further measures, such as the use of masks and physical distancing, were observed to the extent compatible with measures involving deprivation of liberty. In the event of symptoms or any other indication of an infection on the part of detainees, doctors were called in and, where appropriate, additional measures taken in consultation with the competent health authority.

Prisons

212. During the pandemic, all Länder implemented a succession of measures to prevent the spread of infection in prisons, thereby averting serious health risks to both prisoners and officers on one hand, and threats to safety and order on the other. These measures were guided by overarching provisions at the national and Land level, and formulated in strict compliance with the principle of proportionality. Every restriction was imposed in accordance with the absolute prohibition of torture, which may not be disregarded even in states of emergency. Accordingly, any measures that could conceivably have an impact on the freedom or right to self-determination of those affected were strictly scrutinised in advance and weighed against the need to protect physical integrity and health. As soon as feasible in light of infection and vaccination rates, restrictions were rolled back. There is nothing to suggest that any of the measures taken by the Länder in response to the COVID-19 pandemic were incompatible with their obligations under the Convention.

Examples of measures taken include:

213. In Berlin: preventive isolation for new arrivals and transfers from open institutions, quarantine in the event of infection or suspected infection and for contact persons, regular testing, restriction of unaccompanied temporary leave (Lockerung) from closed institutions to cases where it was essential for treatment purposes or in preparation for release, and restricted visitation rules. To avert the increased risk of infection associated with movements

in and out of prisons, suitable prisoners in open institutions were granted consecutive periods of extended leave so that they could spend most of their time at home or at work, where their presence was monitored. Where possible, efforts were made to mitigate the impact of restrictions. For instance, video telephony equipment was promptly installed in prisons throughout the country so that missed visits could be made up for with Skype calls. In addition, telephone credits for prisoners in quarantine were substantially increased to allow them to maintain contact with friends and family. Every effort was made to maintain standards of care and treatment – in particular for prisoners in isolation – and above all to ensure regular contact with professional services (social workers and psychologists).

214. In Thuringia, for instance, continuous treatment by social, psychological and medical services was ensured in spite of the restrictions arising from the COVID-19 pandemic, thanks in part to a project for telemedicine in prisons launched in July 2020, which has since been made permanent.

215. In some Länder, default imprisonment in lieu of payment of a fine was temporarily suspended so as to reduce occupancy levels and prevent excessive fluctuations in prisoner numbers.

Forensic psychiatric detention

216. Forensic psychiatric hospitals also imposed special visitation rules to prevent the spread of COVID-19. These rules were regularly adjusted in view of local incidence rates and statutory provisions in the course of the pandemic. Where possible, personal visits were kept in place subject to precautions (testing strategy, face coverings, social distancing, disinfection measures, glass partitions, etc.). In addition, video telephony was introduced alongside flexible visiting hours. Where visits had to be suspended in light of the pandemic situation, opportunities for contact via video telephony and additional free telephone calls were provided. Additional treatment services and leisure activities within the facilities were also offered.

217. In Mecklenburg-Western Pomerania, for instance, the supervisory authorities issued directives which, besides implementing the hygiene measures required to limit infection, also provided regulations tailored to forensic psychiatric facilities to ensure that any interferences with patients' fundamental rights remained lawful. The goal was to provide regular (albeit reduced) treatment in spite of the pandemic so as not to jeopardise successes achieved so far and avoid prolonging the placement unnecessarily.

218. Supervisory authorities in Schleswig-Holstein were also in close communication with forensic psychiatric facilities from the start of the pandemic. They received hygiene concepts and comprehensive statements from the clinics regarding the measures taken to protect staff and patients, and strategies for the event of a COVID-19 infection. The supervisory authorities are informed of adjustments to the protective measures in monthly supervision meetings held in the facilities. Since March 2020, the statistics on interventions affecting fundamental rights maintained by the supervisory authorities also include all restrictions to temporary leave and segregations for the purpose of quarantine arising from the COVID-19 pandemic.

Retirement homes, hospitals and facilities for persons with intellectual or psychosocial disabilities

219. Where decisions taken in response to the COVID-19 pandemic affected the interests and needs of persons requiring long-term care and persons with disabilities, the specific concerns of these groups were always taken into account in the deliberations of all Länder.

220. In Bavaria, for instance, recommendations for visitation arrangements and social participation were issued to protect residents of care facilities and persons with disabilities, and enable them to maintain contact with friends and relatives in spite of the rapidly evolving pandemic. In all other respects – especially with regard to curfew requirements – the requirement for a judicial decision was observed throughout the COVID-19 pandemic (Article 104 GG).

221. In Berlin, the rules protecting people in residential and semi-residential care facilities against the risk of a SARS-CoV-2 infection set out in the Ordinance on Covid-19 in Long-Term Care (Pflegemaßnahmen-Covid-19-Verordnung, PMCV) ensured at all times that measures to protect residents were tailored to local circumstances and conditions, and that the benefits provided by these measures were carefully weighed against their potential psychosocial impact and the risk of exacerbating the residents' condition. The measures provided for in the PMCV included restrictions of liberty, most notably visitor bans when infection rates were at their highest. Decisions on whether and in what form to issue visitor bans were jointly taken by several entities, and always involved checks of their necessity, proportionality and current relevance. Bans were only permitted for a fixed term and where justified to protect residents' health, and had to be communicated to the relevant supervisory authority. Once the peak infection rates had subsided, the authority to issue visitor bans on the basis of the Infection Protection Act (IfSG) lay solely with the competent health authority. However, under the PMCV daily minimum visiting times were ensured, visits to critically ill or dying patients were not restricted, and access was always granted to certain groups of persons (e.g. pastoral caregivers, judicial officers, legal counsel, and persons providing medical or nursing care).

222. In Brandenburg too, besides the general protection measures in place, specific information materials were published offering interpretation guidance to ensure practically-oriented implementation tailored to the individual needs of residents in the facilities in question. Aside from interpretation guidance, the information materials included concrete recommendations on the implementation of testing and vaccination strategies, such as the recommendation to notify visitors of the testing requirements in force in writing on entry to the facility, and to appoint a contact person for the performance of PoC antigen tests to ensure smooth execution of any testing requirements.

223. Comparable rules and measures were also introduced in the other Länder.

Reply to paragraph 25 of the list of issues

224. The Convention is cited and invoked by the German courts on a regular basis. A search in the "juris" database of judicial decisions returns a large number of rulings in which a German court has explicitly referred to the Convention. For the most part, these rulings continue to concern proceedings in cases of extradition or deportation, in which conditions in the destination state are to be reviewed. The courts regularly refer to the stipulations of the Convention in this regard.

225. In cases concerning the situation in Germany, the rights guaranteed by the Convention are, in the vast majority of cases, already protected in the form of the fundamental rights enshrined in the Basic Law and the rights enshrined in the European Convention on Human Rights, which likewise have direct application.

General information

Reply to paragraph 26 of the list of issues

Legislative activity

226. Directive (EU) 2016/800 "on procedural safeguards for children who are suspects or accused persons in criminal proceedings" affords young accused persons comprehensive legal safeguards that are also of relevance in the context of the Convention.The Directive was transposed into German law by two acts that came into effect in December 2019: the Act to Strengthen the Procedural Rights of Accused Persons in Juvenile Criminal Proceedings (Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren), published in the Federal Law Gazette I 2019, p. 2146, and the Act to Reform the Law Governing Mandatory Legal Representation (Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung), published in the Federal Law Gazette I 2019, p. 2128, also implementing in particular Directive (EU) 2016/1919 on legal aid for suspects and accused

persons in criminal proceedings and for requested persons in European arrest warrant proceedings; see also in this regard the reply to question 3.

227. With the Act Governing Social Compensation Law (Gesetz zur Regelung des Sozialen Entschädigungsrechts, Federal Law Gazette I, p. 2652), Book Fourteen of the German Social Code – Social Compensation (SGB XIV) was enacted. This instrument, which entered into force on 1 January 2014, constitutes a comprehensive overhaul of social compensation law. The benefits provided for by the new legislation include recurring cash compensation payments, medical treatment, and basic welfare benefits.

228. A binding legal framework for outpatient trauma centres and simplified access to the new rapid assistance benefits were introduced with a view to enabling more people to claim social compensation benefits. Prior to the entry into force of the full package of reforms, from 1 January 2021 orphans' pensions and funeral expenses were increased, assistance with transfers was improved, and equal treatment for all victims of violent offences in Germany regardless of nationality or residence status was introduced.

229. In Bavaria, the Bavarian Act on Long-Term Care and Quality of Living was reformed. The amending act, which came into force on 1 August 2023, provides more effective protection against violent offences for people in long-term care and adults with disabilities. Concrete provisions to this end include a special requirement to report any suspicion of physical or sexual violence, and a requirement for residential care facilities to submit a violence prevention strategy when they begin operation.

230. Berlin's Act on Self-Determination and Participation in Residential Care Facilities (WTG Bln) was overhauled with effect from 1 December 2021. In this process, regulations providing protection against abuse, exploitation, violence and discrimination applicable to all communal assisted living facilities were emphasized and enhanced. As a result, protection against abuse, exploitation, violence and discrimination is now explicitly specified in the Act's purpose, while regular inspections of care facilities by the competent supervisory authority are to include an assessment of compliance with requirements concerning the prevention, occurrence and eradication of measures involving restriction of liberty, abuse, exploitation, violence and discrimination.

231. In North Rhine-Westphalia, the amended Act on Residence and Participation, in effect since 1 January 2023, provides enhanced protection against violence in care facilities and workshops for persons with disabilities. To this end:

- A central monitoring and complaints office was established for violence prevention, oversight and advice in connection with the execution of placements involving deprivation of liberty and measures involving restriction or deprivation of liberty;
- State inspections were enhanced (more specific remit for local authorities, random on-site inspections including by local authorities, cross-checks, reporting regulations);
- In workshops for persons with disabilities, joint oversight at municipal and state level was introduced.

Past decisions of the BVerfG

232. In addition to the decision of the Federal Constitutional Court on physical restraints (see replies to questions 14 and 17), two further decisions of relevance to the prison system were issued: the decision of 23 September 2020 (2 BvR 1810/19) on strip-searches in connection with visits, and the decision of 22 July 2022 (2 BvR 1630/21) on the removal of clothing for urine sample collection. In both cases, the Federal Constitutional Court upheld the detainees' constitutional complaints of violations of their rights under Article 2 (1) in conjunction with Article 1 (1) GG and remitted the cases to the lower courts for fresh consideration.

International activities of the Federal Government in the field of torture since 2019

233. Funding of projects in the field of torture prevention in countries including Egypt, the Democratic Republic of Congo, Israel, Jordan, Kenya, Kyrgyzstan, Moldova, Peru, the

Philippines, Rwanda, Russia, Syria, Tunisia, Turkey, Ukraine and Hungary, with a particular focus on support for NGOs in their work with victims of torture.

234. Financial contribution to the UN Voluntary Fund for Victims of Torture and the OPCAT Special Fund in the amount of 1.1 million euros in 2019, 560,000 euros in 2020 and 543,000 euros in 2021.

235. Drafting of/support for UN resolutions in the field of torture. The EU and its Member States are founding members of the "Alliance for Torture-Free Trade", launched in autumn 2017. The goal of this initiative is to create a binding international legal instrument to regulate trade in goods that could be used for the purpose of inflicting torture or executing the death penalty, modelled on the EU's Anti-Torture Regulation. At the 73rd General Assembly of the United Nations in June 2019, the resolution proposed by the Alliance (A/73/L.94) was adopted by a large majority. In August 2021, an international group of experts including representatives of the Federal Government was tasked with drafting a report on the scope of application of joint international standards, which was published in May 2022. On 31 March 2021, the Committee of Ministers of the Council of Europe adopted a corresponding recommendation formulated with the involvement of the Federal Government.