

AUSTRIAN  
OMBUDSMAN BOARD



# Annual Report

## 2016

International Version



## Preface

This report documents the work of the Austrian Ombudsman Board (AOB) and the activities of the Austrian National Preventive Mechanism (NPM) in 2016.

The AOB is not only fulfilling its legal obligation to report to the National Council and the Federal Council. It also endeavours reaching readers from the wider public, as the problems addressed in this report affect many citizens and deserve due attention.

Social and legal topics continue to be reason for many complaints within the AOB's ex-post control of Austrian public administration. This can be considered as an indication of economically difficult times in which the pressure on the authorities to save money is increasing. But this should not happen at the expense of those who need help. As in the last three years, the majority of complaints, concern asylum cases. This is – to some extent – attributable to the large number of refugees, but also to insufficient measures on the part of the responsible authorities.

The AOB does not only perceive itself as a control mechanism. It also regards it as its duty to raise awareness on human rights and draw attention to the discrimination of individual groups. The AOB is also committed to this topic on an international level. It actively supports projects in the field of human rights and has established itself as a reliable partner in the protection of human rights in numerous bilateral and international co-operations.

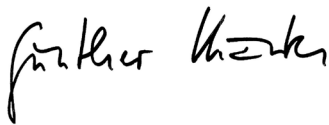
In order to get a complete picture of its activities, the AOB must also be perceived in its function as a National Preventive Mechanism. The large proportion of this report (chapter 3 to 6) therefore deals with observations, findings and recommendations of the Austrian NPM.

As NPM, the AOB's core responsibilities lie in the protection of persons who have been deprived of their liberty against torture and inhuman treatment. The fact that such protection is at all necessary in Austria might seem awkward. However, even in highly developed democracies, the protection of these human rights is not a given fact.

It is apparent that human rights are violated not only in cases that make the headlines of newspapers, but also in situations arising on a daily basis. The work of the Austrian NPM consists in recognising and reporting these situations as early as possible. This represents the essence of the preventive mandate: to monitor the human rights situation through regular visits with the aim of avoiding potential cases of maladministration before they arise.

All of the problem situations and recommendations described in this report are based on the investigative activities of the six commissions of the Austrian Ombudsman Board, who deserve huge credit and thanks for their commitment. The Human Rights Advisory Council must also be thanked for its supportive advisory activity.

The AOB would also like to thank the federal ministries and other federal agencies, the Laender and municipalities for their cooperation. The work performed by the AOB staff is also crucial for the results and cannot be appreciated highly enough. We express our particular gratitude to them.



Günther Kräuter



Gertrude Brinek



Peter Fichtenbauer



# Table of Contents

1	Performance record.....	13
1.1	Monitoring public administration .....	13
1.2	Budget and personnel.....	19
1.3	Focal points 2016.....	20
1.4	Public relations .....	22
1.5	International activities .....	23
1.5.1	International Ombudsman Institute (IOI).....	23
1.5.2	International cooperation .....	25
1.6	The members of the AOB take stock .....	29
1.6.1	Ombudsman Günther Kräuter.....	29
1.6.2	Ombudswoman Gertrude Brinek .....	31
1.6.3	Ombudsman Peter Fichtenbauer .....	33
2	Monitorin public administration.....	35
2.1	Anti-discrimination .....	35
2.1.1	Discrimination on the grounds of illness or disability .....	35
2.1.2	Discrimination on the grounds of gender.....	39
2.1.3	Discrimination on the grounds of nationality or ethnicity .....	42
2.2	Investigating human rights.....	46
2.2.1	Labour, social affairs and consumer protection .....	46
2.2.2	Family and youth .....	48
2.2.3	Finances .....	53
2.2.4	Health and women.....	54
2.2.5	Interior .....	57
2.2.6	Judiciary.....	70
2.2.7	Transportation, innovation and technology .....	79
3	National Preventive Mechanism .....	82
3.1	Introduction.....	82
3.2	Overview of the National Preventive Mechanism .....	83
3.2.1	Mandate.....	83
3.2.2	Monitoring framework and methodology .....	84
3.2.3	Monitoring and control visits in numbers .....	85
3.2.4	Budget.....	88

3.2.5	Human resources.....	89
3.2.6	Report of the commissions .....	90
3.2.7	International collaboration and cooperation.....	91
3.2.8	Report of the Human Rights Advisory Council.....	93
4	Monitoring framework, methodology and further action by the NPM.....	95
4.1	Preamble.....	95
4.2	Goals and basic principles.....	95
4.3	Monitoring methodology .....	97
4.4	Further action .....	98
5	NPM findings and recommendations.....	99
5.1	Retirement and nursing homes.....	99
5.1.1	Introduction.....	99
5.1.2	Geriatric care requires attentiveness and competent leadership.....	104
5.1.3	Violence in nursing care.....	107
5.1.4	Introduction of care standards in relation to pain .....	110
5.1.5	State's duty to protect also relates to non-approved facilities .....	111
5.1.6	Regular raising of awareness in relation to measures that < restrict freedom .....	114
5.2	Hospitals and psychiatric institutions and facilities.....	119
5.2.1	Introduction.....	119
5.2.2	Inadequate child and adolescent psychiatric care .....	123
5.2.3	Questionable use of security companies.....	126
5.2.4	Immediate reporting of measures that restrict freedom and violation of personal rights .....	128
5.2.5	Application of measures that restrict freedom.....	129
5.2.6	Unacceptable transfer of patients requiring placement in a psychiatric clinic.....	131
5.2.7	Involuntary placement without doctor's certificate as the norm? ..	133
5.2.8	The unknown Istanbul Protocol.....	134
5.2.9	Struggling with the care of a juvenile patient .....	135
5.2.10	Spatial redesign of the psychiatric wards in Mauer Regional Hospital.....	136
5.3	Child and youth welfare facilities .....	138
5.3.1	Introduction.....	138
5.3.2	Monitoring priority: prevention of sexual and all other forms of violence.....	142

5.3.3	Critical personnel situation in shared accommodations and residential homes .....	143
5.3.4	Abrupt breaks in relationships after stays in psychiatric hospitals	144
5.3.5	Participation .....	145
5.3.6	Centre for eating disorders with questionable treatment methods.	147
5.3.7	Unaccompanied minor refugees .....	148
5.3.8	Positive observations .....	152
5.4	Institutions and facilities for persons with disabilities.....	153
5.4.1	Introduction.....	153
5.4.2	Causes and forms of measures that restrict freedom, and violence	156
5.4.3	Augmentative and Alternative Communication .....	161
5.4.4	Developing planning and target agreements.....	164
5.4.5	Degrading treatment through negligence and inadequate concepts .....	165
5.4.6	Criticism on Carinthian centres for psychosocial rehabilitation ....	168
5.5	Correctional institutions.....	170
5.5.1	Introduction.....	170
5.5.2	Health care .....	171
5.5.3	Personnel .....	183
5.5.4	Living conditions .....	188
5.5.5	Access to information.....	196
5.5.6	Contact to the outside .....	198
5.5.7	Infrastructural fixtures and fittings.....	200
5.5.8	Detention of mentally ill offenders and after-care facilities.....	202
5.6	Police detention centres .....	204
5.6.1	Introduction.....	204
5.6.2	Working group on conditions of detention in police detention centres.....	204
5.6.3	Working group on suicide prevention.....	210
5.6.4	Fire prevention at police detention centres.....	212
5.6.5	Partitioning of the toilet areas in cells for multiple inmates.....	213
5.6.6	Improper conversational tone on the part of the employees .....	214
5.6.7	Restriction of the right to spiritual counselling.....	215
5.6.8	Vordernberg detention centre.....	216
5.6.9	Positive observations .....	218
5.7	Police stations .....	219
5.7.1	Introduction.....	219



5.7.2	Degrading detention.....	219
5.7.3	Insufficient availability of public health officers/physicians .....	220
5.7.4	Inadequate documentation of detentions.....	221
5.7.5	Inadequate equipment at police stations .....	222
5.7.6	Deactivatable call bells in detention areas.....	224
5.7.7	Detention rooms in the basement of the police station .....	224
5.7.8	Positive observations .....	225
5.8	Coercive acts .....	226
5.8.1	Introduction.....	226
5.8.2	Human rights observers during forced returns.....	227
5.8.3	Deficiencies in interpreting services .....	227
5.8.4	NPM's participation in a return by air .....	229
5.8.5	Schwechat special transit area .....	229
5.8.6	Demonstrations .....	230
5.8.7	Targeted campaigns .....	232
5.8.8	Inadequate notice of police actions .....	233
5.8.9	Positive observations .....	233
6	Recommendations of the Austrian National Preventive Mechanism .....	236
6.1	Retirement and nursing homes.....	236
6.2	Hospitals and psychiatric clinics .....	239
6.3	Child and youth welfare facilities .....	242
6.4	Institutions and facilities for persons with disabilities.....	245
6.5	Correctional institutions.....	248
6.6	Barracks .....	252
6.7	Police institutions.....	253
6.8	Returns and release of detainees.....	255
6.9	Acts of direct administrative power and coercive measures.....	256
	ANNEX .....	259



## Introduction

The traditional area of responsibility of the Austrian Ombudsman Board (AOB) is to monitor and control public administration. The importance of this function is evidenced *inter alia* by the high frequency with which citizens approach the AOB. Expressed in numbers, this means that some 18,500 people contacted the AOB in the year under review. On average 74 complaints were submitted or presented in person to the AOB on every working day. Every fifth complaint that resulted in investigative proceedings was justified. That means that maladministration was ascertained in these cases.

The numbers with regard to the investigative work are explained in detail in the chapter on “Performance record”. They provide information about the number of processed complaints and investigative proceedings initiated in the federal administration as well as in the municipal and regional administration. In order to obtain a complete picture of the AOB’s services in 2016, the basic indicators for the preventive monitoring and control of human rights, which is the AOB’s new field of work added in 2012, are also displayed. Detailed information on the preventive work will also be given in this report. The performance record in this volume should however also depict AOB activities that are not included in the investigative work but are definitely an important part of the range of tasks performed. For this reason, the performance record also includes reports about international activities, public relations work and other focal points of the AOB’s work in the year under review.

Performance record informs about basic work results

The results and focal points of the investigative work are depicted by area of responsibility as already familiar from past reports. They document everyday problems citizens encounter in their contact with the authorities. As the extensive details show, the problems are complex. For example, citizens are affected by unacceptably long proceedings, welfare benefits are paid unfairly or too late, which sometimes even threatens the livelihood of those affected, in particularly serious cases even basic and human rights are violated.

Maladministration is identified

A list of legislative recommendations that were made during the year under review, serves to uncover unclear or discriminating regulations that were observed during the investigative work. The long-term efforts on the part of the AOB to effect a reform of the legislation on legal guardianship is proof that implementation requires great patience. A new legal regulation of this particularly sensitive area is due to come into effect in mid-2018.

Legislative changes should provide the impetus for reform

The support of the members of the Parliament is necessary in order to implement suggested changes in legislation and to push forward reform plans. With this report, the AOB hopes to provide the impetus to tackle the necessary changes. The depiction of the observed cases of maladministration should also contribute to increasing the sensitivity of the administration to a correct and

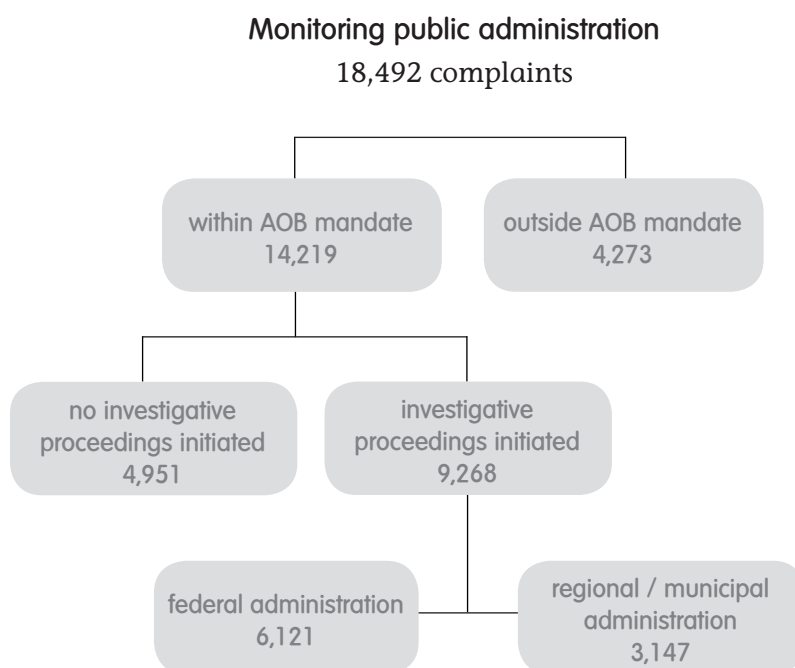
citizen-oriented execution of the law. In this way, more convenience can be achieved for the population and the confidence in legal security strengthened.

# 1 Performance record

## 1.1 Monitoring public administration

Every sovereign administrative act carried out by the Federal Government falls under the remit of the AOB's monitoring and control authority. This also applies for actions set by the Government as holder of private rights. This corresponds directly with the AOB's obligation to pursue every permissible complaint and inform those affected of the result. The AOB is thus there to assist all citizens who feel that they have been unfairly treated by Austrian authorities. The AOB can also initiate *ex-officio* investigative proceedings if maladministration is suspected. It is furthermore authorised to call upon the Austrian Constitutional Court in order to appeal regulations issued by federal authorities.

AOB pursues every complaint



In the year under review 18,492 persons approached the AOB with their concerns. This means that the AOB received an average of 74 complaints each working day. The AOB initiated an official investigative proceeding in around half of all complaints (9,268). An additional 4,951 complaints were within the mandate of the AOB but no investigative proceedings were initiated due to a lack of sufficient evidence. In these cases, the AOB was able to offer support with information on the legal situation and general information. 4,273 of the submissions involved questions that were outside the AOB's investigative mandate. In these cases, the AOB tries to help with information as well.

## Investigative proceedings within the federal administration 2016

The AOB's investigative activities cover the entire public administration, i.e. all authorities and departments whose duty it is to implement federal law. The AOB carried out a total of 6,121 investigative proceedings in matters involving federal administration. This is equivalent to an increase of around 13% compared to the previous year.

Investigative proceedings regarding internal security issues are most frequent

As in the past three years, most of the investigative proceedings dealt with the internal security sector. About a third of all proceedings (34.8%) are from this area. What is noticeable is that the investigative proceedings in this area have risen sharply compared to last year (2,130 cases as opposed to 1,496 in 2015). This development is attributable to the large number of complaints dealing with asylum law. In the year under review, a substantial portion of the complaints concerned the Federal Office for Immigration and Asylum, which is responsible for asylum proceedings in the first instance, and the Federal Administrative Court, which is responsible for appeals in asylum proceedings.

Every fourth complaint deals with social affairs

The social affairs sector holds second place. Around a quarter of all complaints resulting in an investigative proceeding dealt with social insurance law or problems surrounding the labour market. The main reasons for complaints were deficiencies in the area of the Public Employment Service Austria (*AMS*), the assessment of entitlement to care and nursing allowances and problems surrounding pension insurance law. The number of complaints regarding persons with disabilities continues to be high.

Investigative proceedings in the judiciary have risen sharply

There were 927 investigative proceedings initiated based on complaints concerning the judiciary, which is equivalent to about 15% of all of the investigative proceedings initiated. Compared to the previous year, the number of investigative proceedings in this area rose by around 22%. The concerns related to the duration of court proceedings and proceedings by public prosecutors' offices and the penal system.

Investigative proceedings in federal administration	number	%
Federal Ministry of the Interior	2,130	34.8
Federal Ministry of Labour, Social Affairs and Consumer Protection	1,453	23.8
Federal Ministry of Justice	927	15.2
Federal Ministry for Transport, Innovation and Technology	355	5.8
Federal Ministry of Finance	303	5.0
Federal Ministry of Family and Youth	216	3.5
Federal Ministry of Science, Research and Economy	191	3.1
Federal Ministry of Agriculture, Forestry, Environment and Water Management	182	3.0
Federal Ministry of Health and Women's Affairs (excl. health and accident insurance)	149	2.4
Federal Ministry of Education	109	1.8
Federal Ministry of Defence and Sports	45	0.8
Federal Chancellery	33	0.5
Federal Ministry of Europe, Integration and Foreign Affairs	21	0.3
<b>Total*</b>	<b>6,114</b>	<b>100</b>

\* Additional seven cases did not fall into the area of responsibility of any of the Ministries. The AOB maintains them as files to be handled by the Chairperson of the AOB.

## Investigative proceedings within the regional and municipal administration in 2016

In addition to the federal administration, the AOB monitors and controls regional and municipal administration in seven *Laender*. Only the *Laender* Tyrol and Vorarlberg have set up their own regional ombudsman office. The AOB carried out a total of 3,147 investigative proceedings of regional and municipal administration in 2016. The distribution of the investigative proceedings across the *Laender* is not surprising. Almost 40% of all investigation cases are in the most populous *Land* of Vienna followed by Lower Austria with a share of 21.9% as well as Upper Austria and Styria with shares of around 11%.

<i>Land</i>	2016	%
Vienna	1,217	38.7
Lower Austria	689	21.9
Upper Austria	361	11.5
Styria	350	11.1
Carinthia	196	6.2
Burgenland	169	5.4
Salzburg	165	5.2
<b>Total</b>	<b>3,147</b>	<b>100</b>

*Focus on the Laender* The following content was the focus of complaints on the regional and municipal level. Most of the complaints concerned the social system including the needs-based minimum benefit system, youth welfare and matters regarding persons with disabilities. With a 25% share of all investigation cases, every fourth complaint concerned these topics. The areas of regional planning and building law made up an almost equivalent share (23.6%). Problems regarding citizenship law and traffic police as well as municipal affairs also gave rise to complaints.

	number	%
Needs-based minimum benefit system, youth welfare, persons with disabilities, basic welfare support	798	25.4
Regional planning and housing, building law	742	23.6
Citizenship, electoral register, traffic police	422	13.4
Municipal affairs	397	12.6
Finances of the <i>Laender</i> , regional and municipal taxes	166	5.3
Health care system and veterinary sector	157	5.0
Regional and municipal roads	132	4.2
Educational system, sports and cultural matters	124	3.9
Nature conservation and environmental protection, waste management	51	1.6
Office of the <i>Land</i> Government, public services and compensation law for regional and municipal employees	49	1.5
Trade and industry, energy	41	1.3
Agriculture and forestry, hunting and fishing laws	40	1.3
Transport and traffic on regional and municipal roads (without traffic police)	28	0.9
Science, research and arts	0	0.0
<b>Total</b>	<b>3,147</b>	<b>100</b>



## Resolved complaints relative to federal and regional administration 2016

A total of 10,735 investigative proceedings could be resolved in the year under review, of which 8,696 were initiated in the same year, and 2,039 in the previous years. In 2,096 cases the AOB ascertained maladministration, which is equivalent to 19.5% of all resolved proceedings. This means that around every fifth complaint resulting in an investigative proceeding was justified. In 3,849 complaints, the members of the AOB saw no reason for criticism. 4,790 cases were outside the AOB mandate. The AOB informed those affected about the result of the investigation after 42 days on average.

Every fifth complaint is justified

Under the Austrian Federal Constitution, the AOB can initiate investigative proceedings *ex-officio* if it has suspicions regarding maladministration. As was the case in the previous years, the members of the AOB made use of this right by initiating 124 *ex-officio* investigative proceedings.

124 *ex-officio* investigative proceedings

Resolved investigative proceedings in 2016	case files from previous years	case files from 2016
Maladministration on the part of the authorities	692	1,404
No maladministration found	953	2,896
Complaints outside AOB mandate	394	4,396
<b>Total</b>	<b>2,039</b>	<b>8,696</b>
<b>Total of resolved investigative proceedings in 2016</b>		<b>10,735</b>

## Citizen-friendly communication

Complaints can be submitted informally

The AOB considers itself a citizen-friendly service and control institution. It is thus particularly important that access to the AOB is as easy and informal as possible. Complaints can be submitted in person, by telephone or in written form. An online complaint form, which can be accessed on the AOB web site, facilitates particularly quick and uncomplicated contact. The information service can be reached under a cost-free service number. The following figures prove that the citizens avail themselves of and appreciate these offers to a considerable degree:

- 21,439 persons contacted the AOB: 7,011 women (32.7%), 12,052 men (56.2%) and 2,376 groups of persons (11.1%),
- of which 8,060 contacted the information service in personal or by telephone,
- 36,037 documents comprised the total correspondence,
- 16,537 letters and e-mails comprised the total correspondence with the authorities.

The consultation days of the members of the AOB in the *Laender* are also very popular. For this reason, the offer was further expanded in the year under review. Within the framework of 275 consultation days (as opposed to 243 in the previous year), the citizens took the opportunity to discuss their problem with an ombudsman in person. Most of the consultation days took place in Vienna, in line with the demographic distribution.

Consultation days	2016	2015
Vienna	109	80
Lower Austria	36	35
Upper Austria	27	26
Styria	25	26
Burgenland	24	19
Salzburg	21	16
Carinthia	15	22
Vorarlberg	9	10
Tyrol	9	9
<b>Total</b>	<b>275</b>	<b>243</b>

## 1.2 Budget and personnel

In accordance with the cash flow statement, in 2016 the AOB had a budget of EUR 10,559,000, of which EUR 300,000 resulted from the dissolution of reserves. In accordance with the operating statement, EUR 10,646,000 was available to the AOB. In the following, only the cash flow statement is explained, because it represents the actual cash flow (for details, please refer to federal budget statement 2016, section 05, AOB).

In the cash flow statement, EUR 5,857,000 was slated for outgoing payments for staff expenditures and EUR 3,722,000 for outgoing payments for general administrative expenditures. General administrative expenditures include, for example, payments for the commissions and the Human Rights Advisory Council, expenditures stemming from statutory obligations regarding remuneration of members of the AOB, internships, printed materials, supply of energy and other expenses.

Additionally, the AOB had to make payments stemming from transfers for pensions of former members of the AOB as well as pensions for surviving spouses of former members of the AOB amounting to EUR 918,000. And finally, EUR 36,000 was available for payments from capital expenditures and EUR 26,000 for advances on salaries.

In order to fulfil the responsibilities incumbent on the AOB since 1 July 2012 under the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), a budget of EUR 1,450,000 (unchanged compared to 2015) was planned for 2016 for payments for the NPM commissions and the Human Rights Advisory Council. Of this amount, around EUR 1,163,000 was budgeted for reimbursements and travel costs for the members of the commissions, and around EUR 87,000 for the Human Rights Advisory Council; roughly EUR 200,000 was available for workshops attended by the commissions and by AOB employees working in the OPCAT sector as well as for expert opinions.

Budget of  
EUR 10.559 million

**Federal budget statement of the AOB**  
(in millions of euros)

Cash flow statement 2016/2015

2016	2015
10.559	10.475

Staff expenditures		General administrative expenditures	
2016	2015	2016	2015
5.857	5.720	3.722	3.749

Transfers		Capital expenditures and advances on salaries	
2016	2015	2016	2015
0.918	0.907	0.062	0.099

75 permanent positions

In 2016, the AOB had a total of 75 permanent positions in the federal personnel budget. This means that the AOB is the smallest supreme body of the Republic of Austria. With part-time staff, persons working reduced weekly hours, internships and staff posted from other local and regional authorities, 90 persons are working at the AOB on average. The 56 members (2015: 54) of the six commissions as well as the 34 members and substitute members of the Human Rights Advisory Council do not count as AOB staff members.

### 1.3 Focal points 2016

#### Police training

AOB implements police training module

Future police officers will be informed about the work of the AOB as part of their police training from 2017. The implementation of this new training module was agreed on by the Federal Ministry of the Interior and the AOB, and initiated. AOB staff and members of the NPM commissions will explain the responsibilities and tasks of the AOB and the NPM in detail in a four-hour training unit in the future. Information about the work of the AOB is important because the police are often confronted with the activities of the AOB. Early information about the work of the AOB should help reduce scepticism and reservations and promote a positive atmosphere between the police and the AOB.

## Accessibility for persons with disabilities

Structural accessibility can still not be taken for granted in Austria even though the implementation period for providing full accessibility in public buildings ended in January 2016. Countless complaints about the lack of accessibility in public facilities triggered the thematic focal point of “Structural accessibility in Austria” which Ombudswoman Gertrude Brinek initiated in the reporting year. For the opening, a debate on sensitisation and raising awareness was started in cooperation with representatives from the media. Attention was drawn to this topic within the framework of open forums and conferences. The aim was to highlight problems in the building regulations of the Laender and their (in)compatibility with the National Action Plan on Disability as well as to provide information about the objectives of the AOB.

End of transition period  
in January 2016

## AOB website in simple language

The AOB website is an important source of information about its work, complaint channels and current topics. In order to make this service available to persons with language problems, poor vision or other impairments, the most important information about the AOB as well as help when lodging complaints has been obtainable on a “light version” of the AOB website since 2016.

Two brochures were published, which provide information about the tasks of the AOB in simple and easy-to-read language. A brochure on the preventive monitoring and control of human rights was updated in 2016 and translated into 16 languages. Besides, the AOB published eight brochures which reflect the positions of the Human Rights Advisory Council in easily understandable language and which tackle questions concerning the police and police detention centres, children and youth protection and the prohibition of net beds.

New brochures in easy-  
to-read language

## Violence against women – lecture series “One in five”

To counter the taboo status and trivialisation of violence against women, the AOB organised the interdisciplinary lecture series “One of five” for the first time in cooperation with the Department of Forensic Medicine at the Medical University of Vienna and the Austrian Women’s Shelter Network (*Autonome Österreichische Frauenhäuser*) in November and December 2016.

The opening of the lecture series took place at the end of November in the ceremonial hall of the AOB. Three lecture units held by experts from the AOB focussed on work experience from the relevant AOB areas. Due to the great interest in the lecture, the contributions to the lecture series will be published

Opening event at the  
AOB

in 2017. The cooperation between the Medical University of Vienna and the Austrian Women's Shelter Network will also be continued, and a joint lecture series will be held in the autumn of 2017.

### Focus on the depiction of persons with disabilities in the mass media – 1-year-study

NGO Forum 2016 This year's NGO Forum concentrated mainly on the topic of persons with disabilities. The event, which took place in spring 2016, was at the same time the launch of a campaign dedicated to the sustainable change of the depiction of persons with disabilities in the media. The aim of the campaign is sensitisation and awareness-building as well as the removal of barriers. The AOB used the campaign to support a study by media analyst Maria Pernegger who has devoted herself to this topic. In the year under review, the AOB also promoted the comprehensive realisation of a catalogue of measures on the basis of the "National Action Plan on Disability 2012-2020".

## 1.4 Public relations

Exchange with representatives of the media

The AOB continued to expand its public relations activities in 2016. With press releases, press conferences and a monthly newsletter, the AOB regularly informs representatives of the media about its work. The members of the AOB are also available for interviews with journalists. The AOB informs the media about its investigative proceedings and their results and provides statements regarding draft legislation, events and international activities.

AOB website frequently visited

The AOB website is also an important medium for information. The website recorded 123,617 visits in the year under review, which shows a clear increase compared to the previous year. Current reports and a large number of service offers such as the online complaint form make the website attractive for an increasingly growing number of users. The complaint form was downloaded 1,192 times in 2016. The website also supports networking with journalists, members of government and other politicians, trade unions, NGOs and associations. Everyone can access central information material on the AOB's investigative proceedings and the NPM's findings, e.g. all reports to the Parliament and the *Laender* Diets as well as a list of current observed cases of maladministration.

Media presence

The AOB's continued growth in media presence is attributable to the strengthened media work. In 2016, there were some 3,152 reports about the work of the AOB in Austrian news agencies, in print media and online editions as well as on the public TV and radio broadcaster ORF.

The television programme „*BürgerAnwalt*“ (“Advocate for the People”) which is broadcast by the Austrian public television channel ORF, is an important platform for the matters of the AOB. At the same time, this is the most important advertising medium. This programme has been running since January 2002. Each week, an average of up to 330,000 households follow the studio discussions. In the reporting year, the viewer record was 507,000. The members of the AOB discuss cases with representatives of various authorities and endeavour to find a solution to the everyday problems of those affected. After the broadcast, every episode is available for online viewing for a week on the *TVthek* website of the ORF.

ORF TV programme

## 1.5 International activities

### 1.5.1 International Ombudsman Institute (IOI)

The IOI, whose headquarters are located at the AOB, supports around 180 independent ombudsman institutions from more than 100 countries. It sees its main responsibility in the global promotion and development of the ombudsman concept as well as in supporting and connecting ombudsman institutions worldwide.

In addition to expanding training offers for IOI members and the development of cooperation agreements with partner organisations, two objectives were particularly important for the IOI in 2016: (1) the support of ombudspersons who exercise their mandate under extremely difficult conditions, and (2) the IOI World Conference held in Bangkok in November 2016.

Focal points 2016

Reports about ombudspersons who are subject to extreme pressure or even concrete threats while exercising their independent mandate are on the rise. As the only global organisation for the promotion of ombudsman institutions, the IOI takes this alarming development very seriously and supports its members in every possible way.

In a workshop organised by the Catalan Ombudsman in Barcelona, the IOI Board of Directors discussed strategies on how to best help the affected ombudspersons. In close cooperation with the Polish Ombudsman, a catalogue of actions was developed with guidelines for supporting the “Ombudsman under threat”. In this context, steps and actions that the IOI can set down were defined – in close agreement with the affected institution – in order to demand and strengthen the independence of the institution and its ability to act freely.

Barcelona workshop  
lays down guidelines

- Fact-finding mission in Poland In 2016, Poland was an example of the level of oppression or even threat to which an ombudsman institution can be exposed even inside the EU. The Polish Ombudsman was confronted with the loss of his personal immunity and strict budget cuts. The mandate and sphere of activity of the institution were restricted. For this reason, the IOI sent a delegation on a fact-finding mission in Warsaw in July 2016 to analyse to what extent the constitutional developments in the country affect the ombudsman institution. Meetings with the Constitutional Court, the members of the Senate and representatives from NGOs and citizens movements also took place as did talks with government representatives and the Ombudsman.
- IOI recommendations at press conference The main message of the IOI delegation after this fact-finding mission was criticism of the restriction of the Ombudsman's sphere of activity and the emphasis on the key importance of the institution for democracy and protection of human rights in Poland. In a final report, which was presented at a press conference in Poland and submitted both to the Polish parliament and national as well as international institutions, the IOI emphasised the great importance of open support for the ombudsman institution, condemned the personal attacks on the Ombudsman and demanded the provision of sufficient financial and human resources.
- IOI World Conference Another focal point in the reporting year was the preparation and holding of the IOI World Conference in Bangkok, Thailand. The IOI World Conference takes place every four years. In 2016 it was held in the Asian Region for the first time and hosted by the office of the Ombudsman of Thailand. The motto of the World Conference was "Evolution of Ombudsmanship". The forum discussions and workshops of the three-day conference offered not only an excellent opportunity to exchange experiences but also to get to know innovative projects from the practical side. Ombudswoman Gertrude Brinek represented the Austrian Ombudsman Board at this event and spoke about the collaboration of the AOB with civil society. Within the framework of a media workshop, Ombudsman Günther Kräuter presented the ORF TV programme "BürgerAnwalt" ("Advocate for the People"), with the help of a video clip specially produced in English in cooperation with the Austrian Broadcasting Cooperation's public television channel ORF.
- IOI General Assembly and election of Executive Committee Besides the annual meeting of the IOI Board of Directors, the IOI General Assembly, which takes place every four years, also convened prior to the conference. The member institutions taking part in the General Assembly unanimously adopted the "Bangkok Declaration, with a view to strengthen the independence of ombudsman institutions and to focus on the protection and promotion of human rights. The IOI Board of Directors also elected their Executive Committee with Peter Tyndall (Ireland) as IOI President, Diane Welborn (USA) as 1<sup>st</sup> Vice-President, Chris Field (Australia) as 2<sup>nd</sup> Vice-President and Viddhavat Rajatanun (Thailand) as Treasurer. As IOI Secretary General, Ombudsman Günther Kräuter is an *ex-officio* member of this body.



Also for the first time in 2016, the IOI organised a breakout session within the framework of the judicial dialogue at the European Forum Alpbach. The title of this interactive workshop was “Human rights on the run”. In addition to Ombudsman Kräuter, who presented of the IOI’s work, Christoph Pinter, Director of UNHCR Austria, highlighted the role of his organisation in the refugee crisis. The multidisciplinary and multicultural group of participants at this seminar discussed the working methods of national and international human rights organisations and drafted suggestions for improving communication and the cooperation between these organisations.

IOI breakout session  
at Forum Alpbach

In the field of further education, a training programme on systemic investigative proceedings was offered in March in Japan for the first time with the help of the IOI. Another first-time-event was a training programme in Spanish, which took place in Argentina in June 2016. Employees of Latin American ombudsman institutions were thus given the opportunity to take part in a multi-day workshop on complaint and investigation work. The NPM focus in 2016 was also extended with follow-up training in Vilnius, Lithuania.

Training offers

## 1.5.2 International cooperation

### National Preventive Mechanism (NPM)

In its function as National Preventive Mechanism (NPM), the AOB, together with its commissions, is always interested in an intensive exchange of knowledge and a close cooperation with other NPMs (see chapter 3.2.7).

### OSCE

The AOB takes an active part in the OSCE dialogue on the challenges and further development opportunities of National Human Rights Institutions (NHRIs).

In September, the AOB sent an expert to an implementation meeting in Warsaw on questions regarding the human dimension. This annually held platform for democracy and human rights provides the opportunity of taking stock of the implementation status of the human rights commitments in the respective states and to discuss the associated challenges.

OSCE implementation  
meeting on the human  
dimension

An expert meeting organised by the OSCE (ODIHR) in cooperation with the Council of Europe, the UN Office of the High Commissioner for Human Rights and the IOI brought ombudspersons and representatives of international organisations and the scientific community to Warsaw at the end of the

OSCE expert meeting to  
strengthen NHRIs

year. The participating experts highlighted international standards for safeguarding the independence and plurality of National Human Rights Institutions (NHRIs). In his opening speech, Ombudsman Kräuter illustrated how important a close, international network and cooperation is for affected NHRIs, using the IOI fact-finding mission to Poland as an example. A joint statement was published.

## United Nations / UN conventions

Global Alliance of NHRIs (GANHRI)

As NHRI, the AOB takes part in the annual meeting of NHRIs in Geneva. The hitherto International Coordinating Committee of National Human Rights Institutions (ICC) was renamed the Global Alliance of NHRIs (GANHRI) at the 2016 meeting. In his function as IOI General Secretary, Ombudsman Kräuter led a round of discussions organised by the IOI in cooperation with the European network of National Human Rights Institutions (ENNHRI), which provided insight into the work of ombudsman institutions in the field of human rights protection. Ombudsman Kräuter also availed of the opportunity to exchange views with Kate Gilmore, the deputy UN High Commissioner for Human Rights.

Visit from UN High Commissioner for Human Rights

The AOB had an important visitor on 29 April 2016 when the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, came to the office for a work meeting. As an introduction, Ombudswoman Brinek spoke about the tasks of the AOB as well as the mandate exercised since 2012 for the protection and promotion of human rights. The thematic focus of the meeting however was asylum and migration issues, in particular with a view to unaccompanied minor refugees, right-wing populist movements in Europe and current threats to human rights representatives worldwide. In concrete terms, the Paris Principles for national human rights institutions were discussed in detail. The results of the last Universal Periodic Review (UPR) in Austria were discussed as well. The UN High Commissioner was impressed by the commitment of the AOB and emphasised the importance of a close cooperation for the future.

European NHRI network (ENNHRI)

As NHRI and accredited member of GANHRI, the AOB maintains – also in its function as headquarters of the IOI General Secretariat – active and close contact with regional networks, above all the European network of NHRIs (ENNHRI).

Thessaloniki conference on refugees and migration issues

At the beginning of the year, ENNHRI organised a workshop on the refugee and migration crisis in Thessaloniki together with the institution of the Greek Ombudsman. Ombudsman institutions from the countries along the so called “Western Balkan Route” discussed the importance of monitoring the human rights of refugees. With the 2015 “Belgrade Declaration” as a base, a concrete action plan for ombudsman institutions was drafted and presented

in Thessaloniki. It was also emphasised that this action plan did not serve to dictate political solutions. On the contrary, the intention was to provide concrete and pragmatic approaches and to support ombudsman institutions in safeguarding the basic and human rights of refugees through coordinated actions.

The topic of the refugee and migration movements also dominated another conference, which was organised in Tirana by the IOI and ENNRI – in close cooperation with the office of the Albanian Ombudsman. This conference also dealt with the tasks and responsibilities of ombudsman institutions in times of increased migration movement. For the first time, not only high-ranking representatives from ombudsman institutions from the affected transit and destination countries took part in the discourse, but also from countries of origin in Africa or South America.

Thessaloniki conference  
on refugee and  
migration issues

The challenges resulting from the increase in migration were thematised. Besides the invited ombudspersons, experts from the Council of Europe, the EU and the UN Office of the High Commissioner for Human Rights took part in the discussion. Ombudsman Günther Kräuter emphasised in his speech that the challenges posed by this increase in migration can only be overcome through close international cooperation. The intensive talks resulted in a joint “Tirana Declaration” in which the participants commit to intensify their efforts in relation to refugees in the future and to be more active in fighting xenophobia and populist agitation.

„Tirana Declaration“

In October 2016, Ombudsman Kräuter took part in the ENNHRI annual meeting in Zagreb. As leader of the round of discussions on the topic of “Human rights in a climate of security and fear”, he emphasised that new security measures may not result in a decrease of personal freedom. The meeting was also an occasion to sign an official declaration of support for the Polish Ombudsman who is under political pressure.

ENNHRI General  
Meeting

## Council of Europe

A conference organised by the Council of Europe in cooperation with the European Network of Ombudspersons for Children and the office of the French Ombudsman dealt with unaccompanied minor refugees, a group that requires particular protection. Under the motto “Children on the run: protection and the future of child refugees – a challenge for Europe”, the participants discussed how a direct protection of refugees and unaccompanied children can be safeguarded and the relevant asylum and immigration procedures improved and expedited. An expert from the AOB took part in this event and added the Austrian experience as well as proposed solutions to the discussion.

Children’s rights  
conference in Paris

PACE inform themselves about AOB work An AOB employee welcomed a delegation of the Parliamentary Assembly of the Council of Europe (PACE), explained and presented the AOB's work and accompanied the visitor group to the Vordernberg detention centre.

Conference on the freedom of speech An expert workshop on "Freedom of speech" took place at the Council of Europe in Strasbourg in December. An AOB expert presented international examples of complaints to ombudsman institutions in this area. The topic of freedom of information, which is becoming increasingly important for ombudsman institutions, was included in this exchange of experience.

## European Union and European Network of Ombudsman

ENO meets in Brussels Ombudswoman Brinek and Ombudsman Kräuter also took part in the conference of the European Network of Ombudsmen (ENO), which was organised by the Office of the European Ombudsman. National and regional ombudspersons from all over Europe as well as members of government and EU public servants met for the first time in this framework. The core topics of this conference included the refugee situation and transparency in EU institutions in relation to lobbying. As a speaker, Ombudsman Kräuter explained the Austrian view on the refugee matter.

FRA Director visits AOB An intensive exchange took place with the EU Agency for Fundamental Rights (FRA), whose headquarters is located in Vienna, in 2016. Ombudsman Kräuter received the Director of the FRA for a working meeting, and experts from the AOB took part in various FRA meetings and conferences.

## Other events and bilateral contacts

Serbian Commissioner for Protection & Equality In April, the Serbian Commissioner for Protection of Equality visited the AOB. The focus of the discussion, in which Disability Ombudsman Erwin Buchinger took part as well, was care for the elderly. The growing challenge in connection with refugees was also discussed. Ombudsman Günther Kräuter indicated that besides minor refugees, persons with disabilities were not cared for adequately.

Conference of German Petition Committees The Petitions Committees of Germany met in Potsdam in 2016 for their biennial conference. The Austrian Ombudsman Board was represented by Ombudsman Peter Fichtenbauer. The main theme of the conference was petition law. Luxembourg was used as an example to show how petition rights can be made more accessible to older persons in particular.

Visitor groups come to Vienna A delegation from the ombudsman institution of Kyrgyzstan used their stay in Vienna to pay a visit to the AOB as did a delegation from Sri Lanka, which was led by the Minister for Parliamentary Reform and the Media. The guests were greeted by the members of the AOB and gained an insight into the

organisational structure, working methods and responsibilities of the AOB in brief working sessions.

## 1.6 The members of the AOB take stock

### 1.6.1 Ombudsman Günther Kräuter

I would like to extend my sincere gratitude to all of our staff for their dedication, their competence and the empathy with which they encounter people who are often in very difficult circumstances, and try to find solutions for their problems.

I would also like to thank our six commissions and the members of the Human Rights Advisory Council, and express my recognition of their ongoing commitment for the protection of human rights in Austria.

The AOB works intensively with civil society. This is an extremely useful and fruitful cooperation for both sides. The institutionalised collaboration with Disability Ombudsmen, children and youth advocates, patient advocates as well as residents representatives is also very much in the interests of the affected persons.

I would also like to thank the Parliament and federal government bodies for the respectful collaboration. We are happy that a major request of the AOB was acknowledged and that our staff will be increased by three permanent in 2017.

Parliamentary discourse  
is important

On the positive side, we have made some headway in meeting a declared goal of the staff in this term of office: an increasing number of *Laender* have recognised that direct exchange with the AOB in the Diets is what a great part of the citizens would like to see. Traditionally, in the Diet of Vienna the ombudspersons debate with the parliamentarians in both, the committee and in the plenary sessions. In Styria and in Salzburg – and soon also in Carinthia – regional legal regulations govern participation in meetings in the committees of the Diets. In Burgenland, Upper Austria and Tyrol, the AOB also informs the parliamentarians in the Diet about maladministration, the findings from the visits made by the NPM commissions and the resulting recommendations.

We are optimistic that in 2017 it will become clear also in Lower Austria that there is room for improvement in terms of democratic politics. It is the right of the citizens, that Lower Austrian politics enable a direct discussion with the AOB concerning complaints, inadequacies, deficits or even maladministration.

Ombudsman of the  
Federal Government  
and the *Laender*

The AOB is also responsible for OPCAT in Tyrol and for federal matters in Tyrol and Vorarlberg; in this sense, it is an “ombudsman of the *Laender*” too.

Sensitisation to human rights protection

The AOB has held the NPM mandate for the preventive protection of human rights and human dignity for five years. One finding from this period of time is very important to me: the work of the commissions is becoming increasingly prominent and highly regarded both with those responsible in the institutions and with the general public. In this way, it is possible to successively build a broader basis for human rights protection. Arguably, the most central task and important goal of the AOB as the “Human Rights House of the Republic” is the sensitisation of the population to the problems and issues regarding human rights protection.

We have made considerable progress in this area: years ago, human rights protection in Austria was seen as a concern of individual, committed activists and claimed by experts “*ex cathedra*” to a certain extent.

The AOB also mastered a large number of international challenges in the year under review. I would like to mention the IOI World Conference in Bangkok as an example.

international presence and responsibility

Thanks to the support of the Austrian embassy in Thailand, we were able to hold a successful conference in spite of the sensitive political situation – military coup, human rights deficits, emotions after the death of the monarch. As IOI Secretary General, I held very open talks with NGOs such as Amnesty International Thailand, Human Rights Watch and the *Friedrich-Ebert-Stiftung*. We also emphasised the principles of the IOI – democracy, the rule of law and human rights protection – within the framework of a press conference and by adopting a “Bangkok Declaration”. I am confident that a considerable contribution to the imminent return to democratic structures was made in this way.

In terms of content, we as the Austrian Ombudsman Board were able to set standards in addition to the organisational responsibility as IOI headquarters. A short film thankfully produced by ORF in English about the TV programme “*BürgerAnwalt*” (“Advocate for the People”) generated great interest on the part of ombudspersons from all over the world. The idea and the impetus to gain prominence, enforcement powers and a preventive effect through the permanent presence of an ombudsman institution in the media is arguably one of the most important IOI projects.

On its 40<sup>th</sup> anniversary, we see the AOB as a nationally and internationally recognised institution. My colleagues and I, and all our staff are however acutely aware that the confidence of the people, the respect of politics and administration and the international reputation have to be earned afresh every single day.



## 1.6.2 Ombudswoman Gertrude Brinek

“Moving topics” were investigated, processed and dealt with in an “emotional year”. This report bears evidence to that. From the field of regional and municipal administration, these included the areas of construction, housing, regional planning and zoning, traffic and general municipal matters.

Many people expect their own personal domestic comfort from the residential construction boom. From the many complaints that are submitted to the AOB I learn about the associated wishes, plans and expectations but also the disappointments.

It is evident that people are basically willing to make sacrifices with their dream home – affordable mansion at the edge of the forest (with access to the lake) with broad horizon and close slip road to the motorway cleverly concealed in green surroundings, low-cost infrastructure including free health and care facilities. And yet the ideal individual concept, which is often wasting space and expensive for the general public, seems to remain in peoples’ minds.

All experts warn about the single-family house in the countryside, and yet it is still built and supported. What is built less and receives less support and above all what young people urgently need are affordable, i.e. smaller, apartments. This applies to many cities and municipalities, which use size (and cost) ratios in their standards which interested persons and families often experience as unreasonable on the whole. In many cases, the cost has to be borne by state aid. The presumed social advancement in the form of more housing space manifests itself as a financial burden for the individuals, the Federal Government and the *Laender*.

Residential construction  
- between wish and  
reality

We were able to gain essential insights into this topic and draw important conclusions at a symposium of the AOB.

Demands associated with barrier-free accessibility and the fair treatment of persons with disabilities also pose a challenge. The legal obligation (and the UN Convention on the Rights of Persons with Disabilities) must be fulfilled in public and private construction. The implementation is far from being on track, as the results of our investigations indicate.

Population growth and unplanned migration are making the creation of housing space even more urgent. To this end, the building regulations were “lowered” in all *Laender* in order to create housing space faster, i.e. regulations and standards were suspended, in many cases including those which guaranteed neighbours legal security. The consequences will have to be closely observed in the next few years. As Ombudswoman, I also see possible control opportunities in the financial equalization scheme and the residential concepts of the *Laender* defined there.

Rapid creation of  
housing space brings  
less legal security

There is a surge of protest with regard to another widespread practice: urban densification. Under this keyword, existing interior courtyard areas that were built on are (almost) filled up. This is justified socio-economically and in terms of urban planning. However, what is often missing is transparent communication. Information is often insufficient for fear of participation equalling with co-determination.

Citizens are outraged, and the number of complaints submitted to the AOB increases when urban policy decisions are clearly left to the investors at their own discretion. This applies to the “*Heumarkt*” project in Vienna as it does to the “*Kahrstrasse*” high-rise project in Linz. Allegations of unequal treatment are often linked with worry about the urban landscape and orders on preservation of cultural heritage. There is thus a thin line between allegations of corruption and cronyism, above all, when the administration ignores even their own regulations. At the end of the day, the damage is considerable on all levels, as the cases investigated by the AOB show.

More self-determination through new legal guardianship law

Taking the concerns of the people seriously for many years, processing their complaints in the broadest possible interpretation of responsibility and giving orientation in the labyrinth of the legal world bears fruit. In a carefully and consistently participative reform process in the Federal Ministry of Justice – with involvement of the AOB – a draft for a new legal guardianship law (in future Adult Protection Law) was drawn up and presented. It is intended to promote and safeguard help and self-determination (as opposed to incapacitation) when required. May 2017 will be the starting date of the legislative enforcement.

We were successful in implementing our mandate of cooperating with academia in a special way this year. Together with university professor Andrea Berzlanovich from the Medical University of Vienna and Maria Rösslhumer from the Austrian Women’s Shelter Network, I was fortunate to be able to welcome students, listeners and visitors to the opening of an interdisciplinary series of lectures on the topic of “Violence against women” in the AOB. For many, this was a new, i.e. a first and informative encounter with the AOB as an institution for legal protection and a human rights institution.

My special thanks go to cooperation partners and all of the speakers. There is no reason not to continue in the next academic year.



### 1.6.3 Ombudsman Peter Fichtenbauer

Looking back on the year 2016, I can see very satisfactory, positive results in some areas. The last report to the National Council and the Federal Council on the year 2015 provided more detail on the lamentable condition of the Austrian national defence than in previous years. For many years, politics has seen this part of public administration as almost obsolete, which resulted in substantial budget cuts and an image loss.

In 2015, it was thus important to me that the AOB give the Austrian armed forces more attention. Many problems in this area were attributable to negligence on the part of politics. The equipment was out of date, the airspace surveillance did not comply with the constitutional mandate, and discussions about the abolition of state swearing-in ceremonies and downsizing of the military music section were detrimental to the reputation of the Austrian armed forces.

The positive results mentioned above should be addressed here. In 2016 it became clear – not least with a view to the security situation – in particular to political decision-makers who considered the Austrian armed forces as almost dispensable that functioning armed forces are no luxury but rather a mandate from the Federal Constitution. It will remain the duty of the AOB to continue investigating possible cases of maladministration, but structural improvements to the extent undertaken in 2016 are a necessary basis for reducing or avoiding the same.

Armed forces upgraded  
in 2016

Another matter important to the AOB, which despite initial positive signals from all political parties has not been implemented yet, is the equal status with the Austrian Court of Auditors for the monitoring and control of divested legal entities. Even if the trend of transferring many areas of public administration to the alleged private sector appears to be losing momentum, there are still many previously state-run areas that are now allocated to the private sector. Examples include the ASFINAG (a corporation responsible for planning, building, financing and maintaining Austrian motorways) and the Austrian Federal Forestry Office (*Österreichische Bundesforste AG*). They all manage public assets and are thus not private companies in the conventional sense.

Celebrating the 40<sup>th</sup> Anniversary of the AOB in the Parliament on 30 January 2017, I reiterated my birthday wish to place the AOB on an equal status with the Austrian Court of Auditors when it comes to the monitoring and control of state-administrated companies that are operated under a private sector legal form. It must be in the interest of politics to make citizens' access to the monitoring and control of maladministration easier and not to burden them with the expensive and lengthy alternative through the courts.

Divested legal entities

The improvement in the situation of chronically ill children in the school setting is still particularly important to me. The phenomenon that a number

of chronically ill children – having diabetes, asthma, epilepsy and other sicknesses that restrict their lives considerably – is on the increase is depressing enough. Young people have to adapt their lives to the illness, learn to deal with not being the same as other children and still cope with their everyday lives most of which they spend in school.

Chronically ill children  
at school

Let us help these children and create a suitable environment for them. Of course, the parents have to make the most important contribution but teachers are also important contact persons who support children and provide them with important information for their lives. Unfortunately, the chronic illnesses of the children expand the sphere of responsibility of the teachers. They should also be able to recognise emergencies and provide simple medical help. The concern of teachers with regard to being held liable is understandable. In such cases, public liability should be applied, to ensure that teachers are no longer liable themselves. The implementation of a “school nursing” system as in Great Britain, i.e. the presence of a medical contact person in every school, would also be reassuring for the teachers.

Legal solutions are necessary for the future, because unfortunately chronic illnesses in children are on the rise and there is no sign of this trend changing. Children are the future columns on which our society stands but they first need our support. I have summarised the results of the symposium held in Parliament on this topic in May 2015 and the most important recommendations in a publication which can be accessed on the AOB website.

AOB in police training

In 2016, the AOB finalised a project that will make a major contribution to bringing its work closer to those who deal with it on a professional level. A set module on the work of the AOB both in the preventive monitoring and control of human rights and in the monitoring of public administration was included in the two-year police training programme. From 2017 onwards, all police cadets who might have dealings with the AOB both within the framework of *ex-post* control and visits by the NPM commissions will receive four hours of instruction in their second year of training. I am convinced that the AOB can remove uncertainties and reservations and build trust – a win-win situation for both sides.

## 2 Monitorin public administration

### 2.1 Anti-discrimination

#### 2.1.1 Discrimination on the grounds of illness or disability

##### NGO Forum to strengthen the rights of persons with disabilities

For some years now the AOB has been organising an annual NGO forum. Human rights topics and initiatives are debated with civil society and persons from the world of politics and administration. Current problems are discussed and attempts are made to find joint solutions.

The NGO forums of the last two years dealt with the first National Action Plan for Human Rights of the Federal Government, which is regrettably not yet complete, despite intensive preparation. The 3<sup>rd</sup> NGO forum 2016 focussed on the topic of “Persons with Disabilities”. In three workshops more than a hundred representatives of NGOs and associations of persons with disabilities discussed the topics “Social services”, “Living and working” and “Persons with disabilities” with those responsible from the world of politics and administration.

The depiction of persons with disabilities in the mass media was another central topic. A study presented at the NGO forum showed that the depiction of persons with disabilities in the media is not in keeping with the times and fails to meet the social and political objectives of inclusion and participation. The images often convey clichés that have nothing to do with real life and are perceived as discriminatory by those affected. This is frequently exacerbated by expressions such as “confined to a wheelchair” or “suffers from”. The conference formed the start of an AOB campaign, the aim of which is to sustainably change this type of depiction in the media. The consistent inclusion of persons with disabilities in the media world, the removal of barriers and negative stereotypes and a broad consensus in media policy for the implementation of inclusive measures will be necessary for this.

AOB campaign

##### Difficult search for barrier-free doctor’s practices

As long as barrier-free accessibility to medical facilities and doctor’s practices is not available nationwide, the search for barrier-free doctor’s practices has to be supported by a corresponding information service.

Following an investigation of the lack of barrier-free access to doctor’s practices in Burgenland, the AOB conducted a nationwide *ex-officio* investigation of the information available on the Internet on the accessibility to and equipment in doctor’s practices for persons with disabilities.

The result of this investigation was that there is no standardised search option for barrier-free doctor's practices and it is often difficult to find information about them. The search options vary depending on the medical chambers of the *Laender* and public social insurance carriers. It is not possible to search for barrier-free doctor's practices on some websites. What is also doubtful is how comprehensive and valid the respective survey results are. For example, the search for doctor's practices without stairs in a Viennese district returned eight results at *arztbarrierefrei.at*, whereas the same search returned three results on the website of the Vienna Medical Chamber.

The degree to which different levels of barrier-free accessibility (ramps, sign language, etc.) are considered is also questionable. This condition is necessary in order to be of use for persons with disabilities of all types – persons with restricted movement, persons with impaired sight or hearing, persons with limited cognitive abilities, etc.

Improved information When confronted with this result, both the Austrian Medical Chamber and the Main Association of Austrian Social Insurance Institutions announced that they would improve the information and, in particular, place a link to <http://www.arztbarrierefrei.at> on the respective websites.

Barrier-free accessibility to all doctor's practices remain objective This is an important step. But what is vital, is to install barrier-free accessibility as quickly as possible and make all medical facilities and doctor's practices accessible to persons with all types of disability insofar as possible.

According to the UN CRPD, access for persons with disabilities to health care services must be the same in terms of scope and quality as for those with no disability. The period of grace for providing barrier-free accessibility in public areas expired at the beginning of 2016. The lack of barrier-free accessibility is not only discriminating, it also restricts the free choice of doctor. A low number of barrier-free doctor's practices means that persons with disabilities can rarely consult a doctor of their choice or they can expect to have to pay additional charges for treatment if a doctor with barrier-free alternatives does not have a contract with public health insurance agencies. For this reason, we appeal to all decision-makers to find a remedy and to contribute to improving this situation.

Barrier-free accessibility as requirement for contracted doctor's practices The AOB is thus making an effort to standardise barrier-free accessibility as an obligatory tendering requirement for a contract doctor's practice in the Ranking Criteria Regulation ("*Reihungskriterien-Verordnung*").

## Difficult purchase of discounted opera tickets for persons with disabilities

The removal of barriers and the equal treatment of persons with disabilities are necessary in all areas: in existential areas such as health, housing and work but also in the areas of leisure, culture and sports.

Removal of barriers necessary in all areas

A visually impaired couple from abroad wanted to order reduced tickets for the *Volksooper* for their visit to Vienna. During a telephone call, they were informed that persons with disabilities cannot order or purchase reduced tickets for the *Volksooper* in advance by telephone. These tickets can only be sold at the box office an hour before the performance begins, in which case it is unlikely that the desired seats are still available. The couple contacted the AOB. Initial research by the AOB showed that also at the Austrian State Opera reduced tickets for persons with disabilities can only be obtained at the box office shortly before the performance. What is also worthy of criticism is that there is no information about discounts for persons with disabilities on the websites of both opera houses, while there is information about price reductions for other groups of people. Having said that, there is information about reductions for persons with disabilities at the Burgtheater, which is also one of the Austrian federal theatres.

No advance sale for reduced opera tickets

Pursuant to Article 30 UN CRPD, the signatories recognise the equal right of persons with disabilities to participate in cultural life. In particular, all suitable measures are to be taken to ensure that persons with disabilities have access to theatres and other venues for cultural performances. The difficulty in purchasing opera tickets for persons with disabilities does not comply with these regulations. From a legal equal opportunities point of view, this should be changed.

In his statement to the AOB, the Federal Minister for Arts and Culture, Constitution and Media announced improvements. He also stated that a solution for all of the Austrian federal theatres was planned in agreement with disability organisations by the end of the current season 2016/17.

Improvement announced

## AOB makes fishing easier for persons with disabilities

Another step towards removing barriers in the leisure area for persons with disabilities was made in the year under review. The AOB already reported about its nationwide investigation of fishing for persons with disabilities (see Annual Report 2014, p. 50). The investigation was initiated by a complaint from an association that supports the participation of persons with disabilities in fishing as a sport.

- Test requirement as insurmountable obstacle According to the hitherto prevailing conditions set down in the fishing laws of the *Laender*, those interested had to pass a fishing test in order to be allowed to take part in the sport on a regular basis. In most cases, this posed an insurmountable obstacle for persons with disabilities. Without a fishing test, one can only practice this sport with a guest card for a limited period of time.
- AOB recommendation received positively This does not comply with the regulations of the UN CRPD, which demand the equal right to participation in recreation, leisure and sporting activities. The AOB also criticised the *de facto* exclusion of persons with disabilities from fishing and made reference to scientific evidence that fishing has positive effects on persons with severe disabilities. The AOB suggested either to create a regulation applicable for the entire country or to change the fishing laws in the *Laender* in order to make it possible for persons with disabilities to practice the sport. The existing regulations for minors and children could be used for orientation purposes. Persons with disabilities should be allowed to go fishing accompanied by someone who has a valid fishing licence. This suggestion was taken up positively by all *Laender*, and changes in legislation were announced.
- New regulation in Vorarlberg Vorarlberg was the first *Land* to create the following new legal regulation in their fishing law: “A permit may be granted to persons with disabilities who are unable to provide proof of their professional ability in the form of a fishing licence pursuant to §14 under the condition that they may only fish when accompanied by a person who is professionally qualified to fish ... The *Land* Government shall enact the detailed provisions regarding the professional ability per regulation. Therein shall be set down in particular ... that fewer requirements shall apply for persons who have not yet completed their 16<sup>th</sup> year as well as for persons with disabilities.” The change in legislation shall become effective on 1 January 2017.
- More *Laender* to follow Draft legislation has existed in Carinthia since the summer of 2016 and is currently being debated in the Diet. The *Laender* of Burgenland, Tyrol and Vienna announced relevant changes in legislation for 2017. A change is foreseen for the next amendment to the fishing law in Styria. Even Salzburg, who was hesitant at first, has announced the inclusion of a pertinent provision in the next amendment of the fishing law. In Upper Austria, the suggestions gathered concerning this topic are currently being discussed on the political level. In Lower Austria, a relevant provision to make fishing easier for persons with disabilities was, despite being announced, regrettably not included in the most recent amendment to the fishing law.
- The AOB hopes that the announced changes in legislation will be enforced quickly in all *Laender*.

## 2.1.2 Discrimination on the grounds of gender

### Lecture series on protection of women against violence

Women often appear to be reluctant to defend themselves or contact complaints offices when they are subjected to unfair treatment or experience discrimination. That is how the numbers of complaints to the AOB can be interpreted: around a third less women than men approach the AOB. The AOB will try to counter this and seek to achieve a balanced gender distribution of complaints through projects that are specially directed towards women. This should help to give women the confidence to contact institutions providing legal protection such as the AOB and demand their rights in cases of violence, discrimination and any other type of violation of their rights. In the year under review, the AOB took part in a lecture series on the topic of the protection of women against violence.

AOB wants to reach more women

Every fifth woman in Austria experiences physical and/or sexual violence, but only a few women know to whom they can turn for protection. In situations where people are dependent on the help and support of others, for instance in cases of poverty, old age, disability and when receiving care, protection against violence is an important topic for women in particular. In order to actively counter the taboo status and trivialisation of the topic, the Department of Forensic Medicine at the Medical University of Vienna has been organising the interdisciplinary lecture series “One in five” in cooperation with the Austrian Women’s Shelter Network for several years. In the year under review, the AOB took part as co-organiser and contributor for the first time.

AOB takes part in lecture series

The series of lectures is intended to be a preventive measure. To increase awareness for the different types of violence against women, experts discussed the topic taking different areas of life and society into consideration at the beginning of the lecture series.

A detailed insight into the background, causes and consequences of the complex topic of “Violence against women” was offered on a total of seven lecture days. With regard to topics such as “Particularly vulnerable women”, “Fleeing and human trafficking”, “The penal system and the protection of women”, the experts from the AOB discussed with students and practical experts how the AOB can provide help and support and contribute to solving structural problems.

The participation of the AOB in this event will hopefully make a contribution to enabling more women to contact the AOB in the future and more attention will be given to specific women’s problems.



## Protection of women refugees against violence

Women refugees are not accepted in women's shelters

The media reported problems in protecting women refugees against violence in spring 2016. Women who have fled their home countries are particularly often confronted with violence, in Austria too, which is why they have to be given special protection in accommodation facilities. For example, it is problematic that women and their children who experienced violence may not be accepted in women's shelters in several *Laender*.

The AOB thus initiated a nationwide *ex-officio* investigative proceeding into this topic. Information was gathered from all of the *Laender* on how women refugees and their children are protected against violence. In concrete terms, a survey was conducted on which measures are taken in facilities that provide reception conditions under the Basic Provision Agreement in the respective *Laender* to protect women refugees and their children against violence and sexual assaults. The survey also gathered information on the measures for victims of violence and sexual abuse in facilities for basic provision, the steps initiated after violent incidents occurred and how the admission of women refugees and their children to women's shelters is regulated. The results of the survey were as follows:

AOB gathers information from all over Austria

As measures for the protection of women refugees against violence in basic provision facilities, the *Laender* are taking the following criteria into consideration when allocating accommodation: nationality, ethnic group and marital status, separate sanitary facilities and the separate housing of women with and without children. Some *Laender* have homes or shared accommodations within the basic provision framework that are exclusively available to women refugees and their children. Other violence protection measures include that accommodation providers are available 24 hours a day or the 24-hour presence of care personnel in larger homes, the emergency number requirement, regular patrols and the obligation to report special incidents, advice and help from trained personnel as well as sensitisation to the prevention of violence for accommodation providers and cooperation with violence protection centres and women's shelters.

Regrettably, the statements provided by the *Laender* indicate that cases of violence to women refugees also occur in basic provision facilities. In this case, the accommodation providers are required to file a complaint and seek medical help for the victim. Depending on the nature of the incident, the perpetrators are moved to another location and warned that they will lose their entitlement to support under the reception conditions. In isolated cases there are also police operations which result in expulsion orders and prohibitions to return. If desired, affected women and their children are housed in specially protected accommodation or women's shelters. Specialised anti-violence units are contacted to enable relevant therapy and care measures.



The admission of women refugees and their children to women's shelters in situations of acute danger or in a crisis situation after domestic violence is possible in several *Laender* regardless of the residence status, that is, also for women refugees and their children. In some *Laender*, women refugees can only stay in a women's shelter for a short period of time. Additionally or as an alternative to women's shelters, several *Laender* report on houses available exclusively to women refugees and their children within the basic provision agreement.

In the opinion of the AOB, the necessary guarantee of the protection and the safety of all persons in Austria, in particular of women refugees and their children, is derived from the universal human rights.

Protection against violence regardless of residence status

This is expressly stated in the Istanbul Convention – the convention of the Council of Europe for the prevention and combatting of violence to women and domestic violence – that was ratified by Austria and has been in force since 2014 (in particular Article 4 and 23). This requires that the signatories create measures to protect female migrants and refugees and their children against violence. According to the Convention, sufficient suitable and easily accessible protective accommodation, above all women's shelters, with relevant security standards shall be provided for all women and children who are victims of violence. The EU Reception Conditions Directive (2013/33/EU) obligates member states to take suitable measures to prevent attacks and gender-based violence including sexual assaults and harassment in the accommodation facilities (Article 18 (4)).

Regardless of the prevailing legal situation of the respective *Land*, it must be ensured on grounds of the protection of human rights that women refugees and their children must be guaranteed the same protection from domestic and any other type of violence as all women living in Austria.

The situation of particularly vulnerable women and the protection of women and their children against violence is given special attention through the AOB's preventive human rights mandate and the visits made by the commissions to the basic provision facilities. But also, within the framework of the *ex-post* control, the AOB will pursue every indication of problems in the protection of women against violence, be they women refugees, beneficiaries of subsidiary protection or other groups.

### 2.1.3 Discrimination on the grounds of nationality or ethnicity

#### Long wait for family benefits when claiming from abroad

Family allowances and child care benefits are an important financial support for every family, in particular for single parents. However, parents are sometimes confronted by massive problems when it comes to cross-border connections (for more detail see chapter 2.2.2).

Cross-border checks by authorities are often lengthy

The AOB is often contacted by parents or single mothers living in Austria who receive no family benefits for months, sometimes even several years, after the birth of their children because of inter-governmental evaluations by authorities. These benefits thus lose their purpose of covering basic needs. The affected families are forced into a situation in which their livelihood is at risk.

EU law guarantees provisional payment after two months

According to EU law, this should not be the case. The EU's country of employment principle stipulates that, as a rule, family benefits are paid in the EU country in which the parents work. This verification of responsibility can often take a long time, especially if the parents live apart. In addition, the communication with foreign authorities can often be difficult. EU law provides for this situation to ensure that it is not borne by the parents or single mothers. The state in which the parent caring for the child lives has to pay the family benefit provisionally.

Massive problems in the implementation of this regulation

However, there are often problems when implementing this regulation. For this reason, the AOB approached the European Commission in 2011 and has been working hard to find a solution to these problems ever since. As it has not been possible to find a solution to date, the AOB requested a statement of opinion from the European Commission in the summer of 2016. The European Commission stipulates therein that after two months the country of residence has to provisionally pay the family benefit until the question of which country is responsible is finally clarified.

AOB obtains statement from the European Commission

The AOB approached the responsible Federal Ministry of Families and Youth with this statement, who then announced that they would contact the European Commission and clarify general processes. The AOB hopes that this will finally bring a solution to these problems.

#### Harmonisation of tuberculosis mass screening failed

The AOB has campaigned for a nationwide harmonisation of the regulations for TB mass screening in recent years and is thus making a contribution to removing discrimination in the health sector (see Annual Report 2014, p. 48). Unfortunately, these efforts were to no avail in the year under review.

Persons from certain countries who want to live in Austria for a long time have to undergo a mandatory tuberculosis examination in the first years of their stay in order to prevent the spread of the disease. The definition of this group of people and the question of how often they have to undergo this examination are, however, regulated differently from *Land to Land*.

Mandatory examination for persons immigrating from certain countries

The investigation was triggered by a complaint from a woman from Serbia who had been living in Carinthia for three years and had to undergo a mandatory TB x-ray examination every year. She perceived the fact that she had to be examined in the following two years even though there were no adverse findings during the first examination as discrimination. If she lived in Burgenland, for example, she would not have had any further mandatory examination, as mass screening is only necessary three years after taking up residence. In Styria, on the other hand, TB screening is mandatory for seven years. In some other *Laender*, a further examination is only necessary when required.

The AOB obtained a medical statement of opinion which found that subsequent examinations are only justified from a professional and economic viewpoint if the result of the first examination indicates suspected latent tuberculosis. It also recommended to regularly align the list of those countries whose citizens are subject to a tuberculosis examination with the epidemiological development in the individual countries.

With these medical observations, the AOB saw the differing practical implementation of the *Laender*, in particular the automatically planned yearly subsequent examinations for a period of up to seven years – without any suspected illness – as unjustified. Unnecessary or exaggerated mandatory examinations for people from other countries who wish to live in Austria constitute a violation of the physical integrity protected under Article 8 of ECHR and discrimination on the grounds of nationality. The AOB thus recommended a harmonisation of the regulations and the abolition of exaggerated mandatory examinations.

Regulations of some *Laender* exaggerated

The Federal Ministry of Health and Women's Affairs shared the reservations of the AOB and announced nationwide harmonisation of the regulations. The associated ministerial draft failed, however, due to resistance in the review procedure. The suggested harmonisation was positively received by several stakeholders in the review process and it was emphasised that there were no objections to the implementation of nationwide standards from the medical point of view. However, individual *Laender* feared an increase in the financial and personnel cost, in case the Federal Government extends the group of persons to be examined.

Planned harmonisation failed

Undifferentiated  
„implementation  
federalism“

The AOB regrets that the efforts to enable nationwide harmonisation of this matter has failed and repeats its reservations concerning the prevailing provisions. The question as to which persons have to undergo mandatory mass screening according to scientifically based criteria does not justify randomly differentiated “implementation federalism”.

### Gaps in receiving basic social services

Move of persons  
entitled to basic  
support to Vienna

In the year under review, a large number of complaints were submitted to the AOB about cases in which vulnerable foreigners requiring assistance did not receive any support under the Basic Provision Agreement for months after moving from Lower Austria to Vienna.

No update of Ministry's  
data network

The payments for accommodation and food made by the *Land* Lower Austria were stopped when the affected persons deregistered from basic welfare support in Lower Austria. However, these people remained health-insured within the framework of the Lower Austrian basic welfare support, because of the lack of information on where the persons have moved to or on the fact that they had already applied for basic provision in Vienna with the Vienna Social Fund. In this way, gaps in medical care and additional cost in the case of a necessary treatment should be avoided. In the information data network of the Federal Ministry of the Interior, the affected persons were still marked as “active in the Lower Austrian basic social welfare system”. However, one and the same person cannot be registered for basic provision in two *Laender* at the same time in order to avoid double payments. Since the records in the information data network of the Federal Ministry of the Interior were not updated due to the failure to forward the information on the registration of the affected persons in Vienna, there were considerable gaps in the payment of benefits owed to them.

Basic Provision  
Agreement requires  
legal security for those  
affected

The Federal Government and the *Laender* have drawn up an agreement on joint measures pursuant to Article 15a of the Federal Constitutional Law to provide temporary basic welfare benefits for vulnerable foreigners requiring assistance in Austria. The aim of this agreement is the nationwide harmonisation of basic welfare provisions. This should be carried out on a partnership basis, help to avoid a regional overload and provide legal security for those affected. Pursuant to Section 4 of this agreement, the *Laender* shall feed the federal information data network with relevant data as soon as possible.

Benefits have to be  
paid in timely manner

It is clear that a person cannot be registered for basic welfare provision in two *Laender* at the same time. However, it is not allowed that this regulation results in people who are entitled to benefits being refused the payments owed to them for months. It is important for vulnerable foreigners requiring assistance that they receive the benefits on time and have clarity about their situation and their legal rights. Problems with the use of data from the Federal Ministry

of the Interior in the basic provision area do not excuse the individual *Laender* from their responsibility to pay the benefits owed to vulnerable foreigners who require assistance as soon as possible.

The outcome of the AOB investigative proceeding was the setting up of a work group to clarify the individual complaints with the participation of the Vienna Social Fund and the Coordination Office for Immigration Matters (*Koordinationsstelle für Ausländerfragen*) at the office of the regional government of Lower Austria. At the instigation of the Vienna Social Fund, the Land Lower Austria had the data in the information data network corrected via the basic provision clearing office at the Federal Ministry of the Interior.

Work group set up

In this way, the Vienna Social Fund was able to organise the outstanding back payments from the time when the affected persons applied for basic provision in Vienna. The gaps in the care of those entitled to basic social benefits were subsequently removed.

Outstanding payments were made

## 2.2 Investigating human rights

### 2.2.1 Labour, social affairs and consumer protection

#### Disability matters and support law

Discrimination of persons with disabilities

Many people with impairments and their relatives contacted the AOB in the year under review. Matters of complaints included looking for a training position or employment, funding of necessary, disability-related purchases and the issuance of disability passes and parking permits. Complaints were submitted about discrimination compared with the treatment of persons without disability and the lack of access to rehabilitation facilities that are suited to their needs.

Slight decrease in the number of complaints

The complaints about the Ministry of Social Affairs Service (*Sozialministeriumservice*) fell slightly, to around 70 submissions. More than half of these concerned the issuance of parking permits. The number of complaints about the duration of proceedings at the Ministry of Social Affairs Service decreased. Some 30 complaints had to do with delays at the Federal Administrative Court. The AOB can only become active in these cases if a suspected delay by the court is the reason for the complaint, which applies in about half of the cases.

#### Employment of persons with disabilities

It is becoming increasingly difficult for persons with disabilities to find employment on the regular labour market.

Criticism of limit on additional income

Ms N.N. told the AOB that she cannot work full-time due to numerous impairments. She receives benefits under the needs-based minimum benefit system and wanted to look for part-time employment. Recipients of unemployment benefits can earn up to a certain threshold for marginal earnings while looking for work. The limits on additional income are considerably lower for persons with disabilities who receive needs-based minimum benefits. The earnings disregard is just 60 euros for them. Ms N.N. thus feels discriminated compared to those without disability looking for work.

No job offers for social service workers for persons with disabilities

Mr N.N. contacted the AOB because he was unable to find employment in spite of a qualification as a social service worker for persons with disabilities. He completed his training within the framework of a project for the professional integration of persons with special educational needs. He now complains that vacant positions are neither offered by the Public Employment Service Austria (*Arbeitsmarktservice*) nor on the employment market.

A representative of an NGO for persons with disabilities explained the problem of a premature determination of original incapacity to work to the AOB. Persons for whom it was determined that they are more than 50% incapacitated to work before starting their working life are outside the Public Employment Service's responsibility. However, adolescents with impairments still need special support after the end of compulsory education before they can start training or partial qualification. People should be given more time to prove themselves. This is not possible without suitable support structures. The lack of individual coordination of the offers from the Federal Government and the *Laender* leaves the integration into the daily structure of a workshop as the only possible option. After working in these facilities, young persons with disabilities only have a low chance of finding permanent work on the regular or intermediate labour market.

More professional qualification offers needed for the young

The support systems must be designed so that persons with severe impairments can take part in working life. This requires the extension of supported employment, personal assistance and non-profit temporary work projects with full protection under the social security scheme. The classification has to be urgently standardised and made more person-oriented. The current 50% limit of incapacity to work and associated exclusion from supporting offers for achieving regular employment and training contracts is rigid and randomly defined. After evaluation, this has to be abolished taking into account the circumstance that the UN CRPD demands a clear departure from the medical model of understanding disability. Accordingly, an open, inclusive, permeable employment market that is accessible to all has to be built pursuant to Article 27 UN CRPD. It must be possible for all persons with disabilities to live from earning their own income.

## Compensation for former home children - Act on Crime Victims

In the Annual Report 2014, the AOB reported about the problems former home children have in enforcing their request for benefits in accordance with the Act on Crime Victims (*Verbrechensopfergesetz*) at the Ministry of Social Affairs Service. Affected persons who were victims of abuse, violence and degrading treatment in homes for children and juveniles contacted the AOB again in this review period.

In most of the cases, the claimants were not fully informed about the eligibility requirements set down in the Act on Crime Victims. For example, many did not know that only the right to covering the cost of psychotherapy or compensation for loss of income is possible. Having to deal intensively again with what they experienced was extremely stressful for many of them.

Covering costs for psychotherapy or compensation for loss of income



Determine causality	<p>According to the Act on Crime Victims, claims are considered if it can probably be assumed that treatment costs or a reduction in the capacity to work have occurred. In the expert opinion obtained from the Ministry of Social Affairs Service information on which illnesses are associated with the abuse suffered and which are not has to be provided. It must be traceable whether the health implications of abuse (causal damage to health) have influenced the career, or other factors or health problems have had an adverse effect on the career.</p> <p>Claimants reported to the AOB that they felt they were not taken seriously by the staff of the Ministry of Social Affairs Service or the experts. The rejection of their claims was often perceived as questioning the trauma they had suffered. In many cases, it was concluded that the trauma caused permanent health problems such as post-traumatic stress disorders, but an adverse effect on the career of the abuse victims was nearly always negated. The AOB criticised that some of the declaratory proceedings were executed poorly because concrete information on the crimes suffered had not been documented properly.</p>
Three-year processing time	<p>Those affected also found the duration of the proceedings both with the Ministry of Social Affairs Service and in the complaint proceedings at the Federal Administrative Court very stressful. In one case, an abuse victim who placed a claim for payment of a benefit pursuant to the Act on Crime Victims in September 2013 only received notification from the Ministry of Social Affairs Service in April 2016.</p>
Better understanding of victims of abuse	<p>The AOB thus repeats emphatically that more sensitivity and understanding are necessary for persons suffering from mental illnesses in particular.</p>

### 2.2.2 Family and youth

#### Family allowances and child care benefits - waiting time for family benefits violate EU law

In the year under review, the AOB was repeatedly confronted with problems in Austrian administrative practice regarding the coordination of family allowances and child care benefits within the EU. The AOB has already addressed this matter repeatedly in previous years. Under the EU's country of employment principle, family benefits are primarily received from the EU member state in which the parents are employed. In case of secondary responsibility, the other member state can be required to pay the difference ("equalisation payment").

Country of residence has to provide benefits temporarily	<p>In the year under review, numerous families living in Austria contacted the AOB because they had already waited many months to be granted family allowances and child care benefits. The evaluations carried out by the authorities of different states can be very time-consuming. In most</p>
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cases, there are multiple factors that prolong the duration of the procedure. Communication with foreign authorities is often very difficult, and, at times, parents are overwhelmed – or unsure of which documents to submit. The provisions of EU law are to ensure that affected families do not remain without family benefits for more than two months even if the evaluation proceedings in cross-border cases are lengthy: the country in which the parent caring for the child lives must provide temporary family benefits until responsibility is finally clarified (Article 6 (2) of EU Regulation 987/2009).

The existing structural problems in Austrian administrative practice could not be definitively resolved despite the AOB's efforts in contacting the competent Federal Ministry multiple times and obtaining a statement from the European Commission in 2011. Therefore, in the current reporting year the AOB again approached the Commission (Directorate-General for Employment, Social Affairs and Integration).

AOB again appeals to European Commission

In its statement to the AOB, the European Commission adhered to one general principle: the term “difference of views” among potential competent institutions (Article 6 (2) of EU Regulation 987/2009), which is the prerequisite for applying the temporary obligation of the country of residence to provide benefits, is to be interpreted broadly. It encompasses everything that does not constitute express consent. Thus, the temporary obligation of the country of residence to provide benefits two months after an application was filed, also applies if the other institution to which the application was forwarded by the Austrian authority does not reply or does so belatedly or if the facts are unclear, e.g. if there is a pending paternity proceeding. Austria, as the country of residence – even if it allegedly has secondary responsibility – has a temporary obligation to provide benefits two months after submission of an application if the country with alleged primary responsibility has not provided family benefits by then.

European Commission affirms Austria's temporary obligation to provide benefits

The following additional determinations are related to the principle of coordination of family benefits within the EU:

(1) No further application is necessary in the foreign country

It is contrary to EU law to require a parent or parents living in Austria, who have filed an application in Austria, to additionally file an application in a foreign country and await a decision on this application before temporary family benefits are paid.

No need to file further application in foreign country

It is also contrary to EU law to require the second parent to file an application in a foreign country or an appeal against the foreign decision and not grant family benefits until a decision is made.

By contrast, in the opinion of the Federal Ministry of Families and Youth, the EU coordination rules make the filing of an application in the foreign country unavoidable. According to that opinion, applicants must fill out the national

Differing administrative practices

form in each country so that all the information necessary for granting benefits can be obtained.

Thus, for example, Ms N.N., who lives in Austria with her two children while the children's father resides in Belgium, contacted the AOB. The Public Regional Health Insurance Office was of the opinion that, in addition to filing an application in Austria, the children's mother was also required to file an application for the Belgian equivalent of child care benefits. Ms N.N. applied for the Belgian benefits even though her prior research indicated that only parents employed in Belgium were entitled to such benefits, and neither she nor the children's father met this requirement. As expected, Ms N.N. received a negative response from Belgium. The Public Regional Health Insurance Office again refused to pay benefits and demanded that the children's father apply for Belgian family benefits and that the Belgian rejection notice be appealed by the children's mother.

In the view of the AOB, which has now been confirmed by the European Commission, the authority in the country of residence – which allegedly only has secondary responsibility – must forward the application to the competent authority in the country of employment. If processing continues for more than two months, temporary family benefits are to be paid in the country of residence.

(2) An application can be filed by either parent

Either parent can file an application

The statement of the European Commission further provides that an application for family benefits in Austria can be filed by either parent.

The Federal Ministry of Families and Youth is of a different opinion. It rejected the application for Austrian family allowances by a woman who lived in Hungary with her two children and was unemployed. The divorced father of her children worked in Austria. The Federal Ministry of Families and Youth stated that only the children's father could apply for Austrian family benefits. However, the mother could not acknowledge this without objection since she feared that the family allowances would then only benefit their joint children.

In light of the statement of the European Commission, this legal opinion of the Federal Ministry of Families and Youth is not tenable: of course, the claim to Austrian family benefits is triggered by the fact that the children's father has employment in Austria. However, based on the family-centred approach, the application can also be filed by the mother living in Hungary in the view of the AOB.

## (3) Pending paternity proceedings are not an impediment

In its letter to the AOB, the European Commission expressly states that the – temporary – obligation of the country of residence to provide benefits to the mother applies even if paternity proceedings are still pending.

Paternity proceedings  
are not an impediment

Therefore, the opinion of the Federal Ministry of Families and Youth that the EU Regulation makes no provision for temporary payment in cases where paternity has not yet been finally established is untenable. Otherwise, mothers living in Austria and raising their children alone would not receive family benefits for months – and maybe years – in cases where there is evidence of a father living and/or working in another EU country but there has (still) been no legal determination of his paternity.

The case of Ms N.N., who is an Austrian citizen, as is her son, can be an example. She lives in Austria and has studied and worked here. Several months before the child's birth, she became unemployed and received unemployment compensation, and then a maternity allowance. The man she identified as the child's father lived and worked in Germany. Immediately after the child's birth, Ms N.N. applied for child care benefits in Austria. She also initiated paternity proceedings, but the presumptive father was not cooperative. Irrespective of this, it was demanded that the single parent first apply for family benefits in Germany. She received a rejection notice from Germany stating as a ground that the man she identified was not recorded as the child's father on the birth certificate. However, family benefits were still not paid. The competent Austrian authority told Ms N.N. that it wished to await a response to an enquiry sent to the German authority in January 2016 and a provisional decision finding that Germany had primary responsibility sent in March 2016. In order to receive family benefits within a foreseeable time period, the single mother of the by then seven-month-old boy was compelled to return to work, which clearly conferred primary responsibility on Austria.

In the opinion of the Federal Ministry of Families and Youth, the country in which the presumptive father is employed has primary responsibility to pay family benefits, even if a single mother in Austria is unemployed during a pending paternity proceeding.

In another case, a mother, who was an Austrian citizen living in Austria, provided all the information she had regarding the man who she believed was the child's father at the insistence of the authority. This man was a Syrian asylum seeker in Sweden, where he could not work until he had been granted asylum. His paternity had not been established, and no paternity proceedings were pending. To reach a quick decision in the specific case, the authority had the child's mother sign a document confirming that she would not file a paternity suit in the future. The AOB criticised this procedure and the Federal Ministry of Families and Youth responded by stating that such documents

would not be tolerated in the future and that the related payment of child care benefits would be stopped.

In the view of the AOB, the granting of Austrian child care benefits should not be delayed until the close of – often lengthy – paternity proceedings. Likewise, such mothers should not be compelled to return to work, despite the obligation to care for a baby, only to make it clear to the Federal Ministry that Austria, and not some other EU member state, has the obligation to provide benefits.

(4) Immediate benefits also in case of equalisation payments

Temporary obligation to provide benefits in case of equalisation payments

If Austrian family benefits are higher than those in another member state, the difference is provided in the form of an equalisation payment. Here, too, the country of residence has a temporary obligation to provide benefits after two months.

Thus, the apparent standard administrative practice in Austria which is to generally make the equalisation payment after the foreign benefits have expired, i.e. not on a current basis but only when the child is three or four years old, is inconsistent with EU law. Moreover, the temporary payment of a very low daily rate, which only makes up a very small part of the difference from the foreign benefits, with notification that there will be an overall accounting after the expiration of the foreign benefits, is incompatible with EU law according to the European Commission.

A great challenge for authorities

The AOB is aware that the implementation of the EU coordination rules for family benefits presents a great challenge to the participating authorities. The AOB in no way denies the problems, e.g. in exchanging information with foreign authorities, which have also been confirmed by the European Commission.

AOB hopes for improvement

The AOB approached the competent Federal Ministry of Families and Youth with the statement of the European Commission. The Ministry announced that it would contact the Commission itself. The AOB asked to be informed of the results of this contact and hopes that the situation improves soon.

## 2.2.3 Finances

### Deductibility of donations as special expenses

The 2015/2016 Tax Reform Act revised the prerequisites for successfully claiming donations as special expenses. The amendment not only affects donors but also has a significant effect on the institutions and facilities that are associated with organisations which are the beneficiaries of donations.

In the past, persons who wished to have their donations included in the tax assessment as special expenses had to document them with donation confirmations issued by the recipient organisation.

With the introduction of the employee tax assessment which does not require an application by the 2015/2016 Tax Reform Act, an obligation is placed on beneficiary organisations to collect data from their donors, to use this data to obtain the so-called “encoded sector-specific personal identifiers for taxes and duties” from the master data register authority and to report this information to the tax administration, together with the individual donation amount, by the end of February of the following year.

Donation recipient must ascertain data

Organisations that do not (cannot or will not) fulfil these obligations will be deleted from the list of beneficiary organisations.

In the course of the reporting year, some beneficiary organisations, particularly smaller ones, contacted the AOB and expressed their concerns that the bureaucratic (financial and personnel) expenses of collecting this data was too burdensome for them and that a portion of the donated money would have to be used for this administrative expense, which was neither the intention of the organisations nor the donors.

Big burden on donation recipients

Donors also expressed their concerns about having to disclose what they considered to be sensitive data to organisations (“the transparent donor”) if they intended to continue deducting their donations.

The AOB had concerns regarding the consequences for individuals if the recipient organisation fails to report the donation to the tax administration or if the report contains errors.

AOB’s concerns

Users of *FinanzOnline* (an online tool which allows access to one’s individual financial administration) can see in advance what amount was reported for them by what recipient organisations. However persons who do not have access to this online tool, must wait for the issuance of the income tax assessment notice. What they have in common is a concern that they themselves must make the effort to rectify any omitted or incorrect report by the recipient organisation and then demand that the tax assessment notice is updated accordingly.

Relief is only provided to the Ministry

The AOB's concerns regarding the new provision on the deductibility of donations were discussed during the ORF TV programme "*BürgerAnwalt*" ("Advocate for the People"). The "relief" announced by the Federal Ministry of Finance only applies to the tax administration. For beneficiary organisations and donors, the provision means a significant increase in expenditures, administration, research, review as well as potentially expensive objections and, if necessary, appeals. The argument of the Federal Ministry of Finance that recipient organisations would spare themselves from issuing donation confirmations in the future is implausible due to the necessity to ascertain the "encoded sector-specific personal identifiers for taxes and duties" for each individual donor.

## 2.2.4 Health and women

### Paediatric care

The topic of existing deficiencies in medical care for children and adolescents has long been a central concern of the AOB. Due to the difficulties in obtaining care and the unreasonable waiting times for urgently needed treatment for children in Viennese out-patient clinics during the influenza epidemic in early 2016, the AOB directed generalised criticism at the basic level of paediatric services in Austria. In an *ex-officio* investigative proceeding, the AOB obtained statements from the Federal Ministry of Health and Women's Affairs and the Main Association of Austrian Social Security Institutions on this topic.

Out-patient area

In the out-patient area, the number of contracted physicians specialising in paediatrics and adolescent medicine has basically remained constant since 2001. Here as well as in other areas, it can be determined that about half of the office-based specialists operate as doctors without a contract with public health insurance offices. Thus, at the end of 2014, there were 579 office-based specialists for paediatric and adolescent medicine, of which 303 (52.3%) had a contract with a public health insurance office. Therefore, it can be assumed that many physicians have little incentive to conclude a contract with public health insurance offices because parents are willing to pay the costs of treatment themselves to shorten the waiting times that apply for contracted physicians, even if they ultimately only receive a relatively small cost reimbursement from the competent public health insurance carrier. In addition, a list issued by the Main Association of Austrian Social Security Institutions shows that not only do large differences exist in the density of care providers from *Land* to *Land*, but the regional distribution of existing contracts for medical practice with public health insurance offices does not provide full coverage.

Therefore, in the opinion of the AOB, it is necessary to better utilise existing resources through targeted measures on a regional basis and ensure that there will continue to be contracts for medical practice with the public health insurance offices over the long term. To this end, out-patient care offerings in medical facilities and hospitals must be coordinated and networked. One approach would be to include paediatricians in primary health care centres which would offer expanded office hours on weekends and holidays.

Necessity to ensure care close to home on a regional basis

In the in-patient care area, there were a total of 1,394 beds for paediatric and adolescent patients in medical facilities for the treatment of acute illnesses in 2014. There were an additional 297 beds for paediatric and adolescent surgery patients and 363 beds for paediatric and adolescent psychiatry patients. As compared to target bed numbers in the 2012 Austrian Health Structure Plan, many *Laender* were below the target numbers.

In-patient care

In particular, there is inadequate bed capacity in the area of paediatric and adolescent psychiatry. There are also significant gaps in care in the area of office-based practices. Thus, for example, in Styria and Burgenland there are no contracted specialists for paediatric and adolescent psychiatry.

Problems with paediatric and adolescent psychiatry

This problem is treated in detail in the chapter on the AOB's activities as National Preventive Mechanism (NPM), since this structural care deficit in the area of paediatric and adolescent psychiatry is a focus of the activities of the Austrian NPM under the OPCAT mandate.

There is another glaring care deficit in the rehabilitation of children and adolescents. There are no specialised rehabilitation centres for children and adolescents in Austria. The AOB has already discussed the inadequate offering of family-oriented paediatric and adolescent rehabilitation in Austria in the Annual Report 2009 and the Annual Report 2011. It has also addressed the problem many times on the ORF TV programme "*BürgerAnwalt*". After long negotiations, an agreement was reached in 2014 on the financing and the scope of paediatric and adolescent rehabilitation. After additional delays and postponements, the locations for the paediatric rehabilitation centres were finally established, for the most part, in December 2016. Accordingly, 306 of the planned 343 beds have been specifically allocated. Only the locations for Tyrol and Vorarlberg are still missing, and they will be allocated by May 2017.

Sites for the rehabilitation of paediatric and adolescent patients

## Health insurance - waiting times for MRI and CT scans

When entering into contracts for the conduct of MRI (magnetic resonance imaging) and CT (computed tomography) scans, health insurance carriers are bound by the requirements of the large-scale equipment plan, which is a component of the Austrian Health Structure Plan.

Large-scale equipment plan limits the range of services



This large-scale equipment plan requires binding needs planning to control the quality and efficiency of medical care nationwide. This means that contracts for MRI or CT equipment outside of the large-scale equipment plan are not covered. Therefore, cost reimbursement is only possible for examinations with equipment that is included in the large-scale equipment plan. This has been confirmed by the case law of the Austrian Supreme Court.

Long waiting times However, the AOB is continually confronted by patients' complaints about waiting times for MRI and CT scans which may amount to several months.

Due to the urgency of these examinations (e.g. for cancer diseases or upcoming, scheduled operations) the affected persons are often compelled to be examined as private patients, even though the health insurance carrier cannot pay any cost reimbursement then.

Appointments are scheduled quickly for private patients

Therefore, in its Annual Report for 2015 and on the ORF TV programme "*BürgerAnwalt*" the AOB has discussed specific individual cases involving this problem in order to achieve an improvement in this unsatisfactory situation. An important reason for the waiting times is the fee agreement between the Main Association of Austrian Social Security Institutions and the Association of Austrian Health Care Facilities (Austrian Economic Chambers). This agreement provides for limiting (capping) the total fee amount. The result is that facilities only examine as many patients as they receive corresponding fees for. Since private patients receive appointments much faster, it can be assumed that there is still available capacity, which has not been exhausted because of the cap on the total fee amount.

Health insurance carriers take first measures

The health insurance carriers have now reacted to this bottleneck in providing care ensuring that at least examinations which are urgently necessary can be conducted quickly at the expense of the public health insurance programme.

Thus, in Lower Austria an "onco-CT" task force was established with representatives of the Lower Austrian Public Regional Health Insurance Office (*NÖGKK*), the Specialists' Group on Health Care Facilities/Diagnostics of the Lower Austrian Economic Chamber, the Lower Austrian Patients and Care Advocates and the *Land* of Lower Austria. They agreed on measures to ensure that cancer patients receive appointments for urgently needed examinations quickly. This agreement is intended to help persons who have been diagnosed with cancer in a preliminary examination and need computer tomography for further therapy planning, but who cannot obtain a timely appointment from their CT providers. They will be allotted an appointment from a special quota offered by CT providers nationwide. Such models should be developed throughout Austria to ensure earlier appointments for examination.

However, if an evaluation of such measures shows that patients still expect unreasonable waiting times, the existing agreement on the total fee amount for MRI and CT scans must be critically scrutinised.



## 2.2.5 Interior

### Asylum and immigration law - federal support for asylum seekers

An application for asylum is usually filed with the police. After initial questioning, the police ask the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) for a directive on how to proceed. Generally, the Federal Office for Immigration and Asylum directs that the asylum seeker should be transferred to a federal support facility for admission proceedings. Section 43 (2) (2) of the Federal Office for Immigration and Asylum Procedures Act provides that this can be dispensed with if it is not possible to care for the person in a federal support facility due to unforeseen circumstances.

During a visit to the Vordernberg detention centre in February 2016, one of the NPM commissions found that families and women with children were not given places in federal support facilities. The asylum seekers were merely transported to the Leoben train station and left to their fates. Since the commission suspected that these were not isolated cases due to the massive increase in applications for asylum in 2015, the AOB initiated an *ex-officio* investigative proceeding.

The AOB found that between September 2015 and March 2016, a total of 12,405 persons were not provided with shelter in federal support facilities immediately after applying for asylum. The Federal Ministry of the Interior justified the cessation of transfers in autumn of 2015 by stating that the accommodations were being fully utilised. In many cases transit quarters were all that was available for asylum seekers in the near term. Particularly vulnerable groups of persons (such as families with children up to 10 years of age) were affected by this until early December 2015. The situation was further complicated by the fact that persons affected by this cessation of transfers were not given written information regarding possible acceptance in emergency shelters.

Federal Government overburdened by providing housing and food to refugees

Thanks to voluntary helpers and aid organisations, especially the Austrian Red Cross, the situation did not get completely out of control.

Private organisations assisted the state

Under the Reception Directive (2013/33/EU), asylum seekers are entitled to an appropriate basic level of reception conditions immediately after filing an application for asylum. The Federal Government is responsible for ensuring these basic reception conditions during admission proceedings. This includes suitable housing, appropriate board, health insurance, pocket money, payment of transportation costs, measures for persons needing care, daily structure for unaccompanied minor refugees, clothing, information and counselling. Only if there are statutory grounds for exclusion (which in no way include shortages of accommodations), is there no claim to a basic level of reception conditions.

The state is obliged to provide basic reception conditions

In reaching its decision, the AOB relied on the case law of the European Court of Justice (Matter of Saciri, C-79/13), holding that even full utilisation of reception structures do not justify temporarily withholding the basic reception conditions. The AOB also relied on the opinion of the Constitutional Court of Austria (A 15/2015) holding that “support services” within the meaning of the Reception Directive must be provided once an application for asylum has been filed, as long as there is no decision denying, restricting, or withdrawing the statutory claim.

The AOB complained that numerous asylum seekers were temporarily denied the basic reception conditions from September 2015 to March 2016. Every asylum seeker was finally able to be immediately assigned to a shelter commencing on 4 March 2016, after facilities for basic provision were increased.

As in the previous year (see Annual Report 2015, p. 62 et seq.), the AOB issued an interim report on several open investigative proceedings. These proceedings were completed in 2016 with the following results:

The AOB complained about the accommodations and level of support in the massively overcrowded Federal Support Facility East and on the adjoining grounds of the Security Academy *SIK* in Traiskirchen in the summer of 2015.

Deficiencies at the Initial Reception Centre West

Also in the summer of 2015, an NPM commission visited the Initial Reception Centre West in Thalham. The AOB’s primary criticism was that unaccompanied minor refugees were transferred to the overcrowded Federal Support Facility East from mid-May until the end of September 2015. The Federal Ministry of the Interior immediately eliminated the unsecured storage of medications. The AOB complained that fellow residents and care personnel were used as interpreters at initial examinations. First, these persons often lack medical expertise, and second, their involvement limits the confidentiality of the interview with the physician. The Federal Ministry of the Interior promised to explore the use of professional interpreters. Fortunately, the Federal Ministry of the Interior quickly implemented the recommendations to serve dinner later, inform the residents of the possibility of a second helping, and offer snacks between meals.

The AOB also criticised the use of bilingual residents as interpreters during medical visits at the Upper Austria Special Care Facility. The Federal Ministry of the Interior announced that it would use a video interpreting system in the future. The Ministry also eliminated another deficiency: the lack of properly placed and labelled fire extinguishers.

The Federal Ministry of the Interior confirmed that there was a bed bug infestation in five rooms at the Steyregg Special Care Facility. The AOB complained that the care personnel initially did not take the complaints of the affected unaccompanied minor refugees seriously. Management did not

take measures to eliminate the pest infestation until the adolescents contacted outside third parties.

A review of the allocation centre in Ossiach showed no evidence that it was unsuitable. In other proceedings, the AOB is currently observing the implementation of structural improvements.

As announced in 2015, follow-up visits were made to the Federal Support Facility East in February and April 2016. The living conditions had improved significantly. Nevertheless, the commission observed some deficiencies: inadequate hygiene in the sanitary areas, a lack of information on individual topics and unequal access to the wireless network and to kitchenettes. The AOB also complained about the crowded living conditions, the lack of privacy and the fact that unaccompanied minor refugees were denied access to the so-called “waiting tent” on the grounds of Federal Support Facility East.

Deficiencies at Federal Support Facility East

For the first time the AOB was also confronted with interference with the activities of an NPM commission. The delegation had a long wait until it was admitted to the Federal Support Facility East, and employees did not answer questions. The Federal Ministry of the Interior immediately undertook measures to sensitise staff.

Commission activities impeded

However, the AOB’s continued monitoring also brought along improvements: asylum seekers now have the option of accompanied visits to physicians outside of the support facility. It was furthermore clarified that under-age unaccompanied minor refugees may leave the Federal Support Facility East in the company of asylum seekers who take care of these children.

Providing suitable housing and care to unaccompanied minor refugees is very important in the view of the AOB. For this reason, the commission visited the Special Care Facility South in Reichenau in October 2015. The commission found that no care personnel were on duty during the night in this facility designed for 70 adolescents. The AOB also saw the lack of accompaniment for minors during visits to the physician and deficiencies in furnishings as problematical. The AOB suggested that medical care be provided at the facility and that books be purchased in the languages of the children at the facility. It requested that the Federal Ministry of the Interior ensured that the tasks of the care team be clearly communicated. Encouragingly, the Ministry promised to provide a night care team, and it improved the furnishings.

## Asylum and immigration law - border management in Spielfeld

A delegation of the AOB visited the Spielfeld border-crossing on 20 February 2016. Since no acts of direct administrative power and coercive measures were observed during the visit and the border-crossing is not a place of detention within the meaning of the OPCAT, the AOB conducted an *ex-officio* investigation as part of its ex-post control.

At the time of the visit, the congestion was manageable and entry was organised in a satisfactory way. The police, the army and private organisations did good work. However, the delegation – which included persons with adequate language skills – observed deficiencies in interpreting services. There also was a need for improvement within the police organisation.

Deficiency in interpreting services

The Federal Ministry of the Interior stated that lay interpreters who were qualified and culture-sensitive would be utilised, as needed at the time, and that a contract had been concluded with an appropriate company. The Police Department of Styria and the Federal Ministry of the Interior considered this to be sufficient since standardised questions were being asked. The affected persons received written information with the precise reasons for refusing entry in their own language as well as a verbal statement.

Storage of fingerprints

The AOB found that the observations made by the Police Department of Styria did not match those of the visiting delegation and determined that lay interpreting was inadequate. According to the Federal Ministry of the Interior, the aforementioned company will be able to provide the professionalism demanded by the AOB, since the lay interpreters are supposed to be trained to meet UNHCR quality criteria. Peer support and supervision units will be offered as well.

Information regarding possible vaccinations

The delegation also observed that police officers were not adequately informed regarding possible vaccinations. The Federal Ministry of the Interior referred to a decree dated October 2015, which the Police Department of Styria communicated to all police stations. The Federal Ministry of the Interior accepted the suggestion of the AOB that attention should also be drawn to possible vaccinations by posting notices in police stations.

Commands are unclear

Conversations with police officers on site indicated that commands were not always clear and changed rapidly. The Federal Ministry of the Interior stated that the commands in the Police Department of Styria were clearly discernible to all managers and the police officers under their supervision, and realisable. An extremely dynamic situation, like the one that existed at the time of the commission's visit, demands intervention as the situation dictates. Therefore, procedures had to be adjusted on short notice. Extensions of working hours on short notice are part of a police officer's everyday life and therefore are inherent in the system. However, these statements did not correspond to the statements made by the police officers on site. Therefore, the AOB suggested

that the competent managers should be clearly instructed that commands to the persons working on site must be timely, structured and understandable.

With respect to the ability of police officers to make use of psychological supervision, the Federal Ministry of the Interior referred to the peer support programme. This is available to all police officers who are confronted by emotionally demanding situations while they are on duty and reach their limits. In such cases, there are about 70 peers available nationwide, i.e. specially trained and selected police officers and psychologists from the psychological service at the Federal Ministry of the Interior. However, additional work is needed to familiarise police officers with the valuable, preventive assistance available through psychological supervision.

Psychological supervision and peer support

The AOB believes that it makes sense to utilise peer support as well as the option of psychological supervision, which has been provided by decree for many years. When it is known in advance that deployments will be mentally stressful, notices about these services should be posted directly in the offices on site.

The AOB initiated an *ex-officio* investigation based on media reports in February 2016 according to which all refugees were being fingerprinted at the Spielfeld border-crossing, but only the fingerprints of those who filed an application for asylum in Austria were being retained.

The amendment to the Austrian Border Controls Act (*Grenzkontrollgesetz*) and the Procedures Act of the Federal Office for Immigration and Asylum (Federal Law Gazette I 25/2016) make it possible to retain the fingerprints of all refugees entering at border-crossings, even if they do not file applications for asylum and wish to continue travelling to another EU member state. According to the Federal Ministry of the Interior, all precautions have been taken with respect to the taking and storage of fingerprints, and the costs of storage have been significantly reduced with the closing of the Balkan route.

## Asylum - length of proceedings before the Federal Office of Immigration and Asylum

In the last four years, the number of complaints from asylum seekers about the length of proceedings before the Federal Office for Immigration and Asylum has drastically increased. In 2013, there were only 58 complaints, but this quadrupled to 228 complaints in 2014, and one year later there were 745 complaints (see Annual Report 2015, p. 64). This number doubled to 1,445 complaints in 2016. Since the staff level at the AOB was not increased, this large number of complaints posed a large organisational challenge. A total of 901 of the investigative proceedings that were already completed by the closing date ended with a determination of maladministration. In 271 cases,

1,445 complaints about length of proceedings

the affected persons or the Federal Ministry of the Interior informed the AOB that the proceedings had been concluded.

A total of 974 complaints related to proceedings that had been pending since 2015. 283 complaints related to proceedings from 2014, and 32 complaints related to proceedings from 2013. The longest proceedings began in 2011 and related to Afghan and Algerian asylum seekers. Both proceedings had already gone through several appeals and were again pending before the Federal Office for Immigration and Asylum.

Persons from Afghanistan filed the most complaints

Asylum seekers from Afghanistan filed the most complaints (300). The second largest group of complaints came from Iraqis (236) and the third largest came from Somalis (230). Many complainants came from Syria (186) and Iran (70); others came from Russia, Pakistan, Nigeria and other countries.

The most complaints filed with the AOB were directed against the Regional Directorates of Tyrol (606) and Upper Austria (410). The number of complaints filed against the Regional Directorates of the other *Laender* were distributed as follows: Vienna – 163; Lower Austria – 60; Styria – 89; Carinthia – 13; Salzburg – 10 and Vorarlberg – 2.

Even minors have a long wait

About 80% of the complainants were men. Unaccompanied female refugees primarily came from Africa, e.g. Somalia. Most of the unaccompanied minor asylum seekers who contacted the AOB were young men. There were also delays in processing these unaccompanied minor asylum seekers, i.e. children under the age of 14. Thus, proceedings with respect to a young man born in Syria in October 2002, which began in November 2015, were still not concluded in July 2016. An Afghan boy, who was 10 years old when the complaint was filed, had been waiting since August 2014 for the proceedings to be concluded. It was promised that he would be questioned by the end of 2016.

There is no doubt that the enormous increase in complaints is connected to the huge migration wave in 2015. Therefore, a backlog in the proceedings was to be expected. On the other hand, the staffing at the Federal Office for Immigration and Asylum was increased by several hundred persons. It is very likely attributable to the influence of the Federal Ministry of the Interior, that parliamentary negotiations on the Immigration Law Amendment Act 2016 resulted in changes of Section 22 (1) of the 2005 Asylum Act (*Asylgesetz*). As a consequence, the six-month decision-making period in effect up until then was extended to 15 months as of 1 June 2016.

Appeals to the Federal Administrative Court for breach of duty to reach a decision

Starting in the autumn of 2016, the AOB observed an increase in appeals to the Federal Administrative Court against the administration's failure to reach a decision. Decisions of the Federal Administrative Court dismissing such appeals at the request of the Federal Ministry of the Interior were noteworthy. The rationale was that the large number of applications for asylum constituted an "unavoidable and insurmountable event", and therefore the Federal Office



for Immigration and Asylum was not at fault for the excessive length of the proceedings. In view of the substantial increase in personnel and the extension of the statutory decision-making period, the AOB did not understand this rationale.

In 2016, several asylum seekers complained that they did not receive a written record of their initial questioning. Neither the Federal Ministry of the Interior nor the AOB could verify this, since no documentation of the receipt of the written record was made. The Federal Ministry of the Interior stated that the form “Initial questioning regarding an application for asylum” was used for the initial questioning. Thereafter, a carbon copy of the record of the questioning is offered and delivered, if necessary, although there is no automatic statutory obligation to make such a delivery. At first, there was no requirement of documentation. Then the form was supplemented so that the asylum seeker can confirm receipt of a copy of the initial questioning or waive receipt.

Delivery of a written record

## Asylum - length of proceedings before the Federal Administrative Court

The complaints of asylum seekers regarding the length of their appeal proceedings significantly decreased in recent years: from 974 in 2014 to 238 in 2015. In 2016, only 152 persons contacted the AOB. In this reporting year, the AOB found that in 80% of these cases (123), the duty to issue a decision within the legal deadlines had been violated, thus constituting a delay on the part of the Federal Administrative Court. In contrast to the Federal Office for Immigration and Asylum, the deadline for issuing a decision is still six months for the Federal Administrative Court.

Decrease in appeals

The most complaints were made by asylum seekers from Afghanistan (72) and Somalia (26). Others came from Iran, China, Bangladesh, Pakistan, Eritrea, etc. As with the complaints against the Federal Office for Immigration and Asylum, most of the complainants in these cases were men.

A total of 31 complaints related to proceedings pending since 2016. A total of 53 complaints related to proceedings pending since 2015. 28 persons complained about proceedings pending since 2014 and six persons complained about proceedings pending since 2013. Eight complaints related to proceedings pending since 2012 and two related to proceedings pending since 2011. In one of the last-named complaints, it was confirmed that the Federal Administrative Court had actually failed to decide the case for five years. The Federal Administrative Court decided the appeal of a man from the Congo in June 2016.

Information regarding the conclusion of proceedings

Since 2013, the Federal Administrative Court (formerly the Asylum Court) has regularly informed the AOB of the conclusion of any proceedings that were the subject of AOB complaints. The following figures on closings were announced: 2016: 152 complaints, 28 proceedings concluded; 2015: 238 complaints, 102 proceedings concluded; 2014: 974 complaints, 444 proceedings concluded; 2013: 683 complaints, 366 proceedings concluded.

### Delays in family reunification

15 complaints against the Federal Office for Immigration and Asylum

For years the AOB has complained that the Federal Office for Immigration and Asylum prevents or delays the entrance of relatives. However, Article 8 of the European Convention on Human Rights (ECHR) requires the state to respect family life. A total of 15 persons complained in 2016 – primarily about the time it took for family reunification under the Asylum Act. Of these, seven complaints were justified.

A spouse, unmarried minor children and the parents of an unmarried minor child are “family members” under the Asylum Act. These relatives of persons who are eligible for asylum and beneficiaries of subsidiary protection, can file applications for entry with an Austrian representation abroad. Family members must be given visas for entry if the Federal Office for Immigration and Asylum informs the embassy that the family members will likely be given the same protection as the reference person.

Federal Office for Immigration and Asylum protracts the proceedings

The AOB considers it important to make a precise determination of whether the applicant is actually a family member, in order to prevent abuse. The AOB also understands that determinations in family proceedings can take time. However, the Federal Office for Immigration and Asylum should avoid unnecessary delays so as to implement the right to family life in practice.

In one family proceeding, the AOB complained that the Federal Office for Immigration and Asylum took more than eight months before initiating an examination into whether an applicant was a family member. Not until the AOB initiated investigative proceedings did the Federal Office for Immigration and Asylum schedule a questioning session with the husband, who was living in Austria. The Federal Ministry of the Interior promised to issue a probability analysis by the end of March 2017.

### Delays in issuing residence permits on humanitarian grounds

Federal Office for Immigration and Asylum delays proceedings

The Federal Office for Immigration and Asylum also delayed proceedings to obtain residence permits. In addition to asylum matters, the responsibility of the Federal Office for Immigration and Asylum also covers the granting of residence permits on humanitarian grounds. The basis for such residence permits can be the protection of private and family life in Austria



(Article 8 ECHR), the particular worthiness of the immigrant for protection or some other factor worthy of consideration.

In one case, the AOB criticised that an application remained unprocessed for nine months. When the applicant filed an appeal against delay, the Federal Office for Immigration and Asylum forwarded the record to the wrong settlement authority. Only after the initiation of investigative proceedings did the Federal Ministry of the Interior refer to the competent Federal Administrative Court.

The AOB also found a significant delay in the proceedings in another case. The Federal Ministry of the Interior conceded that the residence card had been issued but was not delivered for months since the file could not be found. The file was only found after the Federal Office for Immigration and Asylum relocated its offices and then the complainant received his residence permit.

File disappears

### Delays in proceedings for obtaining residence title

In general, the settlement authorities are responsible for proceedings for obtaining a residence title. A closer examination of proceedings in Vienna showed that the competent body, the municipal department MA 35, did not always conduct these proceedings in an expeditious manner. Delays are however also caused when the Federal Office for Immigration and Asylum is making statements or conducting investigations under the Aliens Police Authority.

In one case, an applicant did not meet all the prerequisites for obtaining the residence title. Therefore, the municipal department MA 35 initiated proceedings to terminate the applicant's stay and asked the Federal Office for Immigration and Asylum, as the Aliens Police Authority, for a statement. The AOB determined that the Federal Office for Immigration and Asylum (the Police Department of Vienna had jurisdiction until 31 December 2013) took 17 months to make a decision. The Federal Administrative Court ended the residency ban and remanded the case to the Federal Office for Immigration and Asylum. Even though the Court clearly described the deficiencies in the investigative proceedings, the Federal Office for Immigration and Asylum did not resume the proceedings for more than a year. The AOB complained about the authority's inactivity.

Federal Office for Immigration and Asylum took no action for two and a half years

In another proceeding to authorise measures to terminate residence, the AOB criticised the fact that the Police Department of Vienna did not send its final report to the Federal Office for Immigration and Asylum in September 2015. The Federal Office for Immigration and Asylum did not request the file until January 2016, and then it took no action. The Federal Ministry of the Interior could not promise any date for concluding the proceedings and justified this by the heavy workload at the Federal Office for Immigration and Asylum. The AOB complained that the Federal Office for Immigration and Asylum –

which is limited to the facts found by the municipal department MA 35 in the extension of proceedings – took no steps for several months.

In both cases, the Federal Ministry of the Interior argued that the statutory decision-making deadline is not applicable to proceedings to authorise measures to terminate residence. As a consequence, the Federal Office for Immigration and Asylum could not be in delay. The law with respect to proceedings to authorise measures to terminate residence actually does not set deadlines for initiating such proceedings or issuing decisions. However, in the view of the AOB, this does not give the Federal Office for Immigration and Asylum carte blanche to take no action for months and years.

Confusing entry in the information system

When reviewing the length of a proceeding to extend a residence permit, the AOB found that, already on the day the application was filed, MA 35 noticed the following entry in the Electronic Information System of the Austrian Criminal Police (*Elektronisches Kriminalpolizeiliches Informationssystem; EKIS*): “Authorisation of measures to terminate residence”. That same day, the municipal department MA 35 sent a written request for clarification to the Federal Office for Immigration and Asylum. However, there was no response to the enquiry for more than seven months. Not until the municipal department made a telephone enquiry did the Federal Office for Immigration and Asylum state that it never had any concerns regarding the issuance of a residence permit.

The Federal Ministry of the Interior stated that it had compiled numerous records containing personal data from several electronic registers at the end of 2013. The *EKIS* entry was the result of technical problems during data migration – as in many other cases. However, an additional notation made it clear to all *EKIS* users that no proceedings under immigration law were pending in the specific case.

Federal Office for Immigration and Asylum takes months to answer

In the view of the AOB, the confusing *EKIS* entry raised questions with the settlement authority and thereby caused an unnecessary delay in the proceedings for obtaining a residence title. The Federal Ministry of the Interior regretted the untimely response to the enquiry and justified it by reference to the heavy workload at the Federal Office for Immigration and Asylum at that time.

## Police - murder at the Brunnenmarkt

According to numerous media reports, a man brutally murdered a 54-year-old woman with an iron bar in the Brunnenmarkt, a market place located in the 16<sup>th</sup> district of Vienna, on the night of 3 - 4 May 2016. Because of the public criticism of possible omissions by the authorities, the AOB conducted an *ex-officio* investigative proceeding. The investigative proceeding was independent of the Brunnenmarkt special commission established by the Federal Ministry of Justice and illuminated areas that were not the focus of this special commission. The AOB investigated aspects related to residence law, the Aliens' Police and housing law.

The man, who came from Kenya, had been granted several residence permits since 2008, which were based on family reunification with his mother, who lives in Austria. The municipal department MA 35 did not decide on the last application for extension – which was belatedly filed by the mother in October 2011 – until August 2012. Thus, the proceedings lasted more than nine months. The AOB found that the proceedings were unnecessarily long since the formal criteria had not been met and MA 35 knew that a mother-child relationship no longer existed.

Residence permit -  
excessive length of  
proceedings

In addition, according to the Federal Ministry of the Interior, MA 35 incorrectly entered an application for extension into the database of the immigration information system. The case workers entrusted with the case at the Office of the Aliens' Police at the Police Department of Vienna assumed that the man was in the country legally, and therefore took no steps to authorise measures to terminate his residence.

The AOB criticised that MA 35, as an authority responsible for residence permits, had made the erroneous entry, but also determined that the Office of the Aliens' Police received a letter from MA 35 dated November 2011 informing the Office that the application for extension had been filed late. Therefore, the Aliens' Police knew that the application did not extend the man's residence permit. The discrepancy between this information and the entry in the immigration information system should at least have been noticed. The AOB criticised the fact that the Aliens' Police did not follow up on this information.

MA 35 and Alien's  
Police had different  
information

MA 35 rejected the (last) application for the issuance of a residence permit in August 2012. In late January 2013, i.e. several months later, the Federal Ministry of the Interior asked the mother, as the man's legal representative, to send documents, which she submitted in February 2013. Not until the end of May 2013 was the mother asked to provide a power of attorney because the son had come of age "in the meantime". However, the son was already of legal age in December 2012. In October 2013, the Federal Ministry of the Interior held a hearing of the parties. Thereafter, it took no further steps due to an organisational realignment (transfer of jurisdiction to the Regional Administrative Court as of 1 January 2014). The Federal Ministry of the Interior

A file was with the  
Federal Ministry  
for 15 months

sent the file to the Regional Administrative Court in Vienna in January 2014, which issued a decision in April 2014.

For months, the Federal Ministry of the Interior took no steps – or only inadequate steps in proceedings that were substantively easy to resolve. Assuming that the appeal was submitted to the Federal Ministry of the Interior in October 2013 – if not sooner – the AOB determined that the proceedings were pending for about 15 months without a decision being made.

Was detention pending forced return not possible?

With respect to the question of whether placement in detention pending forced return was an option, the Federal Ministry of the Interior stated that there was no statutory basis for securing the issuance of a return decision since the man was present in person at the issuance of the notice in June 2014 after he was brought before the Federal Office for Immigration and Asylum. However, placement in detention pending forced return to ensure deportation was not possible since, under the settled case law of the Administrative Court of Austria, detention pending forced return may not be ordered when it has already been determined that deportation is not feasible. However, when the Aliens' Police Act (*Fremdenpolizeigesetz*) was most recently amended (2017), the Federal Ministry of the Interior used this case as grounds for including a provision taking criminal conduct into account in determining whether detention pending forced return may be imposed.

The AOB is unclear as to the specific circumstances that caused the Federal Office for Immigration and Asylum to decide that deportation of a man who apparently had no fixed address was not feasible. "Uncertainties" with respect to the cooperation of Kenya – which was cited by the Federal Ministry of the Interior – exist with many countries in Europe, and especially outside of Europe. The Federal Ministry of the Interior pointed out that Kenya has never issued a repatriation certificate since the Federal Office for Immigration and Asylum began operating on 1 January 2014. This does not answer the question of how many of these documents were requested in this period.

Repatriation certificate impossible to obtain?

Based on the published asylum statistics, the AOB assumes that applications for asylum from Kenyan nationals are not a mass phenomenon – nor is illegal immigration from this country. For a year after the return decision was issued, the Federal Office for Immigration and Asylum did not attempt to implement it, but took the first steps in June 2015 when the man was picked up as a homeless person – apparently by accident. In July 2015, the Federal Office for Immigration and Asylum sent a form sheet and an urgency letter to the Kenyan embassy to obtain a repatriation certificate.

The AOB criticised that the Federal Office for Immigration and Asylum never considered placing the man in detention pending forced return, even though he had no fixed address and a criminal record. The Federal Office for Immigration and Asylum assumed that deportation was not feasible in this particular case – without making an attempt or any enquiries. Not until May 2016, i.e. about

one year after the last activities of the Federal Office for Immigration and Asylum and the homicide at the Brunnenmarkt, did the Federal Ministry of the Interior take further steps to obtain a repatriation certificate.

Based on media reports and the available information, it could be assumed that the man had been extremely neglected, homeless and, at times, aggressive towards others (e.g. attacking two women with iron bars). Therefore, the AOB examined whether placement under the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) was indicated. This may have enabled the man to receive psychiatric treatment. The Federal Ministry of the Interior stated that no disorders were evident, according to the report of the Police Department of Vienna.

Placement under the Hospitalisation of Mentally Ill Persons Act

Without a doubt, assessing whether a case requires placement under the Hospitalisation of Mentally Ill Persons Act places high demands on police officers. Since the assessment is situation-dependent and it is difficult to determine through *ex-post* analysis whether there was maladministration, the AOB wishes to note the following on this topic:

On one hand, a restrained application of the Hospitalisation of Mentally Ill Persons Act is generally a positive thing but, on the other hand, such restraint is not always required. The AOB has already discussed this topic in its report to the National Council and the Federal Council on the year 2006. Police officers and public health officers are not social workers. It is their duty to give serious consideration to forced placement where indicated and take the appropriate steps.

Police stations should cooperate – at least within a manageable local area – so that they can exchange knowledge and information regarding persons with mental disorders in their areas of responsibility. When deployments are made, police officers with knowledge of the local structures and the persons with mental disorders should be involved. This would make it easier to decide whether placement under the Hospitalisation of Mentally Ill Persons Act should be considered.

Cooperation between police stations

Psychiatric information and information on how to treat persons with mental disorders should be mandatory – not only in initial police training but also in further training for police officers.

Psychiatric information in further training for police officers

## Police - handling allegations of abuse

In the Annual Report 2015, the AOB criticised the Federal Ministry of the Interior for taking almost no action to implement the concept of an independent complaints and investigation office, described by the former Human Rights Advisory Board of the Federal Ministry of the Interior in its report “Independent external complaints office for allegations of abuse against police officers – a visionary concept or an unnecessary institution?” (see Annual Report 2015, p. 67 et seq.).

New decree on  
allegations of abuse in  
progress

In the project “Police.Power.Human Rights”, the Federal Ministry of the Interior discussed a draft decree, which would regulate how the police should handle allegations of abuse. The AOB was invited to several meetings on various topics relating to this project. Finally, the Federal Ministry of the Interior stated that a new decree, which is being coordinated with the Federal Ministry of Justice, would contain appropriate procedures for cases of alleged abuse.

### 2.2.6 Judiciary

#### Legal guardianship

As of the editorial close for this report, an amendment to the legal guardianship law, in the form of a draft of the 2<sup>nd</sup> Adult Protection Law, was already the subject of parliamentary deliberations. The AOB would like to take this opportunity to express its appreciation for the exemplary manner in which the draft law was developed, i.e. it was also developed with the cooperation of self-advocates, in the spirit of the UN CRPD. The AOB hopes that there will be no basis for a high number of complaints once the Adult Protection Law takes effect.

In the 2016 reporting period, 239 complaints were filed with the AOB from all over Austria in connection with legal guardianships. These complaints were either made to the AOB in person on consultation days or in written form. In addition, the AOB received many telephone enquiries regarding legal guardianship, where there were no written submissions after information regarding the tasks and mandate of the AOB was provided.

Thus far, the main complainants to the AOB have been the affected persons themselves or their close relatives. The problems reported were comparable to those in previous years. Predominantly, criticisms were aimed at the legal guardianship itself and the low influence of family members when professional legal guardians are appointed. Many persons complained that not enough money was provided, even when high income, pensions and savings were



available, or that legal guardians made arbitrary decisions regarding the property of the affected persons.

Many complainants criticised the derogatory treatment they felt they received from the offices of the professional legal guardians. This includes the feeling that one is being “fobbed off” when calling these offices and the lack of monthly contact with the legal guardians. Complainants criticised that offices specialising in legal guardianship neglected their duties due to the large number of legal guardianships they took on – far more than the intended number of 25. The AOB has noticed that the same offices are subject to criticism year after year. According to the Federal Ministry of Justice, there is no central register of all the legal guardianships that have been taken over, despite the Federal Electronic File Management System (*ELAK*).

Still no central register of legal guardians

As an *ex-post* control body for the public administration, the AOB cannot provide the desired assistance. Legal guardians are appointed, replaced or removed by court orders. Decisions of the independent courts can only be reviewed by judicial appeal and must be acknowledged by the AOB without comment. The name “Ombudsman Board” often leads complainants to expect that the AOB is responsible for providing legal advice or representation. In these cases, the AOB provides information regarding the organisation that provides initial free legal advice, which has been (re-)established by the bar association.

As in the past, the AOB referred affected persons to the competent court sections. The desperation of the situation was often unmistakable to the AOB during in-person contacts with the affected persons and their close relatives and in telephone conversations. Affected persons and their close relatives criticised their powerlessness and the fact that they depend on the mercy of persons who had “purely financial interests”, but not the desire to act in the best interests of their wards. Persons, who due to illness cannot file an application with the court regarding an individual legal guardian or the performance of their legal guardianship role, are unable to change a situation that they may consider unacceptable. Concerned persons, such as relatives, friends and neighbours, have no standing before the court and therefore have no right to file an application. The AOB cannot examine whether or how the court responds to the suggestions of third parties.

Jurisdiction of the courts

A young academic complained that her grandmother was not being appropriately cared for by the Vienna Social Fund. At the suggestion of the Fund, a legal guardian from outside the family was appointed, who deprived the relatives of all their rights. The grandmother was taken to the hospital suffering from malnutrition, where she died.

Malnutrition due to poor care

Friends of an elderly artist contacted the AOB and reported that his legal guardian was not taking care of their friend. He was not being properly cared for, despite having a good pension. He was completely neglected and could

Neglect due to lack of care

not take care of himself. The AOB informed the Vienna Social Fund of the aforementioned problems. Thereafter, the Fund – in cooperation with the legal guardian – had the apartment renovated and provided intensified care. According to the final report, the measures taken fully satisfied the affected person.

Denial of contact with  
the family

The son of an elderly, financially secure, married couple with a legal guardian, who were cared for in a Vienna home, contacted the AOB. The father was said to need permanent nursing care. The mother, according to the report, could make personal decisions for herself, but the legal guardian was preventing the termination of legal guardianship and contact with the family. The son's criticism was that "the (grand) mother, who was ambulatory, was being kept in a ward of the home like a prisoner". Even a short, escorted walk or a visit to the hair dresser or the ice-cream parlour depended on the whim of the legal guardian.

Financial matters

A sprightly pensioner who had her own savings criticised the fact that her legal guardian had the pensioner's pocket money dispensed to her by a social worker, whom she had to pay. She has always been capable of making financial decisions and taking care of herself. Now the legal guardian is refusing to let her withdraw her pocket money from the bank or ATM machine herself, which would cost less and spare her having to wait for the social worker. The elderly woman is also angry that she does not receive a statement of account from the legal guardian, since the latter is only obliged to report to the court. By examining her file, the pensioner found out that the legal guardian withdrew 5,000 euros from her account without any plausible reason, which was not use for the affected person, but apparently for the legal guardian herself.

A business woman, who – together with her considerably older husband – had built up and managed a successful business for many years, criticised the economically incomprehensible actions of her husband's legal guardian. He terminated the existing managing directors and was in the process of breaking up the company. A well-operated family business with secure jobs would have been destroyed, and there would be nothing left for the two sons, who were students.

A 60-year-old childless widow from Styria complained that the court would not approve the sale of her big house. After her husband's death and her serious accident, a legal guardian was appointed for her – with whom she was unsatisfied. At her request, her former boss, an ex-CFO and friend of her husband, was then appointed as her legal guardian. He managed her affairs very well. She left the big house and moved into a more comfortable apartment, but now the court is refusing to approve the sale of the house, which constitutes a significant expense burden.

The wife of an academic, who was in temporary legal guardianship after a stroke and a hospital stay, complained that the legal guardian and the court



withheld information about accounts after the end of the legal guardianship and did not return documents. The AOB initiated investigative proceedings to determine whether the court was belated in taking procedural actions. The charges could not be verified based on a statement from the Federal Ministry of Justice.

In 2016, there were again very few complaints made to the AOB about the activities of professional legal guardians (*“Vereinsanwalt”*).

Professional legal guardians

## Penal system - furnishings for specially secured inmate cells

The furnishings in correctional institutions should pose no risk to persons who use them. This applies to an even greater extent to specially secured inmate cells. Any sharp-edged furnishings must be avoided there.

Furnishings as potential hazards

On a consultation day at the Floridsdorf satellite facility of the Mittersteig correctional institution, the AOB noticed that the furnishings of the two specially secured inmate cells had potential hazards. Both inmate cells contained sharp-edged iron bed frames with mattresses on them.

Sharp-edged iron beds

Therefore, the AOB recommended that the two specially secured inmate cells be equipped with options for sitting and lying down, which could be used by the inmates safely. For example, foam loungers and seats covered with washable materials would be suitable. These are used in specially secured inmate cells at the Graz-Jakomini correctional institution.

The Federal Ministry of Justice implemented this recommendation.

At the request of the AOB, the Federal Ministry of Justice also surveyed the condition of the specially secured inmate cells in the other correctional institutions. Sharp-edged metal objects were also found in the Klagenfurt correctional institution. They were replaced.

However, the safe use of specially secured inmate cells cannot be ensured solely by proper furnishings. All items given to inmates must be critically examined to determine if inmates can use them to harm themselves.

For example, Styrofoam cups are used in the Mittersteig correctional institution. They can be safely crushed without the material splintering. As non-recyclable containers, they certainly do not minimise waste, but the safety aspect outweighs the environmental protection aspect with respect to specially secured inmate cells. As compared to Styrofoam cups, plastic cups splinter into sharp-edged segments, which can be used to harm oneself or others.

Styrofoam cups as a positive example

The AOB considers equipping the specially secured inmate cells in the Mittersteig correctional institution with Styrofoam cups to be good practice. This example was described to the Federal Ministry of Justice, and it was

suggested that paper or Styrofoam cups also be purchased for the other correctional institutions.

Proposal accepted The Federal Ministry of Justice accepted this proposal and included it in the project “Furnishings for specially secured inmate cells”. The Ministry promised implementation by the spring of 2017.

### Penal system - Health care

In this reporting period, the AOB has again received numerous complaints about inadequate medical care. There were evidently continuing coordination problems when services outside of the correctional institution had to be utilised: appointments with specialists were not kept or examinations in hospitals were not made.

One inmate at the Stein correctional institution complained that he was suffering from an eye disease, which was getting much worse and required a cataract operation. At the subsequent examination in January 2013, the eye specialist recommended a follow-up appointment after six months. However, he was not taken to an eye specialist until after a year.

Follow-up appointment much too late The Federal Ministry of Justice confirmed that the examination was not conducted after six months, as recommended, but after one year. No reasons were given for this. The AOB criticised the prison administration for arranging such a late follow-up appointment for the inmate. The fact that the recommended time for the examination appointment was not met constitutes organisational negligence on the part of the Stein correctional institution.

No computer tomography performed An inmate at the Mittersteig correctional institution complained that computer tomography, recommended by the institution’s physician, was not performed. This was to have been performed in the Vienna *Barmherzige Brüder* hospital.

The Federal Ministry of Justice stated that the “organisational restructuring” at the hospital resulted in short-term modifications or cancellations of scheduled examinations. In the opinion of the medical superintendent in the general directorate for prisons and detention of the Federal Ministry of Justice, an adequate level of medical care is guaranteed to inmates.

To avoid such incidents in the future, a promise was made to have a clear discussion with the persons in charge at the Vienna *Barmherzige Brüder* hospital.

The AOB understands that cancellations and brief postponements of appointments by the hospital are not the responsibility of prison authorities. However, it should be ensured that recommended medical examinations are carried out. It is subject to criticism that no further action, such as a discussion

with the persons in charge at the hospital, was taken until a complaint was filed with the AOB.

When the AOB visited the sick wards in correctional institutions on consultation days, it always found the doctor's rooms in clean and flawless condition.

Hand sanitisers as good practice

When entering the doctor's room area at the Wels correctional institution, all persons are requested – verbally and by pictogram – to use the disinfectants available in the wall dispenser. This enhances the overall standard of hygiene in the treatment rooms.

The AOB welcomes this option and considers it an example of good practice, which should be imitated in other correctional institutions. This was suggested to the Federal Ministry of Justice.

Purchase of wall dispensers desirable

## Penal system - Living conditions

Once a week, inmates can purchase merchandise at a store in the facility, including perishable food, which requires refrigeration. The AOB took the complaint of an inmate at the St. Pölten correctional institution regarding the lack of refrigerators, as a reason to examine the availability of refrigeration in the correctional institutions nationwide.

Storage of perishable food

The results showed that all inmates in the Eisenstadt, Hirtenberg, Korneuburg, Leoben, Salzburg, Stein and Schwarzau correctional institutions have some form of cooling capability in their inmate cells.

Nationwide examination

In the Gerasdorf, Göllersdorf, Graz-Karlau, Krems, Suben, Wels, Vienna-Josefstadt, Vienna-Mittersteig, Vienna-Favoriten and Vienna-Simmering correctional institutions, there is some form of cooling capability in inmate cells or elsewhere in the section.

Not all inmates have an option to refrigerate their food in the following correctional institutions: Feldkirch, Garsten, Graz-Jakomini, Innsbruck, Linz, Ried, Sonnberg, St. Pölten and Wiener Neustadt.

In the Klagenfurt correctional institution, the inmates have no ability to keep their food refrigerated.

The AOB suggested developing a concept for a wider distribution of cooling capacities. Attention should be paid that inmates are treated equally from a financial perspective and – if it cannot be avoided that they have to purchase their own cooling units – to at least make them not pay the electricity costs.

In some correctional institutions, cooler bags with freezer packs have been distributed. This seems reasonable to the AOB when the use of refrigerators in the inmate cell or elsewhere in the section is not possible due to space concerns or a weak power supply system.

Search for alternatives

Therefore, the AOB was pleased to hear that this suggestion will be made to the management during a meeting.

**Lockable compartments** The AOB also welcomes the fact that some of the centralised refrigerators have lockable compartments. This can prevent disputes over (alleged) theft of food.

**No disposable gloves** One of the tasks of inmates is to clean their own cells. An inmate of the Graz-Jakomini correctional institution complained that he had to clean the washroom of a cell for multiple inmates without rubber gloves. He considered it unhygienic to have to clean the toilet without gloves.

The AOB learned that correctional institutions do not supply inmates with rubber gloves for cleaning inmate cells. They are only distributed to maintenance workers who clean the common areas of the institutions. In addition, gloves are not included in the assortment available at the institution's "supermarket", so that individual inmates are unable to purchase rubber gloves at their own expense.

**Assortment expanded** This criticism was ultimately accepted by the Federal Ministry of Justice, and disposable and/or household gloves were included in the assortment of goods available at stores in correctional institutions nationwide. Now inmates can protect their hands while cleaning inmate cells – but at their own expense.

### **Information about contagious diseases - Vienna Josefstadt correctional institution**

In the Vienna-Josefstadt correctional institution, the doors to several inmate cells had placards on them stating "contagious disease". Such information violates the basic right to the protection of privacy and is impermissible. A recommendation of the AOB in this regard was adopted.

**Ostracism by fellow inmates** The reason for the finding of maladministration and the recommendation was the complaint of a detainee awaiting trial. He complained about the notice on the door of his inmate cell stating that he has a contagious disease. This caused difficulties with the other inmates.

**Notice on cell door** As the AOB ascertained, these were clearly visible notices in the DIN A5 format, which were attached to a cord on the door of the inmate cell. To prevent other inmates from learning of the content of the notices as far as possible, the notices were covered up or turned around during presentations during the night shift.

**Hazard warning** With respect to the content of the notices, the Federal Ministry of Justice justified itself by stating that the text was encoded. An integrated prison administration security code (letter code) was used. The intent was to give an officer opening the inmate cell brief information about certain health problems of the person in the cell, without making it explicit to the inmate. These security codes

provide support for guards working the night shift. On the night shift, it is often not possible to inspect the integrated prison administration module before deployment – for reasons of time. The notices at the Vienna-Josefstadt correctional institution were only posted during the night shift, i.e. from 1:45 p.m. to 6:45 a.m.

In the view of the AOB, these placards constituted an intrusion on the basic right of privacy guaranteed by Article 8 ECHR, which includes the right to keep personal data confidential. Information about health is particularly deserving of protection. It falls under the category of the “sensitive data” in the Data Protection Act (*Datenschutzgesetz*).

Right of confidentiality with respect to personal data

The posting of notices stating “contagious disease”, can be classified as degrading treatment that stigmatises the affected inmate.

Stigmatisation

After obtaining an expert opinion from the Human Rights Advisory Council, the AOB recommended that the decree of 21 March 2013 regarding “Contagious diseases of inmates, duty to report and give notice, other measures” should be amended to add that posting health-related information on inmate cell doors is generally impermissible.

The recommendation of the AOB was adopted by decree of the general directorate for prisons and detention of the Federal Ministry of Justice on 29 July 2016.

Clarification by decree

### **Inadequate psychiatric care of addicted minor inmates - Innsbruck correctional institution**

Two addicted minors criticised the inadequate psychiatric care at the Innsbruck correctional institution. One affected inmate told the AOB that the institution’s physician did not include her in the substitution programme. A second minor said that the physician had substantially reduced her dose of medication against her will.

With respect to the first case, the Federal Ministry of Justice found that there was no established opiate dependency. Therefore, inclusion in a drug substitute programme would be counter-productive. In the second case, the Federal Ministry of Justice stated that the medication was reduced due to a lack of compliance and frequent violations of the work agreement.

In both cases, the Federal Ministry of Justice stated that the female minor was not sent to a specialist in paediatric and adolescent psychiatry for evaluation or implementation of substitution treatment or for determining whether substitution therapy or an alternative therapy was indicated.

No specialists in paediatric and adolescent psychiatry

In the view of the competent specialised section of the general directorate for prisons and detention of the Federal Ministry of Justice, it is not mandatory to

utilise a specialist in paediatric and adolescent psychiatry to evaluate or treat addicted minors. Moreover, the institution's treating physician did not see any indication that the minors should be seen by a specialist in paediatric and adolescent psychiatry at any time during their treatment. Therefore, this was not done.

Nationwide investigative proceedings Reinforced by the observations of the commissions during their visits to the Innsbruck correctional institution and the Gerasdorf correctional institution, the AOB initiated a nationwide investigative proceeding regarding paediatric and adolescent psychiatric care in correctional institutions.

Psychiatric care to be provided as soon as possible As a result, the AOB recommended that the Federal Ministry of Justice make every effort to quickly ensure that the psychiatric care of adolescents and young adults in detention pending trial and in prison and detention for mentally ill offenders is provided by specialists for paediatric and adolescent psychiatry (see also chapter 5.5.2).

The AOB assumes that there are differences in the psychiatric diagnosis, establishment of indications and treatment of adolescents as compared to that in "adult psychiatry" due to the adolescent's stage of development and strong integration into family and social systems. Therefore, basic knowledge of adolescent development is an important prerequisite for creating treatment plans. Moreover, as compared to the pharmacological treatment of adults, a series of important differences in pharmacokinetics and pharmacodynamics must be taken into account with adolescents.

Need for specialised expertise in addiction The AOB stressed to the Federal Ministry of Justice that there is a very urgent need for specialists in paediatric and adolescent psychiatry when adolescents are addicted. As with the general care of mentally ill adolescents, special expertise is needed to deal with the special diagnosis of "addiction in minors". This relates both to the question of indication and to the choice of a suitable substitution, if substitution therapy seems appropriate.

Office of the medical superintendent: need for psychiatric expertise The AOB was critical of the fact that the office of the medical superintendent in the general directorate for prisons and detention of the Federal Ministry of Justice is only staffed by a general practitioner and a dentist, so that the psychiatric care of inmates and detainees is not supervised by a specialist in psychiatry or paediatric and adolescent psychiatry. Even more regrettable is the statement of the Federal Ministry of Justice that it cannot promise that a psychiatrist or a specialist in paediatric and adolescent psychiatry will be appointed to the office of the medical superintendent.

The AOB considers it indispensable for the office of the medical superintendent to utilise a specialist in (paediatric and adolescent) psychiatry to assess the psychiatric care of inmates and detainees.

## 2.2.7 Transportation, innovation and technology

### Transportation of assistance dogs in taxis

Media reports and complaints by affected persons made the AOB aware that there are continuing problems with respect to transporting assistance dogs in taxis. Persons with disabilities, who rely on assistance dogs, are not allowed to take them with them in taxis. This is often justified by fear of soiling the vehicle, fear of dogs and “dog allergies”.

Transportation in taxis often refused

According to the Austrian Federal Disability Act (*Bundesbehindertengesetz*), assistance dogs, which include guide, service and signal dogs, are utilised for the purpose of enhancing the self-determination of persons with disabilities and their participation in all areas of life. Therefore, persons who are accompanied by their assistance dogs need free access to services.

The AOB found that the “Operating regulations for non-scheduled carriage of passengers”, which apply nationwide, have no special rules for assistance dogs. However, under this regulation issued by the Federal Ministry for Transport, Innovation and Technology, animals that are “vicious” or “dirty” can be barred from transport in taxis, as can dogs that are not wearing a muzzle.

In some *Laender*, these provisions have been included in taxi business regulations. The operating regulations of other *Laender* have no rules in this regard. Only Vienna and Salzburg impose an express obligation to transport guide dogs.

Provisions not uniform

The AOB suggested a uniform nationwide provision to ensure that taxis are required to transport assistance dogs. In the interim, an amendment to Section 13 (3) (a) of the Occasional Transportation Act (*Gelegenheitsverkehrsgesetz*) was passed and took effect in January 2017. Under this amendment, there is a nationwide requirement to transport assistance dogs in occasional transportation (particularly taxis), if the person being transported relies on the accompaniment of an assistance dog. There is no requirement that such animals be on a leash or wear a muzzle.

Nationwide transportation requirement implemented

### Discounts for persons with disabilities on special toll sections

A special route toll is collected on private cars on certain sections of the toll road system. These are sections of the Pyhrn motorway (A 9), the Tauern motorway (A 10), the Karawanken motorway (A 11), the Arlberg expressway (S 16) and the Brenner motorway (A 13).

Persons with disabilities contacted the AOB with complaints that various prerequisites for purchasing a discounted annual card for these routes were subjective and incomprehensible.



The annual toll card for these special toll sections costs about 100 euros. Anyone with an annual toll sticker has 40 euros credited towards the annual toll card (Section 13 (3) No. 2 of the Federal Road Tolls Act). A registered owner with a disability pass for a registered permanent serious impairment of mobility receives a free annual toll sticker from the Federal Office for Social Matters and Disabled Persons under Section 13 (2) of the Federal Road Tolls Act.

Additional benefits for drivers of vehicles for persons with disabilities are provided by the toll regulation of *ASFINAG* (a cooperation responsible for planning, building, financing and maintaining Austrian motorways). This group can obtain an annual card for special toll sections for 7 euros. However, one prerequisite for this is that the vehicle be of a type suitable for operation by persons with disabilities or that the authorisation to drive at least be restricted to the operation of a vehicle with an automatic transmission. In addition, this restriction must be recorded on the person's driver's licence.

No uniform prerequisite for a discount

Drivers with disabilities can purchase an annual card for the special toll route on the Brenner motorway (A 13) for 40 euros. If they have an annual toll sticker, the annual card is issued free of charge. Here, the basic prerequisite is that the affected person be able to prove at least 50% disability.

The AOB asked the Federal Ministry for Transport, Innovation and Technology for a statement to explain the reasons for these differing access prerequisites. The Federal Ministry for Transport, Innovation and Technology replied that benefits under the Federal Road Tolls Act are price reductions. On the other hand, benefits under the *ASFINAG* toll regulation are "incentives to increase traffic safety". Instead of using mountain roads, most of which are difficult to drive on, the tunnel sections on the special toll routes shall be used.

For this reason, the issuance of this discounted annual card is limited to the small group of persons who drive a vehicle adapted for persons with disabilities, or use a standard car with an automatic transmission and possess a driver's licence that restricts the authorisation to drive to this type of vehicle. No other persons with disabilities meet the access prerequisites for this "traffic safety measure", even if they have a disability pass. The different and simpler prerequisites for benefits relating to the Brenner motorway are of historical origin, according to the Federal Ministry for Transport, Innovation and Technology.

AOB suggests free passes

The AOB found that the disparate treatment of persons with disabilities on different special toll sections is objectively difficult to understand and that the provisions are unclear. Therefore, it suggested that the existing provisions be simplified and proposed that annual cards for persons with disabilities be issued, without charge, to persons with an annual sticker on all special toll sections – similar to the provision for the Brenner motorway. In addition to current beneficiaries, all registered owners with a disability pass for a registered permanent serious impairment of mobility under Section 13 (2) of the Federal



Road Tolls Act should be able to receive the benefit of this measure. Apart from social considerations, there would be a better incentive to use the special toll sections and thereby increase traffic safety in accordance with the statement of the Federal Ministry for Transport, Innovation and Technology.

In its response to this suggestion, the Federal Ministry for Transport, Innovation and Technology referred to the decline in the revenues for *ASFINAG* associated with such a provision. Providing support to persons with disabilities is the task of the state, thus the decline in the revenues for *ASFINAG* shall be compensated from the federal budget.

Revenue declines  
expected

In the view of the AOB, budgetary considerations should take a back seat to the traffic safety aspect and the social components of the proposed measure. Therefore, the AOB suggests that such a provision be considered.

## 3 National Preventive Mechanism

### 3.1 Introduction

The four sections of this volume present a detailed overview of the activities of the Austrian Ombudsman Board and its commissions as the National Preventive Mechanism (NPM). The first part will explain the preventive mandate of the Austrian Ombudsman Board (AOB), on the basis of which the most important results in this area will be summarised. The report will present particularly important and representative figures relating to monitoring and control activities, staff resources and the budget. This performance record will be supplemented by a report by the expert commissions and the Human Rights Advisory Council along with a summary of the numerous forms of bilateral and international cooperation, which guarantee a continuous sharing of experience.

Thereafter, the monitoring framework and methodology of the NPM will be presented. The standards and methods set jointly by the AOB and the commissions guarantee a uniform approach and provide an important base for the work of the NPM.

Focus on structural deficits

Since the institutions and facilities that are to be monitored and controlled are very different, the main part will present the significant results of monitoring proceedings according to the type of institution or facility. On account of the sheer number alone – the commissions carry out an average of 500 control visits each year – it is not possible to present the results of each individual case. The presentation must be limited to recurring threats: to system-related problem areas, i.e. circumstances that must be regarded as critical from a human rights perspective or determined cases of maladministration that are not isolated instances. The description of these problem areas will point to the possible causes and report the answers by the responsible parties. However, in addition to systemic deficiencies individual cases will also be presented if particularly problematic situations were observed in the institutions or facilities.

Solution-oriented approach

The task of the NPM is not only to identify maladministration, but also to work towards their elimination and to avoid them in the future where possible. Accordingly, the description of the individual problem areas is concluded by concrete recommendations. The report has intentionally not been limited to presenting existing situations. By contrast, it also documents developments, if structural deficits could for instance be rectified. Examples of positive changes are thus also included, if they have the potential to embolden and encourage others to follow suit. In line with the AOB's area of competence, the report not only documents the monitoring and control of institutions and facilities, but also observations of forced returns and police operations. These accounts also follow the pattern described above.

The report concludes with a long list of all recommendations of the NPM since July 2012. This part of the report is sub-divided according to the type of institution or facility and the thematic area (e.g. infrastructural fixtures and fittings, living conditions). These recommendations relate not only to individual facilities but also to all facilities of this particular type. They thus set a standard that should be guaranteed in these institutions and facilities from a human rights perspective.

Recommendations as human rights standards

## 3.2 Overview of the National Preventive Mechanism

### 3.2.1 Mandate

As the NPM based on authorisation granted under the Constitution and in a general legal context, the Austrian Ombudsman Board (AOB) and its six multidisciplinary commissions monitor and control public and private institutions and facilities that are classified as “places of deprivation of liberty within the meaning of Article 4 of the OPCAT” nationwide and on a regular basis. The main responsibility of the NPM is less to examine isolated cases of maladministration, but rather to detect structural deficits that can lead to such cases. Overlaps with the additional competencies of the AOB pursuant to Article 16 (3) of the UN CRPD and with the monitoring and concomitant examining of the authorities empowered to exercise direct administrative power and coercive measures cannot be entirely avoided.

Setting uniform methods and standards

Last year, the commissions completed 522 visits. In line with the mandate of carrying out comprehensive controls across Austria, most initial visits were made to so-called “less traditional places of detention” (psychiatric institutions, hospitals, retirement and nursing homes, child and youth welfare facilities). When planning visits of these types of facilities, the NPM had to pre-select the institution to be monitored and weigh the necessity of follow-up visits due to capacity reasons. On the other hand, it was possible to visit the classic places of detention (correctional institutions, police stations, police detention centres) on a number of occasions.

A total of 533 visits by the commissions

After having clarified in 2015 that accompanying forced returns by air was indeed within the scope of the NPM mandate, members of the commission accompanied a forced return to Croatia (see chapter 5.8.2).

Forced return by air

The efficacy of the NPM also depends on its acceptance by the institutions and their responsible operators or owners. The competent authorities and administrative departments, but also the management of private institutions and facilities, have as a rule willingly complied with their obligation to engage in constructive dialogue with the NPM (under Article 22 of the OPCAT). The

Increased dialogue

implementation of the measures called for by the NPM was considered in greater detail in joint working groups.

Contribution to police training

The NPM also takes its obligation to promote human rights through cooperation with educational institutions very seriously. An “Austrian Ombudsman Board” educational module has been established jointly with the Federal Ministry of the Interior as part of biennial police training. From 2017 onwards, members of the commissions and AOB employees will instruct young police officers concerning the tasks of the NPM and human rights protection. The NPM is in addition obliged to inform the public of its responsibilities and the results of its work. The NPM complies with its duties to provide information at numerous events, lectures and training courses.

### 3.2.2 Monitoring framework and methodology

As required by the SPT, the Austrian NPM started to set out uniform methods and standards for its activities in July 2015. Significant further developments have occurred during the annual meeting of all members of the NPM to exchange their experience as well as the meetings of the South-East Europe NPM Network (SEE NPM Network).

The focus has been placed in particular on efforts to set uniform standards for less traditional places of detention such as retirement and nursing homes, psychiatric institutions and hospitals.

Visiting methodology elaborated for retirement and nursing homes

Acting jointly with the Austrian Human Rights Institute of the University of Salzburg and international experts from the SEE NPM Network, a visiting methodology (“Visiting methodology for nursing care institutions and homes for elderly”; <https://goo.gl/NcCzLm>) and monitoring and control standards for nursing homes and retirement homes (“SEE standards for nursing care institutions and homes for elderly”; <https://goo.gl/wCqybT>) have been elaborated. Both working papers are due to be developed further both nationally and within the ambit of the SEE NPM Network.

Efforts have been stepped up to develop further the methodology and monitoring standards with the results of a research project supported by the AOB and the Jubiläumsfonds of the Austrian National Bank concerning preventive control activities in nursing homes and psychiatric institutions (Petra Niederhametner, “*Verletzungen von Menschenrechten vermeiden*”, facultas, Vienna 2016).

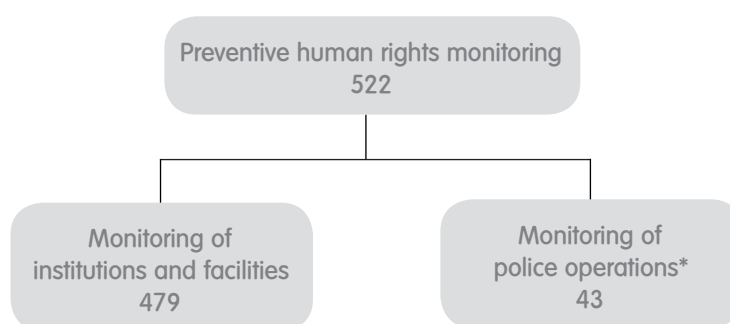
The monitoring framework and methodology are set out in greater detail in chapter 2.

### 3.2.3 Monitoring and control visits in numbers

During the year 2016 the six commissions carried out a total of 522 visits. In most cases, the visits and observations were unannounced; in 8% of cases they were announced in advance. The average duration of a visit was six and a half hours. It must be considered in this regard that a large number of institutions and facilities, including in particular correctional institutions and police detention centres, were visited on several occasions during the year under review.

#### Monitoring and control activities of the commissions in 2016

(absolute figures)



\*these include: forced returns, demonstrations, assemblies

A total of 479 monitoring and control visits in institutions and facilities were carried out across Austria. The overwhelming majority related to institutions and facilities attributable to the category of “less traditional places of detention”. These include retirement and nursing homes, child and youth welfare facilities, psychiatric departments and hospitals. Retirement and nursing homes were visited most frequently (125 visits). This is due to the fact that this type of facility accounts for the majority of the institutions and facilities to be monitored. 76 visits were made to facilities for persons with disabilities.

A total of 479 visits to institutions and facilities

The commissions also observed the conduct of authorities empowered by the state to exercise direct administrative power and to carry out coercive measures throughout Austria: during the year under review 43 police operations were observed, including forced returns, demonstrations and assemblies.

Monitoring of 43 police operations

The following table breaks down the visits carried out by the commissions in each Land according to the type of institutions and facilities, or the police operations observed.

**Number of visits in 2016 in individual *Laender***  
**according to type of institution or facility**

	police	ret.+ nur.h.	youth	inst.f. disabl.	psych. wards	corr. inst.	others	pol.op
Vienna	27	17	35	21	6	11	7	17
Burgenland	2	9	8	2	0	0	0	2
Lower Austria	5	30	24	13	7	12	10	0
Upper Austria	9	7	8	12	1	3	0	3
Salzburg	5	7	3	5	0	1	1	1
Carinthia	4	4	3	4	5	1	3	4
Styria	7	22	6	4	10	5	10	10
Vorarlberg	2	1	0	1	3	2	0	0
Tyrol	7	28	11	14	9	2	3	6
<b>total</b>	<b>68</b>	<b>125</b>	<b>98</b>	<b>76</b>	<b>41</b>	<b>37</b>	<b>34</b>	<b>43</b>
of which un- announced	68	122	97	76	40	34	30	12

Barracks have not been included in his table, as none were visited in 2016

Legend:

police	= police
ret.+nur.h.	= retirement and nursing homes
youth	= youth welfare facilities
inst.f.disabl.	= institutions for persons with disabilities
psych.wards	= psychiatric wards in medical facilities and hospitals
corr.inst.	= correctional institutions
others	= asylum seeker accommodation etc.
pol.op.	= police operations

It is clear from the overall total how often each type of institution or facility was controlled and how often police operations were observed. As mentioned above, the difference in frequency reflects the different number of institutions. It is also apparent from the table that more institutions and facilities are situated in urban areas and that more visits are carried out there. The following table reports the overall number of visits according to the *Land*.

Number of visits in 2016 in the individual *Laender*

<i>Land</i>	2016
Vienna	141
Lower Austria	101
Tyrol	80
Styria	74
Upper Austria	43
Carinthia	28
Salzburg	23
Burgenland	23
Vorarlberg	9
<b>total</b>	<b>522</b>

For all 522 visits, results are available in the form of the comprehensive reports of the commissions. The commissions found that they had grounds to criticise the human rights situation in relation to 417 visits of institutions and 16 police operations. No criticisms were made for 89 visits (62 institutions and 27 police operations). This means that deficiencies were identified in 83% of the visits carried out by the commissions. The observation of police operations resulted less frequently in criticism from the commissions on a pro rata basis than visits carried out in institutions and facilities (37% against 87%).

83% of visits uncovered deficits

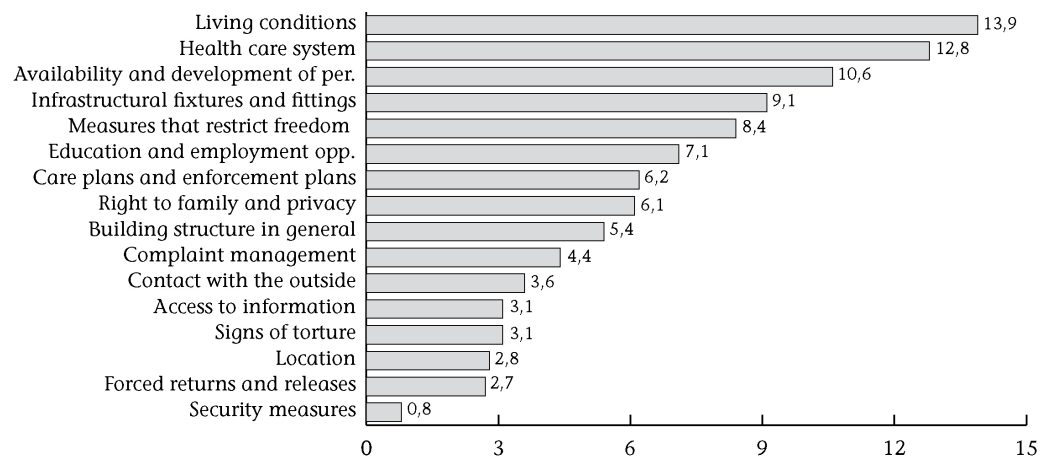
The NPM is not only called on to report problems but also endeavours to recommend a solution for the deficiency identified. It is thus often necessary to work on potential improvements alongside the relevant operators of the facilities, supervisory authorities and/or ministries. Since these processes are understandably time-intensive, these procedures can often take up months.

## Proportion of visits in 2016 with or without criticism

	criticism	no criticism
Monitoring of institutions and facilities	87 %	13 %
Monitoring of police operations	37 %	63 %
<b>Visits in total</b>	<b>83 %</b>	<b>17 %</b>

The following graph provides a breakdown of criticisms according to individual issues which were observed by the commissions during their visits. It must be taken into account here that in almost all cases multiple areas were examined during each visit, and the criticisms thus relate to multiple topics. The most frequent reason for criticism were living conditions, including sanitary and hygiene standards, food and the offer of leisure activities. The proportion of criticism relating to medical care was almost as high. Inadequate staffing resources or human resources development programmes were also frequently perceived as deficiencies.

Topics of criticism voiced by the commissions (share in %)



### 3.2.4 Budget

In 2016, a budget of EUR 1,450,000 was available to remunerate the heads and members of the commissions, as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,163,000 (2015: EUR 1,158,000) was budgeted for reimbursements and travel costs for the commission members alone and around EUR 87,000 (2015: EUR 91,000) for the Human Rights Advisory Council; around EUR 200,000 was available for workshops for the commissions and the AOB employees working in the OPCAT sector, as well as for other activities. It was therefore possible to avoid budget cuts, thanks in particular to the National Council as the federal legislative body in financial matters but also the Federal Ministry of Finance. Both of them emphasised the necessary financial independence for preventive activities and showed understanding for a sufficient budgetary allocation to the Austrian NPM.



### 3.2.5 Human resources

#### Personnel

In order to implement the OPCAT mandate, the AOB has received 15 additional permanent positions to fulfil its responsibilities. Since then, one permanent position was eliminated due to budgetary restrictions. As an organisational unit the “OPCAT Secretariat” is responsible for the coordination of the collaboration with the commissions. It furthermore examines international reports and documents in order to support the NPM with information from similar institutions. The AOB employees who are entrusted with NPM responsibilities are legal experts who have experience in the areas of the rights of persons with disabilities, children’s rights, social rights, police, asylum and the judiciary (see the list of names in the Annex).

#### The commissions

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), the NPM must entrust the multidisciplinary commissions it has appointed with the tasks they have to perform. The commissions are organised according to regional criteria. They each consist of eight members and one head of commission (see the list of names in the Annex). If required, the regional commissions may involve experts from other specialist areas provided that members of other commissions are not available for this purpose. The NPM now has access to a pool of external experts with somatic or psychiatric impairments who can also support the commissions in “traditional places of detention”.

#### Human Rights Advisory Council

The Human Rights Advisory Council was established as an advisory body. It is constituted of representatives of non-governmental organisations and federal ministries (see Annex). The Human Rights Advisory Council supports the NPM regarding the clarification of monitoring competences and questions that arise during visits by the commissions that go beyond the problems inherent in an individual case.

### 3.2.6 Report of the commissions

Last year a reference was made at this juncture to the positive preventive effects of the involvement of commission members in working groups (e.g. in the Federal Ministry of the Interior). This optimistic assessment can only be maintained in part. As a positive aspect it must be stressed that, within a working group from the Federal Ministry of Health and Women's Affairs, which included commission members (Commission 3), the results relating to sexual assaults of particular occupational groups in hospitals were successfully implemented. In other areas it was necessary to relativise assessments significantly during the year under review. For instance, commission visits (Commission 4) showed that planning, e.g. as agreed on a consensual basis within the "Detention Working Group" in the Federal Ministry of the Interior, had still not been carried out after more than one year. Other changes which had already been adopted have even been suspended after some time. In particular, this concerns the regulation that – aside from specifically defined exceptions – detention pending forced return should be practised in the form of open detention, and also that care for individuals on hunger strike should be intensified.

Failure to comply with notification duties

A further point of criticism related to the duty to notify sensitive operations during which acts of direct administrative power and coercive measures may be expected, such as raids, demonstrations, football games or so-called problematic forced returns. On the one hand, these notification duties were not always complied with, in spite of the obligation stipulated in the directive, which resulted in the fact that the competent commissions only learned about critical operations retrospectively from media reports or internal monitoring reports of the authorities. On the other hand, there were irregularities in the notification intervals provided by the police for major operations. As early as 2015 an NPM recommendation was published that referred to this issue: "Only timely notification of the NPM regarding upcoming operations enables observation by the commissions and compliance with the NPM's mandate". The commissions acknowledge that such operations may have planning processes that do not always allow for early notification. Others, however, were planned long in advance and the NPM still was not notified in good time. A concrete example is the large-scale concerted action in the area of Islamic extremism carried out in Vienna and Graz on 26 January 2017 (150 officers were deployed in Vienna), for which only very short advance notice of 19 hours was given. Such a short-time scale can in some cases complicate and even prevent observation by the NPM.

Critical detention in specially secured cells

Visits to police detention centres have repeatedly shown inadequate sensitivity towards detention in specially secured cells. Commission 4 found that in some cases the duration of detention in these cells had been disproportionately long. In one case it had also been associated with restraints of mobility (chains), which raises concerns regarding the upholding of human rights. In this regard

the Commission had the impression that crisis situations (e.g. the injuring of officials) that were associated with particular suspicious factors (e.g. suspicion of Islamism, initially vague, though subsequently rebutted) could easily lead to escalation. The low level of professionalism in dealing with these situations resulted in rendering human rights aspects entirely meaningless. In situations of high-security incarceration basic rights such as outdoor exercise and food intake became of such secondary importance, that it was not possible for the NPM to carry out any examinations due to the lack of documentation.

Across all categories of institutions observed, on some occasions insufficient sensitivity was shown towards the special needs of persons who, in addition to the general vulnerability arising under conditions of deprivation of liberty, required special attention and care due to mental disorders. This affected mentally ill persons in police custody or serving a sentence as well as traumatised refugee children in youth welfare facilities, mentally impaired minors/young adults in socio-pedagogical facilities or mentally ill persons in retirement homes. There is often a general lack of efforts to raise awareness – extending far beyond the discussions about preventive measures in the specific type of facility – in order to protect this group with multiple vulnerabilities and to be able to react adequately to their needs.

Inadequate consideration for the needs of mentally ill persons

An elusive problem for the commissions has been the “disappearance” of minor refugees widely reported in the media and by NGOs, including in particular young girls who were initially registered and cared for. If an unaccompanied minor refugee fails to return to his/her care facility, he/she is officially removed from its care. No institution feels responsible for quickly clarifying the whereabouts of these individuals. Consequently, not only does an information deficit arise in relation to the fate of these children but also a serious problem as to the responsibility of custody for this group.

### 3.2.7 International collaboration and cooperation

The Austrian NPM is always interested in intensively sharing experience and cooperating with other NPMs on an international level.

Since October 2013, the AOB has also been a member of the South-East Europe NPM Network, the so-called SEE NPM Network and held the annually rotating presidency of this network in 2016. Prevention mechanisms from Greece, Romania and Hungary participated as new members of the network. In 2016 two working meetings of the network in Salzburg and Vienna were organised together with the Austrian Human Rights Institute of the University of Salzburg. The meetings focused on the development of a methodology and the standards applicable during preventive monitoring and control activities in retirement and nursing homes. In the view of the AOB it is particularly significant that,

South-East-European NPM Network

for the first time, prevention mechanisms from eleven countries have started to develop a common understanding of methodology and standards. In this regard, the AOB would like to thank the Council of Europe for its generous financial support in order to cover travel and accommodation costs of network members.

NPMs from German-speaking countries meet in Solothurn

Since 2014, there has been regular sharing of ideas and experience with NPMs from the German-speaking countries (Germany, Austria, Switzerland). This year's meeting was held in Solothurn (Switzerland) and was dedicated to the detention of mentally ill offenders and psychiatric institutions as places of deprivation of liberty. The newly established correctional facility in Solothurn was visited jointly by the participants, and experience in the area of psychiatric facilities was shared. Besides, following an overview of human rights standards, problem areas were analysed and discussed from the standpoint of basic rights. Experts explained the legal foundations in the different countries, discussed differences and similarities and issued recommendations. Ombudsman Günther Kräuter provided an overview of the statutory basis and problem areas in Austria.

IOI training for NPMs in Vilnius

As part of their responsibility to protect and promote human rights, an increasing number of ombudsman institutions are also charged with the prevention of torture and other degrading treatment. The Austria-based International Ombudsman Institute (IOI) has recognised the need for bespoke continuing education programmes in this area and offers workshops focusing on NPM issues. In close cooperation with the recognised Association for the Prevention of Torture (APT), the IOI developed training for the staff of ombudsman institutions exercising the NPM mandate. As the host of this workshop, the Lithuanian ombudsman institution invited participants to Vilnius in June 2016.

Vilnius training - focus on psychiatric facilities

The event focused on work and monitoring in psychiatric facilities. Sharing their experiences, the participants devised methods for dealing with the challenges of monitoring so-called "less traditional" places of deprivation of liberty. Selected trainers from the APT presented an interactive and diverse programme. For the first time medical experts were involved as well – including also head of commission Gabriele Fischer – whose broad specialist expertise contributed to the success of the training. In his capacity as IOI Secretary General, Ombudsman Günther Kräuter stressed that above all these less traditional places of detention, such as psychiatric facilities or nursing homes, should move to the forefront of the NPMs' attention. Experts from the Austrian NPM also attended this workshop.

Due to the strong demand, a further IOI NPM training session is planned for 2017. It will be held in Vienna and, in an innovative way, will handle the topic of "do no harm".

Regular exchanges concerning NPM issues also occur within the framework of bilateral visits. Ombudswoman Gertrude Brinek received her counterpart from Kosovo in order to discuss the implementation of the OPCAT mandate. Discussions also considered cooperation between the ombudsman institution and Parliament along with the general processing of complaints. The delegation also had the opportunity to visit the Disability Ombudsman and the Equality Ombudsman.

Working visit by the  
Ombudsman of Kosovo

With the aim of pursuing closer cooperation, the NPM regularly writes reports for the NPM Newsletter of the Council of Europe. This newsletter provides an overview of information with NPM relevance in the member states and offers a forum for sharing practical issues and good practice models.

NPM newsletter of the  
Council of Europe

### 3.2.8 Report of the Human Rights Advisory Council

In 2016, the Human Rights Advisory Council continued and expanded its successful work for the NPM. At more than 30 meetings of its working groups, the Council prepared statements concerning the extent of the mandate, general issues of preventive protection of human rights and draft recommendations of the NPM. An issue of particular concern for the Human Rights Advisory Council was the assessment of visit reports by the commissions. This provided a valuable basis for suggestion of future monitoring priorities for the NPM.

The results of the activities of the Human Rights Advisory Council were discussed with members of the AOB during six plenary sessions. It is pleasing that, in the meantime, eight statements of the Human Rights Advisory Council could be published in an easy-to-read version on the AOB website. The considerations regarding issues elaborated last year dealt amongst other things with the following topics:

- NPM mandate – airport as a special transit area
- NPM mandate – state’s duty to protect in facilities for persons with disabilities without official approval or official supervision
- Insufficient availability of police doctors
- Violations of boundaries with regard to sexual harassment by staff in a psychiatric hospital
- Legal protection for children and adolescents with disabilities in the case of age-atypical measures that restrict freedom
- Designation of cells in correctional institutions with indications of contagious diseases amongst prisoners

At this juncture, the Chairpersons of the Human Rights Advisory Council would expressly like to thank those members and substitute members who have departed for their activities and constructive cooperation.

## 4 Monitoring framework, methodology and further action by the NPM

### 4.1 Preamble

Under the Austrian Federal Constitution, the Austrian Ombudsman Board (AOB), together with its commissions, is charged with the responsibilities of a National Preventive Mechanism (NPM) in accordance with the UN Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as with the monitoring and control of institutions, facilities and programmes in accordance with the UN CRPD, and with the monitoring and concomitant examining of authorities empowered to exercise direct administrative power and coercive measures.

### 4.2 Goals and basic principles

The goal is to protect and promote human rights, including but not limited to the regular, seamless and generally unannounced monitoring and control of institutions and facilities where persons are or can be deprived of liberty, as well as of institutions, facilities and programmes for persons with disabilities and of the exercise of coercive measures by authorities empowered by the State.

The benchmark for the fulfilment of the responsibilities of the NPM, are all the standards and principles developed to protect human rights under the provisions of both, international and Austrian law.

The joint work of the NPM is based on the following guiding principles:

“Quality before quantity”: The preventive activity of the NPM serves to protect against violations of and intrusions into human rights. “Prevention” is defined as measures and strategies to minimise risks and anticipatory action to protect human rights. Therefore, the improvement of general quality standards is not a central responsibility of monitoring and control activities. The focus on preventive monitoring and control to protect against violations of human rights determines the core activities of targeted, unannounced visits in selected facilities and institutions and of confidence-building communication on-site with persons in all roles.

Understanding of prevention

“Priorities and topics”: Fundamentally, the visits by the commissions are oriented towards concrete priorities and topics of monitoring and control that are understood as “guidelines rather than rigid rules”. The size and composition of the commission delegations are based on the defined priorities and the topics chosen by the commissions, as well as the number and planned duration of visits and observations. Preserving the necessary flexibility, for example during general initial visits or in the event of unexpected impressions



on-site, is reasonable and expedient. It must be possible to maintain a free and unobstructed view of occurring tendencies, as well as to be able to react quickly and flexibly to acute situations.

**Coordinated procedures** “Harmonised procedures”: The preparation, carrying out and follow-up of visits by the commissions is based on a jointly coordinated methodology. This is helpful for both delegation teams assembled from across the commissions and for the further development of monitoring processes that can be compared across Austria. The intention is to counteract the obstacles and problems that arise from federalist structures in similar types of institutions by way of monitoring procedures and assessment standards that are as uniform as possible Austria-wide, notwithstanding any necessary regional priorities.

**Traceable and well-documented results of monitoring** “Documentation”: The effectiveness of improvements or elimination of structural problems, which have been identified and detected, depends largely on factors such as specificity, traceability and the reliability of the source(s). The work is guided by the principle of delivering a simple and un-bureaucratic but also a substantive and fact-oriented documentation of the monitoring findings. It should enable an assessment based on human rights and comply with the international principles that have been developed for this type of documentation. Additionally, simple impressions and provisional assessments can subsequently have certain relevance, in particular for the definition of follow-up visits or monitoring priorities.

“Communication”: The intensive and ongoing sharing of experience within the individual components of the NPM is of essential importance. Communication that is direct and based on trust promotes the joint work and makes it easier. Likewise, ongoing sharing of ideas and experience between the AOB and the commissions regarding the progress or the obstacles in their day-to-day work and in the political process is important; the AOB endeavours to participate in and to have the opportunity for discussions in all the regional governments.

**Ongoing further development** “Continuing education”: Ongoing information about international developments, offerings of special training and relevant specialist literature further support the development of joint monitoring and control activities, which must also be seen in the light of the expectation towards the Austrian National Human Rights Institution – which is also the headquarters of the IOI – in terms of following and sharing best practices.

“Advisory functions”: A target-oriented and efficient interaction in the advisory process with the Human Rights Advisory Council is a joint responsibility of the NPM. Consulting on the “establishment of general monitoring priorities” and the submission of suggestions on “ensuring uniform procedures and investigative standards” are included in the area of competence of the Human Rights Advisory Council. This also supports the harmonisation of procedures.

### 4.3 Monitoring methodology

A uniform methodology for on-site monitoring procedures must be differentiated from the assessment standards of human rights-based evaluation. One is the process of gathering information, while the other is the evaluation of the matter itself. These two components cannot be separated from one another completely, as they are intertwined. Depending on the focus of the information gathering (e.g. deployment of private security companies in psychiatric clinics or provision of food during forced returns), different steps or monitoring tools are necessary. This is why process and evaluation cannot be isolated from one another. Ultimately, the process is the means to arrive at an evaluation.

Consequently and in accordance with the monitoring objectives, principles and the standards, the procedure of the commissions in how their visits are structured in order to achieve an Austria-wide comparability of the human rights-based assessments in accordance with e.g. the “Analytical self-assessment tool for National Prevention Mechanisms” (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Twelfth Session, 6 February 2012, CAT/OP/1) and the “Guidelines on National Preventive Mechanisms” (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 2010, CAT/OP/12/5) - should conform to the following template:

Alignment with international standards

- Definition of a clear and well-demarcated monitoring priority or monitoring subject, as this is necessary both for the quality of the information gathering and in order to have the necessary space to be able to perceive any other problems that go beyond the original scope.
- Explanation of which (inter)national standards and statutory framework conditions exist in this regard.
- Development within the NPM as to which monitoring steps must (in any case) be taken (e.g. interviews with certain persons, access to certain documentation, etc.). In the course of this process, it must also be considered how circumstances that are discovered can best be cross-checked.
- The reports should show whether the agreed-upon investigative steps were undertaken or, if not, why they were not possible.

Establishing monitoring priorities

#### 4.4 Further action

The visit reports conclude with a human rights-based assessment, which contains a recommendation directed towards the AOB on what action should be taken, as well as more detailed remarks. The commissions can additionally suggest that further investigations across multiple institutions and facilities be undertaken by the AOB. To the extent that it is not clear from the visit report that no further action is needed, the AOB approaches the highest body which is responsible for the supervision and operation of the facility and, if appropriate, also the owner and/or operator of the facility, with the observations of the commission (consultation proceeding or confrontation proceeding). The heads of the commission are kept informed on an ongoing basis.

Recommendation in accordance with Article 148c of the Austrian Federal Constitution

After the investigation has been concluded, the final assessment (evaluation) is sent to the highest responsible body. It can contain suggestions on how to remedy the deficiencies that were found or how to implement preventive measures. Upon recommendation by the head of the commission or by the AOB, a “recommendation in accordance with Article 148c of the Austrian Federal Constitution” is jointly drafted in some cases or prompted by such case. In addition to a brief and anonymised description of the case and/or any observed maladministration and/or the human rights-based assessment, this recommendation contains a summary, which defines the human rights standard that was applied and indicates which measures should be taken by the responsible state authorities.

Subsequently, the draft recommendations are submitted to the Human Rights Advisory Council and after it has dealt with them in an advisory capacity, they are sent to the supreme administrative bodies. The addressee of the recommendation is obligated to comply with it within a period of eight weeks and to notify the AOB thereof or to provide reasons in written form why the recommendation was not implemented. The disclosures on the website must contain this statement; if need be, in abridged form.

Binding content after adoption of the recommendation

To the extent that the owners and/or operators of the monitored institutions are not local or regional authorities, their management bodies are informed in a suitable way of the NPM’s assessment, with Article 148c of the Austrian Federal Constitution being applied *mutatis mutandis*, and their competent state supervisory authority being notified. Once the recommendation has been adopted, its content is binding for the NPM (guiding principle). During follow-up visits, it must be ensured that the recommendation is complied with. On one hand, the guiding principles should help the commissions in preparing follow-up visits. On the other hand, they can be of assistance when generating visit reports. Thus, they not only identify human rights violations but also address the preventive character of the mandate.

## 5 NPM findings and recommendations

### 5.1 Retirement and nursing homes

#### 5.1.1 Introduction

During the year under review 2016 a total of 125 facilities dedicated to the care of the elderly were visited. When planning their visits, the commissions took care to include facilities of different sizes and operators. So-called follow-up visits were carried out on 37 occasions in order to determine whether requirement for change previously ascertained had been recognised and whether the recommendations of the NPM had been implemented. This was largely the case. However, it is apparent that wherever structural deficits are primarily attributable to staff resources that are deemed to be inadequate, whilst the NPM was in some cases able to obtain changes to duty rosters; it was largely unable to achieve the appointment of additional staff.

The population of Austria is growing and at the same time the population is also ageing. These are the major trends according to the “Population forecast 2016” of *Statistik Austria*, which will also continue in future. Thus Austria, along with other industrial countries, is undergoing a demographic transition towards an ageing society, with the strongest percentage growth above all within the group of the very elderly (above 85 years old). In 2015, this population group included a total of 216,365 people, with projected growth of 59.6% by 2030 and to 448,805 people by 2040. This represents an increase of almost 107%. Nursing facilities are therefore increasingly taking in individuals with multi-morbidity, persons with dementia or other mental illnesses or disabilities. This places major demands both on the presence of nursing and care staff and on their specialist and social skills. The framework conditions set out by politicians do not take account of this; the imbalance between rising demands and the actual human resources available in facilities was perceived by all commissions.

Specialised care expertise as major challenge

The regulation of the establishment, maintenance and operation of homes for persons needing constant general care, and only occasionally medical care, falls under the competence of the *Laender*. In 1993 an agreement was concluded between the Federal Government and the *Laender* pursuant to Article 15a of the Austrian Federal Constitution with the aim of “regulating provision for persons needing care according to the same goals and principles Austria-wide”. The Funding of Nursing Care Act (*Pflegefondsgesetz*) 2011 also pursues the defined goal of harmonising the provision of nursing care services, with the financial support of the Federal Government. There is no question of establishing a minimum standard across Austria. The alignment of guidelines for calculating staffing requirements, which in some cases are strongly divergent, and the underlying methods, which has been called for by the NPM and the Austrian Court of Auditors, has still not taken place.

No overall political management of long-term care

Nine *Laender* - nine different regulatory systems

According to the Upper Austrian Nursing Homes Regulation (*OÖ Pflegeheimverordnung*), the staff shall be provided based on the number of persons needing care and their allocation to care and nursing allowances, without taking account of social components. The minimum staffing ratio laid down in the Regulation applied in Styria uses other parameters for this purpose and, according to the Styrian Chamber of Labour, is comparably lower in spite of an increase in 2016. The Regulation adopted under the Viennese Nursing Homes Act in turn lays down a minimum staffing ratio calculated according to different parameters, which must be increased “for residents with particular nursing needs”. The Tyrolean Nursing Homes Act is limited to the regulation stipulating that “sufficiently qualified staff [must be available] at all times”, although the standard times (measured in minutes) specified by the regional government, which have been widely criticised, limit the time available for individual nursing. In Burgenland, the ratio between persons needing nursing care and staff is determined by ordinance according to a mathematical formula. This includes minimum care times, which are calculated in broad and extremely approximate terms. In Vorarlberg the “guarantee of reasonable nursing care” has been laid down by decree. It stipulates the maximum number of persons under each care and nursing allowance level who may be cared for. In Carinthia the Nursing Homes Regulation provides that staff should be made available based on the number of persons needing care. The qualification of the necessary staff depends on the special care needs of the respective persons; care and nursing allowances levels do not play any role. The Salzburg Nursing Homes Act obliges the provision of “a sufficient number of salaried, specially qualified nursing staff and auxiliary care staff according to the number of residents and the type and extent of the services to be provided to these residents”; no specific requirements are stipulated in this regard. In Lower Austria the regional government has drawn up a manual containing guidelines for calculation, which has been declared binding for its own institutions and facilities. Private operators are subject to the statutory requirement that “sufficient qualified staff for nursing care and other operations of the home [must be available] at all times”. It is therefore difficult to compare staffing requirements in different *Laender* based on the size of the home. A consideration of qualitative or multi-disciplinary staffing requirements points to a similarly unsatisfactory picture.

Insufficient staffing

In the view of the NPM, there is an urgent need for action. The care of persons with neurodegenerative cognitive impairments, dementia or disabilities requires the presence of specialists with the right skills set and a high level of geriatric know-how. This additional costs and needs are not sufficiently accounted for within staffing ratio calculations. The NPM calls on the Federal Government and the *Laender* to take account of the change in circumstances.

Symptoms such as restlessness, apathy, depression, suicidal feelings, disorientation, hallucinations or aggressive and defensive behaviour are everyday occurrences within long-term care. They necessarily give rise to

greater care needs and one-to-one interaction, as well as a particular culture of communication with those affected. The situation is even more complicated for some persons with dementia by the fact that, depending upon their background and the duration of the illness, they may no longer be incorporated into social networks. If social support is only available to a limited extent outside of the facility, the other nursing home residents and professional carers are often the only reference persons.

In the view of the NPM, the focus of treatment and care for persons with dementia must be on maintaining subjective well-being and optimising objective living conditions as a significant element of quality of life. The NPM's recommendations thus cover in particular both the provision of person-focused care and the implementation of the principle of normalisation within the structure of the day. The NPM centres its enquiries in this regard on everyday orientation, biography work and milieu therapy. Validation, basal stimulation, reminiscence therapy, work and movement are also particularly significant forms of comprehensible communication and interaction. Sensory and consensual experiences are enhanced by cooking and eating together. Residents' special preferences should also be taken into account, along with food rich in calories and vitamins. The NPM views positively the usage of Dementia Care Mapping (DCM) as an instrument for surveying both residents' quality of life and quality of care.

Well-being and living conditions

Gerontopsychiatric care proved to be inadequate in many facilities. With the exception of Vorarlberg and the facilities of the Vienna Association of Medical Institutions (*Krankenanstaltverbund, KAV*), it seems that it is not possible to involve specialist neurologists and psychiatrists in order to diagnose and treat long-term care residents suffering from gerontopsychiatric illnesses on a comprehensive scale, often repeatedly throughout the year. There are districts in Austria (e.g. Tamsweg/Lungau) in which still no psychiatrists work as contractual partners of health insurance providers or as specialised medical consultants in homes.

Inadequate gerontopsychiatric support

Inpatient care facilities for persons with dementia require comprehensive barrier-free spatial and structural conditions to enable disoriented elderly persons to move freely, as far as possible, without undermining their feeling of security. Familiar, age-appropriate furniture and comfort zones create a feeling of homeliness, which is largely lacking in hospital-like buildings of a specified facility. Clearly visible aids to orientation, the avoidance of reflective surfaces, attention to anti-glare and the use of low-contrast flooring reduce the risk of elderly persons feeling irritated.

Structural conditions in some cases not suited to patients with dementia

Even in facilities with outdoor areas and gardens, the commissions have observed, that staff in many cases do not have time to accompany residents outdoors. For the elderly, movement is an important aspect of care and support. Last year the NPM reported that residents tend to receive too little mobility support because nursing staff do not have sufficient resources for this (see NPM

Inadequate mobility support and time spent outdoors



Report 2015, page 31). The appointment of physiotherapists could provide a remedy and, having regard also to the complex nature of the interaction between physical and psychological illnesses could be beneficial. The NPM therefore stresses the importance of physiotherapy for elderly persons.

Current assessment of requirements necessary

An occupational and health care science assessment of current qualitative and quantitative requirements within long-term inpatient care is required, specifically from a human rights perspective. In the interest of persons needing care and the around 45,000 people working in this sector, the public authorities are not only responsible for financing; they also must set targets and may not leave this task almost exclusively to operators.

The nursing professions need to be made more attractive

The current situation has serious negative effects. Although it is in the interest of society as a whole to enhance the attractiveness of nursing professions and to create working conditions that will benefit nursing home residents, public debate is steered by the economisation of social work and thus also the pressure to make savings. The commissions often find that nursing staff are overloaded and torn between the needs imposed by time and cost pressures and the professional ethos and motivation imparted during training.

Under-staffing during night shifts

There is a further problem: there are no binding rules for filling night shifts. Nursing care during the night is determined according to duty rosters, which in many cases do not envisage any evening programme and are not tailored to the residents' sleep requirements, which are to some extent conditioned by dementia. The situation is exacerbated by high sickness rates, burnout and early retirement of older staff who no longer feel they are up to the requirements of day and night shifts.

For decades there has been a consensus within specialist circles that nursing homes do not provide adequate living space for young persons with disabilities and acute nursing needs. Inappropriate placements therefore must be avoided by expanding community-based support structures and personal assistance. Commissions have come up against such problems on various occasions in Vienna, Lower Austria, Styria and Tyrol also in 2016. The NPM has thus drawn attention to the human rights aspect of this problem also in the media.

From a human rights perspective, any restrictions of autonomy, self-determination or the well-being of residents in officially approved or tolerated settings of long-term nursing care have to be avoided. . All of these facilities form the centres of the lives of those people who, because of their need for assistance due to their age, are reliant on third-party support.

Dimensions of quality of life

According to current research, the construct of "quality of life" is mapped out over various quality dimensions. These relate to health and well-being, involvement and the provision of information, independence and self-determination, security, spirituality, meaningful participation and work, living and domestic care along with dignity and respect.



In the view of the NPM, supervisory controls concentrate above all on structural circumstances (staffing ratios, staff qualifications, occupancy rates and other issues related to staffing) and nursing processes. Because the focus on quality of processes and structures remains limited, very few indications concerning the quality of nursing and care services are available to supervisory authorities. Objective indicators of quality nursing, such as the number of restrictions of freedom, the frequency and consequences of falls, the number and severity of pressure sores, the emergence of catheter infections, drug administration errors, weight loss, etc. are collected by supervisory authorities on a rudimentary basis during regulatory controls, but are not made available for use in order to make comparisons between institutions. A systematic approach as part of a comprehensive quality assurance concept would also make it possible to measure the level of satisfaction with nursing and care services for residents, relatives and staff. A transparent and rigorous quality assessment of nursing care outcomes is only in its infancy in Austria, as was substantiated in detail in the 2013 report by *Gesundheit Österreich GmbH* (or *GÖG* – national research and planning institute for health care).

In October 2016 investigations were initiated by the public prosecutors' office in a nursing home in Lower Austria, which had repeatedly been awarded the National Quality Certificate for residential and nursing homes in Austria (NQC). Four nurses in a ward are suspected of having subjected nursing care patients to serious physical abuse over a period of months. Amongst other things it was reported that whilst they were working night shifts together, hairspray was sprayed into the faces of the patients, faeces was stuffed into their mouths and essential spirits were rubbed into their eyes and genitals.

NQC does not safeguard against violence and abuse

The NQC is an award for homes that have introduced particular quality management systems and that make systematic efforts – over and beyond compliance with statutory requirements – to achieve the best possible individual quality of life. Here too, despite the external evaluation carried out by the NQC, it can be the case that nursing care results differ significantly from standards that have supposedly been achieved. In terms of preventive aspects, the question arises for the NPM as to which safeguards would have been required in order to avoid abuse or at least to be able to recognise it at a significantly earlier stage. This aspect will be considered by the NPM after the 2017 findings of Commission 6 have been presented.

In the face of this sobering conclusion, the *Jubiläumsfonds* of the Austrian National Bank must be thanked for providing the NPM its support which made possible realisation of a practical study. This study carried out by Petra Niederhametner (project head: Stefan Titscher, university professor emeritus) is dedicated to the prevention of human rights violations in nursing homes and psychiatric wards. It considers the issue of where vulnerable situations from a human rights perspective arise and how they can be defused. Risks and preventive measures are addressed in detail in eight of the main monitoring

Prevention study - „Avoiding violations of human rights“

priorities for the work of the NPM (including malnutrition, medication and drug safety, the use of measures that restrict freedom and violence).

### 5.1.2 Geriatric care requires attentiveness and competent leadership

In order to be able to guarantee a high standard of care and nursing for very elderly persons with multi-morbidity, it is necessary to adopt a careful approach to the overall organisation. A central aspect of our understanding of human rights and thus the nursing philosophy is the belief in the value and dignity of each individual.

Quality development is a task of the overall organisation

The task of operators and those responsible for homes and nursing staff is to create the framework conditions that facilitate and ensure nursing that guarantees human dignity. Good relations at work help to counter excessive demands and violence. Staff who are involved in the quality development process and shift planning, who bear individual responsibility and who receive ongoing support thanks to supervision, continuing and advanced training, regular nursing rounds and case discussions are more resistant to stress. It is also the task of all staff to provide “state-of-the-art” nursing and to document it transparently. In the view of the NPM, joint monitoring of nursing documentation, feedback from the head of nursing staff and targeted training in nursing processes and their proper documentation are important prerequisites for enhancing staff skills.

Attention and supervision necessary

Surveys of nursing staff carried out by the commissions in long-term nursing facilities point to the conclusion that, if there is a good team spirit, even low staffing levels and residents with complex nursing needs can be dealt with. A significant aspect of this is the need for attentiveness and the reciprocal concession of space for reflection in order to be able to discuss conflicts, to concede uncertainties and errors and to be able to accept criticism and change. Mental hygiene is indispensable in the social professions. For this reason, the NPM considers that the management of homes are under an active duty to offer supervision.

Positive development

In a nursing home of the *Land* Lower Austria, Commission 5 was able to witness what an effective management is able to achieve within the space of only eight months. Numerous recommendations were issued during a visit in January 2016, most of which had been acted upon by the time the follow-up visit took place in September 2016. The nursing home and ward managers made considerable efforts to improve residents’ living conditions. The Commission found that the rooms in one ward had been rearranged in a much more personalised fashion and that it had been possible to reduce significantly measures that restrict freedom. Additional staff had been hired to occupy the time of residents. Duty rosters were reorganised by mutual

agreement in order to offer an evening programme and to be able to delay evening mealtimes which had previously been scheduled much too early.

Another control visit showed how negative the effect of changes to those responsible for the home and nursing staff can be. In 2014, Commission 6 visited a privately run nursing home with 132 nursing care places, which overall made a good impression. In 2016, due to complaints received the home was spontaneously reincorporated into the planned visits programme. It became clear in situ that a total of 63 nursing staff had been hired within the space of a year, whilst 55 employees had left the home. In the dementia ward the Commission noticed broken chairs and loose cabling. In the communal area, after breakfast patients with dementia were left to their own devices for hours until lunch, without any activity or verbal interaction. Nursing documentation was comprised of a bundle of text modules. There was no dementia concept or pain assessment; some residents displayed bruising of unclear origin. For 32 residents who had been subject to measures that restrict freedom, it was not apparent whether milder measures had been attempted. Between 2014 and 2016 only induction training was carried out, but no specialist nursing training. Staff objected to mismanagement, harsh treatment, an extremely bad working climate and an unclear allocation of duties. The NPM urgently called for supervisory measures, through to the revocation of the licence.

„Anyone who complains gets dismissed“

The nursing home operator was not only active in Lower Austria but also operated two homes for the elderly in Vienna until the end of 2016. Here Commission 4 most recently noted similarly inadequate staff leadership skills, conspicuously high staff turnover and a large number of complaints regarding shortcomings. In the view of Commission 4, neither of these two facilities in Vienna met the quality standards that other Viennese nursing homes have voluntarily undertaken to abide by on the basis of their membership of the Association for Viennese Social Institutions (*Dachverband der Wiener Sozialeinrichtungen*). In the meantime, the operator has changed, and the NPM will continue to monitor the effects of this.

Inadequate staff management skills

At a facility in Styria hosting 35 persons with psychiatric diagnoses the entire management team (head of the home and of nursing staff) and 80% of staff changed within a few months. Above all, in view of particular manifestations of diseases, night shifts in the three-storey building were very onerous, with only two nursing staff members present. This led to numerous complications. Eighty falls were documented between the start of the year and the middle of October 2016, mainly during the night, resulting in some cases in severe injury and extended stays in hospital. In the disease progression reports written by Graz Regional Hospital, which were viewed by Commission 3, the home was urgently advised to take measures to prevent falls. However, according to staff from the facility, the purchase of additional auxiliary equipment was rejected on cost grounds. In the meantime, the supervisory authority contacted by the NPM arranged for electronic monitoring systems to be purchased (sensor

Management and 80% of staff resign

floor mats, body pressure sensors, microchips) and low-profile beds in order to minimise the risk of falling and the consequences of injury. The supervisory authority stated that it would be desirable to have more staff work on night shifts. However, because the minimum staffing ratio had already been exceeded, there was no legal basis requiring more staff.

Massive conflicts and complaints following staff changes

In a nursing home in Carinthia, in 2015 Commission 3 found serious deficiencies. During the follow-up visit in July 2016, both staff and residents and their relatives addressed the experts with calls for help. Within the space of eight months all qualified staff, including the head of the nursing staff, had left the facility. Although newly appointed staff appeared to be motivated, they did not receive any induction training and there was no team spirit. Out of the original 25 doctors, only four were willing to attend patients in the nursing home. Various residents described to the Commission how much they were suffering from the poor care situation. The regional government of Carinthia informed the NPM that more than ten supervisory examinations in situ were carried out during the reporting year. As required action had not been taken in a timely manner by the facility, the supervisory authority ordered that it be carried out by a third party. At the cost of the operator of the facility, the authority commissioned qualified staff from a mobile service to monitor nursing documentation and for the administration of medication.

No entries in nursing documentation for months

In a nursing home in Burgenland the nursing documentation was so incomplete and inadequate that no entries were made for months. For instance, it was not always apparent to Commission 6 which medication was given to whom. Staff reported to the Commission that they had not received sufficient training concerning the documentation system. The lack of a quality management system on management level not only resulted in impermissible restrictions of freedom – as they were not reported to the representatives of the residents – and some mistakes in the administration of medication, but also to further serious violations of nursing standards: care planning did not take account of increased risks of falls, and regular pain assessments were not carried out.

Team conflicts endanger residents

Also unresolved conflicts within teams can lead to a situation in which responsibilities are not taken and residents are neglected. Commission 1 became aware of a situation in Tyrol in which disputes between staff had the result that incontinent residents, who were no longer cleaned by the day shift before going to bed and provided with fresh incontinence products, were also ignored by the night shift. Leaving the skin of elderly persons, which is already weakened by age, in contact with urine and faeces leads to painful skin conditions and pressure sores. One nurse was dismissed as a result.

Conflicts between residents

Managers and nursing staff must also take care if conflicts occur between residents; in particular, the possibility for individual privacy should also be offered. There was, for instance, a case involving a deadly attack on a fellow resident by an 88-year-old who couldn't fall asleep because of occasional cries.

Such cases are a clear warning that the potential for violence arising out of conflicts between people and from mental illness has to be taken seriously.

- ▶ *In order to guarantee a good quality of life for residents, good working conditions must be secured for staff, along with the necessary staff management skills on the part of managers.*
- ▶ *High staff turnover should be perceived by home operators and supervisory authorities as an alarming indication of inadequate nursing.*
- ▶ *The ability of nursing staff to act with confidence must be guaranteed by regular nursing rounds and controls of nursing documentation along with targeted training in nursing processes.*
- ▶ *An important task of management is to promote the acceptance of supervision by staff and to support reflection on work within the facility*

### 5.1.3 Violence in nursing care

Violence in nursing care may arise in a variety of different situations and forms. Structural deficiencies such as inadequate resources and rigid procedures that leave too little scope for individuality can be found as often as e.g. inappropriate mealtimes and bedtimes. Situations where care is provided by an overburdened nurse working under time pressure are stressful, especially for persons with dementia. Frequently, there are escalations simply because it is not possible to convey a calm and relaxed demeanour. People who are seriously ill are often unable to express themselves quickly and clearly when they should take a decision. As a result they are often ignored when their consent to special nursing measures or medical treatment would be needed. Interference with fundamental rights and personality rights, including in particular measures that restrict freedom, are frequently inadequate responses to problems for which no other solutions have been found.

Various forms of violence in everyday nursing

Violence may however also arise in a subtler form, such as by contempt, insults and the refusal of communication. It is occasionally apparent from derogatory entries in nursing documentation that persons needing care run the risk of no longer being perceived as individuals but rather as a “problem”, especially if they are unable to adjust to framework conditions. Entries such as “resident stubborn again today”, “resident unbearable” or “resident not cooperative” are objected to by the NPM also because this implies that residents must adjust to nursing structures.

Derogatory attitude

During the early stages of dementia, many of those affected are still able to state their needs and wishes but also to refuse consent. This ability declines over the course of the disease and persons with dementia become increasingly

The meaningful occupation of persons with dementia helps to prevent violence

reliant on meaningful occupational activities that are provided by third parties (nursing staff or carers). The lack of person-centred concepts has the result that in some facilities occupational activities are not tailored to the cognitive abilities of residents with dementia.

Structures lead to a reduction in necessary support

During some visits in the year under review, residents reported to the commissions that they did not use call bells out of the fear of a defensive response by staff, who were perceived of as being stressed. Even if these residents required support they would have rather waited for relatives to come and help them. One elderly woman reported that she stopped drinking in the afternoon in order to avoid having to ask for help going to the toilet during the night. In one nursing home elderly persons were provided with incontinence products during the night despite not having been diagnosed as incontinent, i.e. without needing them. Many residents acquiesce in weekly showering and bathing days, even though previously they washed every day and would like to continue doing so. In one facility weekly showering and bathing days were cancelled if they fell on a public holiday. In some retirement and nursing homes there is a lack of awareness regarding these forms of structural violence. For example, the NPM was informed in one facility that any deviation from fixed mealtimes was only possible in “exceptional cases”. One operator alleged that early mealtimes (lunch at 11:15 a.m.) were mandated by an external provider and that changes could therefore not be made. Rigid daily routines that are not structured around the needs of elderly persons facilitate aggression, which above all puts staff under strain.

NPM praises the development of individual concepts

Positive examples show that things can be different. A number of facilities have developed standardised questionnaires for collecting biographical information and take account of these when arranging care. One retirement and nursing home drew up an eating biography for all residents. This resulted amongst other things in the abolition of fixed mealtimes. Some facilities have developed their own concepts and guidelines with the assistance of external experts in order to promote the well-being of persons with dementia. They keep nursing documentation in which the changing sensitivities of cognitively impaired persons are precisely noted. This means that it becomes transparent over the course of time which action is taken in order to minimise “disruptions” in everyday life, where possible. The NPM also found nursing schedules that included “outdoor activities” to be particularly beneficial.

Violence against staff

Nursing staff are also affected by violence and assaults. Anxiety, depression and behaviour such as shouting, restlessness and agitation are side effects of cognitive impairment. This can complicate the provision of nursing care and lead to defensive actions (scratching, biting etc.). Although these symptoms are frequently direct consequences of a process of cerebral decline, it must however also be considered that challenging behaviour is often the only form of communication of persons with severe dementia. They can communicate by means of expressing anxiety, discomfort, pain, hunger, thirst or even the



urgent need to urinate. Provocative sexual behaviour, which not infrequently arises as a side effect of dementia, may cause major problems for inexperienced nursing staff, as they do not have sufficient awareness of how to respond to aggressive intrusiveness.

In some facilities staff are left alone to deal with such experiences. Staff in several facilities reported to the NPM that they are overwhelmed by challenging behaviour and are therefore not able to exchange their views with colleagues or to receive training in this regard. Case discussions between specialist doctors and nursing staff do not take place.

Insufficient support despite care duty

A model for protection against violence and the duty of care is e.g. the project “Further development of gerontopsychiatric expertise in Vorarlberg nursing homes” (“*Weiterentwicklung der gerontopsychiatrischen Kompetenz in den Vorarlberger Pflegeheimen*”) which has been implemented on behalf of the Vorarlberg Social Fund (*Vorarlberger Sozialfonds*) since 2014. The project report published in 2015 shows how prerequisites can be established for the provision of person-centred care for residents with challenging behaviour that is free of violence.

Staff need to be trained in how to communicate with cognitively impaired persons. This may be assisted by training in non-judgemental conversation, geriatric specialisations or measures to prevent delirium and psycho-social care concepts. It is important to recognise the causes of and risk factors for violence within the care of residents in order to be able to base interventions on this, if necessary. However, as far as the NPM is aware, many operators of retirement and nursing homes have not yet taken adequate action.

The NPM calls for guidelines to be drawn up in every retirement and nursing home on the issue of “violence in nursing care”, which will be binding for all staff. These will help not only to protect the elderly against violence (psychological, physical or structural) but also to protect staff against attacks by elderly persons. Measures to prevent violence can only be adopted if there is a clear commitment within the organisation to provide care that is free of violence.

Guidelines on the prevention of violence

It must be regarded as a success on the part of the NPM that in almost all retirement and nursing homes in which attention was directed to the issue, measures to prevent violence were adopted after the NPM visit.

Success of the NPM

- ▶ *Specialist medical and nursing care for persons suffering from gerontopsychiatric illnesses, who are mostly very elderly residents, must be guaranteed. Case discussions between specialist doctors and nursing staff must be arranged.*
- ▶ *Violence prevention concepts must be elaborated in all facilities. The commitment to care free of violence must be established in guidelines.*



### 5.1.4 Introduction of care standards in relation to pain

Facilities often do not notice that elderly persons suffer for extended periods of time from severe pain resulting from both immobility and physical stress. However, it is incorrect to assume that pain is simply part of old age. Pain impairs quality of life, increases the risk of falls and leads to more rapid physical decline and confinement to bed.

Pain must not be accepted as simply part of old age

A study published in 2015 concerning pain in long-term care facilities in Austria shows that around two thirds of the residents of retirement and nursing homes suffer from pain and simply accept this situation as due to their old age. Pain is kept secret in most cases (64%) in order not to be a burden for nursing staff. Around one third of residents had concerns regarding side effects or had recently received painkillers (19%). 18% of elderly persons did not have any reference care person and 16% were concerned about becoming addicted to medication (source: Schreier et al.: "Pain and assessment of pain in retirement and nursing homes. Results of the OSiA study" ("*Schmerz und Schmerzerfassung in Altenpflegeheimen. Ergebnisse der OSiA-Studie*"), in: *Der Schmerz*, April 2015, volume 29, issue 2, pp. 203-210).

The result of this study has also been confirmed by commission visits. Although a nursing diagnosis of "pain" had been made for a large number of very elderly persons, no further measures had been incorporated into nursing schedules. Regular questioning concerning the intensity of pain in situations of immobility and physical stress was not carried out either. Elderly persons at one facility in Salzburg reported to Commission 2 that they did not speak to staff about pain as the staff were already overworked. Residents at a facility in Carinthia described that, despite receiving medical treatment for pain, they still suffered from pain and could hardly move as a result. However, no additional interventions were carried out and no therapeutic support was provided.

Pain and dementia often arise in parallel

In many cases commissions reported that they observed reactions indicative of pain from persons with severe dementia who were no longer capable of expressing themselves, such as twisted faces or defensive movements against the care measures. None of this was apparent from the documentation. Also medical histories prior to admission in the homes have proved to be largely incomplete regarding this matter. In addition to information concerning previous illnesses, it would also be important to know whether painkillers have been taken, and if so, since when and which ones. Here it is above all relatives who are questioned, as they are often better informed regarding the consumption of painkillers than the attending physician, especially if over-the-counter medicines obtainable without medical consultation have been used. The likelihood of dementia and pain emerging in parallel is very high. Nevertheless, persons with dementia are given painkillers much less frequently, and with lower doses, than patients without dementia of the same age. This

is primarily due to the fact that they are less able to report pain verbally, and that pain may therefore be overlooked. However, it also results from the fact that the prejudice that persons with dementia feel much less pain is still widespread. However, it has been demonstrated in a number of studies that persons with dementia suffer from pain just as much as those without any cognitive impairment.

During the reporting year, the NPM also found that pain assessments are often not carried out, or are implemented inadequately. In many cases the commissions criticised the fact that patients in pain were not given the appropriate nursing diagnosis, that there were no pain protocols and that pain scales were not applied. Although established electronic documentation systems support the documentation of pain, this possibility is not used.

Inadequate treatment of pain

The NPM refers to the fact that pain must be incorporated into care planning, determined according to pain scales and evaluated on an ongoing basis. Pain protocols can present the evolution of pain and the effects of pain therapy. Pain scales can establish pain along with its intensity. Special scales and methods for determining pain exist for persons who are not capable of expressing themselves or who have dementia.

Commission visits also show the significance of good interdisciplinary cooperation for effective pain management. Nursing staff are often the key link between patients experiencing pain and doctors.

- ▶ *Pain in elderly persons must be treated. Pain must not be accepted as simply part of old age. In order to ensure this, pain assessments need to be carried out.*
- ▶ *Pain assessments must be a part of every nursing management plan.*

### 5.1.5 State's duty to protect also relates to non-approved facilities

The commissions have also carried out random controls of the precarious care arrangements in private homes. Private individuals reported that they only rented living space to elderly persons needing nursing care, but were not responsible for organising and implementing care. Residents included not only active individuals who appreciated that they no longer had to run their own home, but also persons with physical and/or intellectual impairments and significant nursing and support needs.

One home in Lower Austria was visited twice by Commission 6 during the reporting year. The regional government of Lower Austria informed the NPM that, due to the structural unsuitability, it was not possible to approve this facility as a nursing unit. The private operator was considering the termination

Precarious conditions in one home

of operations. However, after half a year the situation remained unchanged. Out of the eleven persons living there, five were entitled to care and nursing allowance level 5. They were no longer independently mobile and required nursing care during the night. Four residents with restricted mobility were entitled to care and nursing allowance level 4. The building was not barrier-free and nursing staff was not always in situ. During the second commission visit, one resident was in an extremely critical situation and constantly calling out for help. The NPM made it clear that it would not tacitly tolerate amateur nursing care. Four weeks after the second commission visit, the residents with the highest nursing care needs were transferred, administrative penalty proceedings were initiated against the operator and the official closure of the illegally operated nursing facility was ordered.

The situation was known to the authorities and the court

In Tyrol Commission 1 encountered ten elderly men who were mentally ill and/or disabled. They were living in an isolated two-storey residential situated on an extremely steep hillside, with the consent of their legal guardians. The double rooms were furnished in a Spartan manner and none of the men had a key to his own room or the building. The structure was not barrier-free. Mobile phones were prohibited in the facility, and contact with the outside was not encouraged. Confidential discussions between the residents and the Commission were ended by the owner of the house after a short period of time. In most cases the men had already been receiving care for a number of years (and in some cases for decades) from the owner of the house, now aged 70, her spouse and her daughter-in-law. However, none of these had completed training in nursing or any other qualification in dealing with psychiatric patients. There was no doubt for Commission 1 from the documents consulted that various authorities and the Guardianship Court were aware that former psychotropic patients were being housed here.

The NPM saw a need for action also in this case. Other accommodation options were sought out, in coordination with the legal guardians of the residents, the regional hospital and the competent district authority. Suitable places have already been found for some residents.

In Upper Austria, Commission 2 found three women and four men suffering from mental illness in an isolated residential building which could not be reached by public transport. Care was being provided to the residents aged between 56 and 79 by a woman aged 69 and her son, who jointly owned the house. The son distributed psychotropic drugs and provided support in relation to bodily care. However, neither he nor his mother, who cooked and carried out basic cleaning, had received any nursing training. The three women were forced to share a very small room. As there was not enough space for a wardrobe, this was contained in the men's room. There was only one shower for everybody, which could only be reached through the room of a male resident. Except for their clothing, nobody had any personal effects. The commission observed how the persons needing care were provided with food on plastic

plates through a kitchen hatch. There were no occupational opportunities to stay active and no possibility for co-determination and participation.

The NPM considers such remunerated forms of residence for persons with mental or neurological diseases to be inappropriate.

Independence, self-determination and individual responsibility were neither guaranteed nor promoted in the facilities that were criticised. The core principles of the UN CRPD were violated. Restrictions of freedom were imposed as a result of a lack of structural suitability, the provision of sedatives or measures that made it impossible to leave the buildings. The living conditions encountered in these officially not approved facilities breached the dignity and autonomy inherent within each individual, along with the freedom to make their own decisions. Above all, there is no promotion or full and effective participation and inclusion into society if older people do not have any opportunity to integrate into community life due to the isolated position of the facility.

Disregarding the  
UN CRPD

The NPM sees it as its responsibility to point out, that vulnerable persons must be protected against the risk of neglect and inadequate medical care by private individuals. Nobody may be denied the right to live out the final years of their life with dignity. Even the consent of legal guardians or relatives to precarious forms of support does not change the fact that, according to the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*), nursing activities against payment may only be performed by adequately trained staff.

Also the Human Rights Advisory Council indicates in its statement that public institutions and facilities charged with the protection of the physical and mental integrity of individuals are under a duty to guarantee reasonable (statutory and administrative) protection against potential abuse by private persons, if they are or should be aware of the care arrangements.

The state's duty to  
protect

As operators of facilities for persons with disabilities and those who are responsible for social welfare, the Laender must provide effective protection and care to persons with impairments against dangerous, inhuman or degrading treatment. This also entails that care arrangements that have not been officially approved must be controlled and that amateur nursing must be prohibited.

- ▶ ***In order to comply with their duty to protect persons with severe impairments under human rights law, supervisory authorities must investigate all evidence. They must prohibit treatment of persons with severe impairments in facilities that have not been officially approved.***

### 5.1.6 Regular raising of awareness in relation to measures that restrict freedom

Under the Federal Constitutional Law on the Protection of Personal Freedom and the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), measures that restrict freedom are only permitted if they are implemented in order to uphold human dignity and comply with all conditions prescribed by law. This includes in particular compliance with all formal requirements laid down by law, which is established in the specific individual case after the judicial review of measures that restrict freedom.

Therefore, the notifications to the representative(s) of the residents must clearly state not only the person who orders the measure, but the order must also be issued by a person with authority to do so. The measure ordered must be authorised and signed off by this person. Thus, mechanical restrictions of freedom in long-term care facilities may be ordered by qualified nursing staff, whilst medication-based measures must be ordered by a doctor. The notifications must also state the diagnosis, the specific type of danger to the individual or to other persons and the milder measures previously applied without success. If there are any formal errors, this will render the restriction of freedom unlawful and will constitute a breach of the right to protection of personal freedom guaranteed by constitutional law.

**Incorrect reports** The NPM has found a lack of awareness and sensitivity in this area. The list of ascertained shortcomings includes the absence of specific diagnoses and documentation of situations of danger, a lack of internal clarity regarding the persons authorised to impose such measures, the failure to record measures that restrict freedom in the nursing care documentation system, the absence of instructions from a doctor, deficient evaluation and thereafter the failure to update reports about measures that restrict freedom, confusing documentation which even the facility staff can no longer follow, a lack of documentation concerning proportionality and unreported measures that restrict freedom. For example, in one facility in Lower Austria, there were reports on measures that restrict freedom which were no longer being applied, whilst current measures were not being reported. Following a request by the NPM, the documentation system was standardised and reports on measures that restrict freedom were updated.

On various occasions the NPM recommended that staff be advised of the need to comply with the formal requirements of the Nursing and Residential Homes Residence Act when implementing measures that restrict freedom. This is not an insignificant requirement, but rather a basic prerequisite for the admissibility of restrictions of human rights.

**Staff do not always recognise measures that restrict freedom** In some retirement and nursing homes numerous alternative measures to measures that restrict freedom were apparent in the nursing documentation, coupled with a more sensitive approach and good cooperation with the

representatives of residents. In some cases, however, there has been a lack of structured approach and a more fundamental examination of potential measures that restrict freedom. They were not even recognised as such measures. These cases involved both electronic measures (body pressure alarm systems or video monitoring) as well as mechanical measures, such as inclined bed side guards, bed exit sensors, tightened wheelchair brakes and bed side guards used in low-profile beds.

The NPM welcomes the fact that the facilities that have been subject to criticism have subsequently introduced improvements to documentation, carried out staff training and also liaised with the representatives of the residents. The relevant suggestions made by NPM experts have as a rule been received as a positive impulse and implemented constructively.

Restrictions of freedom through psychotropic medication are a particularly sensitive issue. The problem that arises here is the need to distinguish carefully between medication that is recommended as part of treatment (with side effects) and aspects involving restrictions of freedom. Provided that clearly defined indications are complied with and subject to continuous supervision, psychotropic medication is at times indispensable in treating symptoms and re-establishing quality of life. However, there is a high risk that inappropriate medication which restricts freedom may be used in nursing homes.

Mediation-based  
measures that restrict  
freedom

Nursing staff (and not only nursing staff) often perceive any questioning of the administration of medication that may potentially have the effect of restricting freedom as a personal affront and claim that it is a necessary part of residents' treatment. However, upon closer examination it becomes apparent that it is more the structures in which nursing care is provided that lead to problems within everyday nursing and make the usage of measures that restrict freedom appear to be a reasonable solution. Although the prescription of medication falls exclusively under the competence of doctors, in practice the initiative is frequently taken by nursing care staff. As there is not enough time for individual attention, nursing staff see medication as an opportunity to eliminate troublesome "disturbances" in the operation of the home and to ensure that homes are run in an orderly fashion. It is thus clear that psychotropic medication may be recommended less following conscious consideration of restrictions of freedom and more as a way of getting by with limited resources. However, if the usage of a medication is instructed primarily "in order to suppress movement" (where the symptoms of mental illness include excessive movement), this will constitute a medication-based restriction of freedom and must be reported to the representative(s) of the residents. It is therefore necessary to assess whether a situation involves a restriction of freedom or merely medical treatment with reference to the direct reason for the administration of medication. If it is necessary to respond to a specific hazard, any additional therapeutic considerations that are made



will not change any aspect of the existence of medication-based restrictions of freedom.

The administration of sedatives such as sleeping pills, neuroleptics or other psychotropic medication must be regarded as a restriction of freedom not only if residents are thereby prevented from leaving the facility, but also if they are ordered with the aim of establishing peace and quiet in the ward or home. However, the short-term effect of this medication is often considered as the goal of treatment without any reflection – and without sufficient awareness of the detrimental consequences for the individuals involved. Especially where multiple psychotropic medication is used – or where psychotropic medication is administered alongside other medication – without pharmacological expertise the interactions are not only difficult to estimate, but also difficult to control.

A medication-based measure that restricts freedom is also in place in particular if sleeping patterns are not considered prior to arrival in the home and sleep is induced pharmacologically at a certain time of day. The same applies if the duration of sleep is extended by medication without any medical necessity beyond the individual requirement. Precisely in view of the increasing numbers of persons with dementia in long-term nursing homes, it is desirable for the well-being of such persons to deploy larger numbers of staff in a targeted manner during the evening and to ensure a more fluid transition for each individual from daytime to night-time.

The Nursing and Residential Homes Residence Act requires that all nursing options and non-pharmacological measures be exhausted before psychotropic medication is administered. A way of improving the current situation is to ensure comprehensive and ongoing support from specialist doctors, because general practitioners cannot be automatically assumed to have specialist gerontopsychiatric knowledge concerning the effects and side effects of psychotropic medication and those that have effects on the central nervous system.

High need for protection when prescribing psychotropic medication

The experts from the NPM have observed also in this reporting year that there is often a lack of awareness in retirement and nursing homes that sedatives could potentially represent measures that restrict freedom. In many cases, the particular need for protection of residents is overlooked. For instance, nursing staff may regard Psychopax drops as particularly suitable medication for individual restless or disruptive residents. However, there is only a moderate awareness of the long half-life and disruptive side effects of this medication, in particular for the very elderly. Due to the hangover effect, the risk of falling on the following day can be significantly higher. Although there are a variety of other factors that lead to falls, which have been thoroughly investigated, such medication should only be prescribed after very careful consideration, taking account of the complications arising from side effects.



However, there are still long-term nursing facilities that - as a matter of principle - do not notify the representatives of the residents of medication-based measures that restrict freedom. Already during an initial discussion visiting one retirement and nursing home in Vienna, the medical Head of the facility explained to Commission 5 that every use of psychotropic medication was medically recommended and did therefore not constitute a potential measure that restrict freedom. The fact that even medical treatment that is carried out according to proper professional standards may constitute a measure that restricts freedom was completely disregarded, in spite of the requirements laid down by the Nursing and Residential Homes Residence Act. A specific objection in this facility was that medication was administered to residents in “tense situations”; if consent was withheld they were flavoured and mixed in with Nutella. Commissions 1 and 2 in Tyrol and Salzburg and Commission 3 in Carinthia also encountered facilities in which, despite the higher number of persons needing nursing care with suspected psychiatric diagnoses, not one single report on measures that restrict freedom had been made.

Medical treatment according to proper professional standards does not exclude measures that restrict freedom

One retirement and nursing home in Tyrol presented the following picture: after consulting all 74 medication sheets, it became apparent that benzodiazepines had been prescribed in 34 cases, frequently along with anti-psychotic medication. Regarding the suitability of these prescriptions, Commission 1 was only able to consult the diagnosis sheets annexed to the lists of medication, as there was no comprehensive psychiatric clinical description of the condition. The diagnosis most frequently indicated for a medication containing the active ingredient benzodiazepine was “dementia”. However, that is entirely insufficient for the purpose of assessing any related measure that restricts freedom and the then required notification duties.

When assessing the potential restrictions of freedom resulting from psychotropic medication, the NPM stresses the importance that a doctor defines an explicit symptom that is to be treated using sedatives. It is necessary to provide a clear description of the concrete goals of therapy, to reach agreement on success criteria and to carry out regular assessments of the effects of the substances administered. Only if it is evident that the attenuation or restriction of movement is an “unavoidable side effect” of treatment of an underlying mental illness, such as depression, anxiety or productive psychosis, the representatives of the residents do not have to be notified. However, after the symptoms have abated, it must be considered whether it is necessary to continue with the medication. Psychotropic medication should only be administered for as long as it is absolutely necessary. In order to prevent the administration of medication that is potentially unsuitable, regular attempts should be made to reduce doses and wean patients off the medication. It is a fact that frequently no attempts are made to reduce doses and wean patients off medication. It often occurs in practice that once a psychotropic medication has been prescribed, it is rarely removed again.

The experts from the commissions could not exclude the existence of medication-based measures that restrict freedom also in relation to PRN medication. The term “restless” as the most frequently used description of the requirement is too imprecise. In such cases, nursing staff are provided with a broad range of discretion that is not permitted.

Although the Nursing and Residential Homes Residence Act has been applicable since 2005, in the view of the NPM medication-based treatments are not sufficiently queried with regard to their effect of restricting freedom. Considerable tensions remain between the protection of personal freedom provided for by (constitutional) law and the reality of insufficient resources.

- ▶ *The operators of homes must raise staff awareness in order to ensure the reasonable usage of mechanical, electronic and medication-based restrictions of freedom. This requires appropriate training and cooperation with the representatives of the residents.*
- ▶ *The aim of medication-based treatment must in all cases be to achieve or increase well-being. Treatment with psychotropic medication may only be started if somatic, psycho-social and environmental causes of “problematic” behaviour can be excluded and non-medication-based nursing measures have been unsuccessful. Regular visits by specialist doctors are desirable.*
- ▶ *In order to assess potential effects of psychotropic medication that may restrict freedom, it is necessary not only to follow medical recommendations precisely, but also to document explicitly the goal of the therapy or the target symptom being treated.*
- ▶ *Regular attempts must be made to reduce doses and wean patients off the medication. The effects of sedatives must be evaluated regularly with reference to the target symptom.*

## 5.2 Hospitals and psychiatric institutions and facilities

### 5.2.1 Introduction

In the year under review, the NPM commissions visited 41 medical facilities, including 31 psychiatric and 10 somatic clinics or wards.

In the course of these visits, the commissions observed that the intercultural care of patients is becoming increasingly difficult throughout the country. This is partly attributable to the movement of refugees among other things. Language barriers in particular cause communication problems, which can have a negative effect on the care situation and the medical treatment of the patients. For this reason, video interpreting systems have been installed in some medical facilities in order to professionalise the basic framework for interviews and facilitate translation in several languages. The deployment of interpreters is of key importance especially in hospitals where addressing intercultural differences requires a sensitive approach. Special training is required for this. The NPM recommends the continuous expansion of video interpreting services in hospitals.

Intercultural treatment becomes increasingly important

The principle of patient autonomy, i.e. that treatment may only be carried out after the consent of the informed patient, also applies to psychiatry. Restrictions to the freedom of movement through involuntary placement in a psychiatric hospital, restraint and/or isolation and medication-based treatment without or against the will of the patient are thus only allowed in certain conditions. These restrictions must be commensurate and may only be applied if persons not in full possession of their faculties place their own health and life or that of other people at real and considerable risk, and this cannot be prevented through other measures. The demographic development in Austria indicates that the incidence of gerontopsychiatric illness is set to increase. For this reason alone, improvements in the research on coercive measures, in particular from the patient perspective, are necessary, as are the development and testing of measures to reduce coercive treatment. The NPM considers clear changes in prioritisation in the health care system such as better alignment of the inpatient and outpatient areas, the promotion of local psychiatric care structures, health care research and, above all, the qualitatively and quantitatively suitable availability of personnel in psychiatric institutions to be indispensable. It is a fact that psychiatric care is insufficient in some regions in Austria.

Restraint as a last resort

Patients often behave aggressively and violently during inpatient psychiatric treatment. This happens most frequently in acute and admission wards during the first few days of involuntary hospital stays. Avoidance of coercive measures in all forms has to be top priority in treatment procedures. This is followed by carrying out coercive measures as gently as possible, thus reducing invasive and traumatic effects to a minimum when they prove to be unavoidable. The “therapeutic milieu” is of utmost importance for good clinical practice when dealing with coercive measures and treatment. This includes, in particular, the

„Therapeutic milieu” and de-escalation

number and training of the personnel as well as their disposition, attitudes and response strategy when dealing with violence and aggression. Unfavourable environmental factors caused by hyper-stimulation, noise, little private sphere and possibility to retreat, rigid ward regulations, constantly changing contact persons and humiliation brought about by a manner perceived as authoritarian, too expectant or indifferent can provoke pressure, fear, tension or disorientation in highly stressed patients. This encourages aggressive outbursts. Regular analyses of risk behaviour and risk situations, dedicated and standardised verbal and non-verbal de-escalation techniques through the provision of space, time, interviews, opportunities to move, physical relaxation, etc. create possibilities for reducing aggression and are measures which have been proven in practice.

Central recording of measures that restrict freedom

Only analysis of the context in which coercive measures are set makes it possible to identify the opportunities and limits of reducing violence. It is not currently possible to compare the involuntary hospitalisation or forced intervention on a national level due to a lack of the relevant data and research. The NPM is of the opinion that the introduction of benchmarking for coercive measures in psychiatric clinics would improve transparency considerably in this area and would be of key importance in both quality management in hospitals and in terms of safeguarding human dignity and the legal status of the patients. The NPM has thus, in line with the permanent recommendations of the CPT, repeatedly pointed out that an anonymised central register for recording measures that restrict freedom is the condition for an effective and systematic prevention strategy aimed at reducing such measures. Only in this way can routines in dealing with measures that restrict freedom be measurable and comparable from clinic to clinic.

The commissions determined again in the reporting year 2016 that central registers were still not extensively in place in the medical facilities. In view of this standstill and in spite of the efforts made to date, the NPM considers that it is necessary to compel the hospitals by legislative changes to set up relevant registers within a reasonable period of time. The NPM will thus again approach the Federal Ministry of Health and Women's Affairs with this topic and point out the necessity for a change in the law.

Discussion about coercive measures with patients

A further fundamental aspect in the successful treatment of mentally ill patients is the establishing of a stable therapeutic relationship. This requires actively interacting with the patient including informing and involving them in the decision making processes. This increases the patients' willingness to receive treatment, fosters their personal responsibility and social skills and makes post-hospital re-socialisation easier. From the professional and human rights perspective, more attention should be paid to the processing and debriefing of experiences with severe measures that restrict freedom (e.g. restraints, single room restrictions, medication) in the team, but above all with directly affected patients. This should be established as a standard in all Austrian clinics.

Debriefing is not currently widespread and there is no evidence in the patient history to indicate that this is performed. After many interviews with psychiatry patients who confided in commissions and deplored the unwillingness to speak after traumatising experiences, the NPM is convinced that the necessity to explain, justify and support coercive measures as well as the confrontation with such experiences are vital. Conducting interviews like these on equal footing and dealing with the experiences of mentally ill patients in a respectful manner not only reinforces the self-esteem of the patients and their compliance in availing of psychiatric care services, it also supports questioning internal organisational processes and methods.

The NPM dealt with the problem of sexual harassment of female patients by personnel in Annual Report 2015 (see NPM Report 2015, p. 49 et seq.). At the suggestion of the NPM, the Human Rights Advisory Council has deployed a working group led by a representative of the Federal Ministry of Health and Women's Affairs to address this topic.

Sexual harassment by  
hospital personnel

The Human Rights Advisory Council suggests that patients should receive information material about contact persons (ombudsman, victim support groups, patient advocates, etc.) during admission to a medical facility. In the event of incidents inside the medical facility, the patient advocates pursuant to the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) or the patient advocates of the *Laender* should be involved by the victim support groups in order to guarantee an objective investigation of incidents. Personnel should be sensitised to the problem in everyday work by distributing guidelines and organising events (e.g. workshops). Furthermore, the existing supervision offer should be used and a regular exchange of views be made available, as it is important not to treat the topic of "sexuality" as off-limits in health care professions.

A focal measure is the training and further education of those working in health care professions to increase awareness in connection with subjects of culture, tradition, closeness and distance. The training content should cover the right balance between closeness and distance as well as the borders in the relationship to patients. These issues often become important when dealing with psychiatric patients. It is also necessary to define the term "sexual act" in training and further education programmes and, in so doing, to point out the boundary between criminal and non-criminal infringements.

On the legislative level, a provision based on Section 4 of the Regulation on Education and Training for Medical Practitioners (*Ärzteausbildungsordnung*) 2015 should be included in the training regulations for all health care professions. This provision stipulates that, within the training framework, a basic attitude and approach is imparted that respects the life, dignity and basic rights of every person regardless of their nationality, ethnic group, religion, skin colour, age, disability, gender, sexual orientation, language, political views and social group. In particular, there must be sensitisation for

the special needs of those patients affected by human trafficking or psychic or physical violence, above all children, women or persons with disabilities.

Following the recommendation of the NPM, the Federal Ministry of Health and Women's Affairs declared the use of psychiatric intensive beds (net beds) and other "cage-like beds" inadmissible by way of a directive in July 2014. Owners and operators of hospitals and nursing homes were given a one-year transition period until 1 July 2015, which was observed by the responsible legal entities (see NPM Report 2014 and NPM Report 2015, p. 43 et seq. and p. 46 et seq.).

Impact of the abolition of net beds evaluated

The psychiatric ward No. 3 of the Otto Wagner Hospital has not used net beds since October 2014 as part of a pilot project and, for a period of over six months, evaluated all admissions for which a restricting measure was prescribed in the admission situation. Initial results indicate that the abolition of the psychiatric intensive beds causes a relative increase in the use of four-point restraints in the admission ward. However, the time that patients are restrained is substantially shorter than in the previously used net beds. There is also a falling trend in the duration of the restriction in the four-point restraint. The low number of cases might prevent this first study on evaluating the abolition of psychiatric intensive beds in Austria from drawing any general conclusions, but it does provide an initial insight into developments that go hand in hand with the abolition of net beds.

These results are in line with the observations of Commission 4. However, the Commission also indicates that the frequency of four-point restraints could also be reduced by increasing personnel resources to enable 1:1 care for preventive avoidance of measures that restrict freedom. Encouragingly, most of the doctors interviewed by the Commission but also many of the nursing staff now agree to the abolition of net beds and are in favour of dispensing with this security equipment.

- ▶ *Video interpreting services should be expanded in hospitals in order to accommodate the intercultural care of patients.*
- ▶ *The setting up of central registers to record measures that restrict freedom in psychiatric institutions and facilities should be prescribed by law.*
- ▶ *A stronger sensitisation in relation to victims of human trafficking or psychic or physical violence (children, women or persons with disabilities) must be anchored in the training of all health care professions. This must also be made legally binding.*
- ▶ *Sexual harassment must be combatted with further education and training of personnel on the topics of culture, tradition, closeness and distance. Patients should receive information material on possible contacts during admission to hospital. Easily accessible consultation services should be extended.*
- ▶ *The debriefing of experiences with severe measures that restrict freedom in the team and, above all, with the affected patients must be established as a standard in all psychiatric clinics.*



## 5.2.2 Inadequate child and adolescent psychiatric care

The Children and Adolescent Health Report published by the Federal Ministry of Health and Women's Affairs in January 2016 establishes that there are structural deficits in the care provided both in the outpatient and inpatient areas of child and adolescent psychiatry – based on information from around 165,000 children and adolescents requiring treatment in Austria.

Considerable under-achievement of planned objectives

The Austrian Health Care Structure Plan (*Österreichischer Strukturplan Gesundheit*) 2012 stipulates a benchmark of 0.08 to 0.13 beds per 1,000 inhabitants in the full inpatient child and adolescent psychiatry as well as a quantitative benchmark for so called “outpatient child and adolescent psychiatry units” (one outpatient child and adolescent unit per 250,000 inhabitants). Applied to the current population level, this indicates a need of 670 to 1,089 treatment beds based on the bed benchmark for the child and adolescent psychiatry. There are currently about 370. Furthermore, all of the federal states – with the exception of Carinthia – are far from fulfilling the planned benchmark by 2020.

The resulting care deficits were examined by the NPM in the year under review using the *Laender* of Styria and Vienna as an example. They were addressed by the NPM in the *Laender* reports to the Diets of Vienna and Styria.

It is evident from the Regional Health Care Structure Plan for Styria (*Regionaler Strukturplan Gesundheit Stmk 2011*) that even the goals for the year 2020 with 74 beds in child and adolescent psychiatry or day-care places are far below the goals of the Austrian Health Care Structure Plan 2012 as far as the total number of inhabitants in Styria (2016: 1.231,865) is concerned.

Care deficits in Styria

There were a mere 33 beds in full inpatient child and adolescent psychiatry and 14 beds in child and adolescent psychiatry day-care places available in Styria in 2016. There were additional 12 beds each in the University Clinic of Graz Regional Hospital and in Hochsteiermark/Leoben Regional Hospital for the treatment of psychosomatic illnesses. Since further treatment in case of an occurring acute severe psychiatric illness and a resultant involuntary placement under measures that restrict freedom is not possible in these psychosomatic wards, the affected minor patients have to be moved from Leoben to Graz Süd-West/Standort Süd Regional Hospital in acute crises. Styria holds last place in Austria with the current bed index of 0.04, which was also confirmed by the Austrian Society for Child and Adolescent Psychiatry (*Österreichische Gesellschaft für Kinder- und Jugendpsychiatrie*) in a broadcast in April 2016.

This inadequate care situation causes extreme pressure in the child and adolescent psychiatry ward in Graz Süd-West/Standort Süd Regional Hospital. The requests for beds and transfers from all over the *Land* result in a lack of beds on the one hand, and in waiting time and shortened stays with frequent overcrowding of 110 to 115% on the other. The treatment of patients



among others suffers from the permanent high stress levels of the personnel. Adolescents are often placed in adult wards.

This grossly inadequate care is exacerbated by the absence of contracted medical specialists for child and adolescent psychiatry in Styria. There is only an outpatient range of services for minors without deductible in the day-care clinics in Graz Süd-West/Standort Süd Regional Hospital and in Hochsteiermark/Leoben Regional Hospital. Massive adverse effects can thus arise for children, because they cannot receive competent professional treatment quickly and are only admitted to inpatient care when a severe mental illness occurs. Prevention, early detection and treatment of children and adolescents in particular is of key importance in order to avoid mental illnesses from further deteriorating or becoming chronic.

The use of psychotropic medication is often used in child and adolescent psychiatry, although many of these medications were not approved for minors meaning that there is no standardised product-related risk information from the manufacturers. The principle “Children are not small adults, and adolescents are not big children” applies without restrictions. Therefore, the peculiarities of the child and adolescent organism must be considered both for understanding psycho-pathological symptoms typical for the relevant age and level of development, and for the use of psychotropic medication. There were thus increased requirements for doctors in the field of the “off-label use“ of psychotropic medication both in terms of acquiring information prior to medication-based therapies and in terms of informing the patients. In some child and adolescent psychiatry wards, information about possible risks and side effects, therapeutic alternatives and risks related to the dosage form is provided on off-label forms in individual cases. The patient is also informed that the medication is not approved for the relevant indication and the written consent of the treated person or their legal guardian is sought. According to the observations made by the commissions, the lack of pertinent professional child and adolescent psychiatry expertise in other wards means that there are often no off-label forms, and psychotropic medication that is not approved for minors is also prescribed for off-label use without special professional explanation or documentation or without the express consent of the patient or legal guardian.

An increase in bed capacity as quickly as possible is thus in the interest of the children and adolescents requiring treatment. The outpatient and day-care clinics should be strengthened by way of regionalisation.

The efforts of the NPM have at least brought about the commitment to set up a chair of child and adolescent psychiatry at the University Clinic Graz for the first time. However, it is still not clear how much resources will be made available to the allocated clinical ward.

Furthermore, the Styrian Hospital Limited Liability Company (*Krankenanstaltengesellschaft* or *KAGES*) is considering centralising child and adolescent psychiatric care, primarily in day-care clinics or the external area within the framework of a project. An increase – even if a minor one – in inpatient beds is also planned centrally in Graz Süd-West/Standort Süd Regional Hospital.

In the view of the NPM, medical specialists for child and adolescent psychiatry, who are contracted by the public health insurance, should be integrated in this care structure to facilitate local care and promote the de-stigmatisation of the psychiatric treatment of children and adolescents in the interest of the patients. In this respect, decentralised inpatient beds should be made available that could be set up in Hochsteiermark/Leoben Regional Hospital in addition to the already existing day-clinic places for example. This would secure full regional coverage and avoid transfers to inpatient accommodation in Graz Süd-West/Standort Süd Regional Hospital.

Taking the standards from the Austrian Health Care Structure Plan 2012 into account, the capacity required for Vienna would be 128 to 208 inpatient beds in the field of child and adolescent psychiatry.

Insufficient capacity also in Vienna

However, even the capacity of 106 beds set down in the Regional Health Care Structure Plan is far from being achieved. The child and adolescent psychiatry in the Neurological Rehabilitation Centre Rosenhügel and Vienna General Hospital had a mere 56 beds available in 2016.

For this reason, the currently planned capacity extension of the child and adolescent psychiatry ward in the Neurological Centre Rosenhügel should be implemented quickly, because additional care services can only be expected in the Vienna North Hospital in 2018 at the earliest.

The low care density resulted in 191 children and adolescents having to be admitted to adult inpatient psychiatry in Vienna in 2015. There is an upward trend in these admissions. On average, two minors between the ages of 12 and 17 had thus to be treated in the Viennese adult psychiatry per day.

As the observations of the commissions indicate, the treatment of children and adolescents in the area of adult psychiatry is however a general problem. This is because the wards for child and adolescent psychiatry cannot deal with acute cases due to a lack of adequate bed capacity. Being confronted with mentally ill adults is extremely stressful for minors, because their needs cannot be adequately catered to in this environment. There is no suitable care for each age group, no pedagogical service and the children or adolescents have not contact to peers of the same age in adult psychiatry.

Care in adult psychiatry

The separation rule for adolescents in medical facilities is thus emphasised in jurisdiction. The CPT also stressed in its last country report to the Federal Government of Austria in autumn 2014 that placing adolescent psychiatric

patients together with adults in psychiatric institutions must be avoided, on the basis of preventive human rights and professional standards.

The urgency of this care in a dedicated child and adolescent psychiatry ward can also be derived from the United Nations Convention on the Rights of the Child, the Federal Constitutional Act on the Rights of Children (*BVG Kinderrechte*) and the Patient Charter, because adult psychiatry has neither the necessary resources nor the specially trained personnel for the care of mentally ill minors.

Under this aspect, structural improvements in the field of child and adolescent psychiatry are urgently required as well.

Increase in the number of training places urgently required

Efforts in the area of training for medical experts on child and adolescent psychiatry must be clearly intensified in order to meet the rising demand as part of the necessary expansion of the range of treatments in the outpatient and inpatient area. The training regulations in relation to child and adolescent psychiatry as a subject affected by scarcity of teaching staff were recently further relaxed in Section 37 of the Regulation on Education and Training for Medical Practitioners 2015. However, the goal of the regulation governing such subjects can only be achieved if all of the training authorisations and places are actually filled and financed.

- ▶ *The bed capacities in child and adolescent psychiatry must be increased quickly in order to facilitate adequate care for children and adolescents.*
- ▶ *Strengthening of the outpatient and day-care clinic structures as well as the creation of positions for medical specialists contracted by the public health insurance are urgently required.*
- ▶ *The necessary increase in the services offered is to be supported by an increase and prompt filling of open training places in the area of child and adolescent psychiatry.*

### 5.2.3 Questionable use of security companies

Care measures by security companies impermissible

As early as April 2014 the Human Rights Advisory Council found that only personnel with medical and nursing training can be involved in care measures. This is derived from the laws on the health care professions and, in particular, from every patient's right to respectful and considerate treatment and care.

In a fundamental decision made in September 2014, the Supreme Court confirmed this opinion and stated that holding a patient down prior to a four-point restraint forms part of psychiatric health care and nursing, and can thus only be performed by the care staff. Security companies are thus – even when

requested by the attending care staff – neither authorised nor entitled to assist in restraining patients.

The Supreme Court also recognised in a further decision that physical activities, such as holding on to patients to prevent them from leaving the ward, may not be performed by security personnel.

The involvement and participation of security services in care activities is therefore impermissible and must be avoided in all cases. The term “care activity” must be broadly interpreted, which is evident from the fact that pursuant to the jurisdiction of the Supreme Court, holding on to a patient is legally impermissible.

The commissions observed, however, that security services are deployed for the purposes of care.

The observations of Commission 5 show that in hospitals in Lower Austria employees from the house fire brigade are called in regularly to help in the event of an escalating situation, for example, if it is possible that patients might harm themselves or others, or in dangerous situations for patients and staff. In the event of a de-escalation alarm, an alarm group is informed, to which members of the fire brigade service belong.

House fire brigade as security service

The care personnel described the deployment of the house fire brigade as security to Commission 5 by using the words “assists” or “only holds limbs, but does not fasten the belts”. These statements suggest that house fire brigade staff can also be involved in care-related activities for which there is no legal basis.

A job description for the house fire brigade showed that “help in restraining patients as a member of the de-escalation team when the de-escalation alarm is triggered” is expressly mentioned as a special challenge. The house fire brigade in Mistelbach Regional Hospital carry out regular patrols throughout the building on night shift.

In the University Clinic for Psychiatry at Innsbruck Regional Hospital, the security staff are deployed if there is a risk of absconding. The security company is regularly charged with the transfer of patients from the outpatient area to the locked area. A transfer from the locked area of the Innsbruck Psychiatry Department to the locked area of Kufstein Hospital was also carried out in the presence of an employee of the security company. An eleven-year-old patient was accompanied by an employee of the security company from admission to the locked ward even though his mother was present.

Far-reaching tasks performed by security in Innsbruck Regional Hospital

In this context, the Innsbruck Regional Court decided in two cases (use of an ankle bracelet and returning an escaped patient) that the involvement of security company staff was not permissible. In one case, a restrained patient

was held by security staff during a transfer when he tried to free himself from the restraint.

The reality experienced in medical facilities in Lower Austria and in Innsbruck Regional Hospital inevitably leads to unqualified personnel being involved in the care process. That they also help to restrain patients albeit only as preparatory measures is *de facto* unavoidable. The NPM strongly recommends that the activities of security companies in medical facilities are clearly defined in guidelines taking the relevant legal situation into account. Impermissible activities should be unambiguously explained.

The deployment of security companies in psychiatric wards should be critically examined as a matter of principle. Some clinics such as Rankweil Regional Hospital see neither the demand nor the necessity for a security company.

The deployment of security companies can also be reduced by installing specially trained internal crisis teams.

- ▶ *The deployment of a security company for the purposes of care must be avoided in general.*
- ▶ *The area of activity of the staff of security companies in medical facilities must be clearly regulated in guidelines. Impermissible activities must be clearly defined.*
- ▶ *Alternatives to the deployment of a security company that enable dispensing with their deployment should be sought.*

#### **5.2.4 Immediate reporting of measures that restrict freedom and violation of personal rights**

Measures that restrict freedom must be specially prescribed by the attending physician, documented in the patient history including a specific reason and reported immediately. The involuntary placing of patients must also be reported immediately to the patient advocacy or competent court.

Notifications are also required on public holidays and weekends

The Supreme Court stipulated that these notifications must be submitted immediately without exception regardless of whether possible delays in the procedure can be expected due to public holidays for example.

It is thus of no significance whether the relevant recipient of the notification (court or patient advocacy) becomes immediately aware of the report. Rather, formal reasons dictate that the notifications must be submitted in a manner that the timely submission of the notification is traceable. However, putting the notification in a post-box does not suffice here. Confirmation of the notification (e.g. fax confirmation) is always required.

Commission 1 observed that practice in Innsbruck Regional Hospital and in Rankweil Regional Hospital does not comply with this legal provision. For example, notifications were not submitted at the weekend but on the next workday.

The owners or operators of the medical facilities contacted by the NPM have since stated that they are willing to guarantee the compulsory immediate reporting of measures that restrict freedom as stipulated in the Hospitalisation of Mentally Ill Persons Act by implementing organisational measures.

On a visit to the University Clinic for Child and Adolescent Psychiatry in Vienna, Commission 4 observed that in September and October 2016 the private clothes of more than 60% of the resident patients were taken away for two to ten days. The minors were only allowed to wear thin cotton hospital pyjamas with buttons on the front during this phase. Only underpants were allowed whereas it was forbidden to wear a t-shirt or a bra, to the frustration of the girls affected. The Commission saw this as an impermissible restriction of personal rights and violation of the United Nations Convention on the Rights of the Child. Pursuant to Section 34a of the Hospitalisation of Mentally Ill Persons Act, the right to wear private clothes may only be restricted if this is necessary to avert danger according to Section 3 (1) or to protect the rights of other persons in the psychiatric ward, and if it is proportionate to the purpose of the measure. A corresponding notification obligation is not expressly required in Section 34a of the Hospitalisation Act. However, expert opinion says that this can be derived directly from the general protection mandate stipulated in Section 1 (1) of the Hospitalisation Act. If this were not the case, the patient advocacy would be unable to exercise their right to file proceedings for the protection of privacy.

- ▶ *Measures that restrict freedom must be submitted and confirmed immediately, including on public holidays and weekends.*
- ▶ *The ban on wearing private clothes is a violation of personal rights, and therefore the patients' representatives must be informed immediately.*

### 5.2.5 Application of measures that restrict freedom

Measures that restrict freedom are only permissible if they are applied to avert danger, that is, to avert a serious or considerable danger to the life or health of the patient or others, if they support medical treatment or care, and if they are not inappropriate. A measure that restricts freedom can thus not be justified with organisational, personal or business-related reasons.

Measures that restrict freedom as a last resort

The CPT standards stipulate that when restraining a patient, attention should be made to ensure that they do not feel humiliated and that this feeling should not be exacerbated by the way in which the restraint is applied.

Compliance with these human rights standards is still not always guaranteed in psychiatric medical facilities and wards.

Restraints in beds in  
hallways

In a psychiatric ward of Hall Regional Hospital, for example, Commission 1 observed that restraints are not carried out in a suitable environment but in the hallways of the locked area of the psychiatric ward. Restraining patients in beds in hallways is not acceptable on human rights grounds, since the privacy and personal space of those affected cannot be safeguarded.

Other patients can be frightened and traumatised by witnessing coercive measures.

One-point restraint as  
life-threatening  
measure

Furthermore, Commission 1 strongly emphasised that the exclusive use of an abdominal restraint (one-point restraint) must be rejected due to the risk of strangulation. The restraint manufacturer also points this out and recommends the application of a five-point restraint in general.

As operators of Hall Regional Hospital, the Tyrol clinics reacted to this criticism by admitting that the relevant psychiatric ward no longer complies with modern requirements in terms of room partitioning and functionality; the last time the ward was renovated was about 20 years ago. This is why the sanitary fittings in the ward are no longer up-to-date.

Within the framework of a structural redesign a new concept should thus be drawn up to avoid caring for patients in beds in hallways. Furthermore, it was agreed to ban measures by means of abdominal restraint and to forbid the same in the ward in general. The measures that restrict freedom which have been carried out should also be statistically analysed and evaluated in order to improve the care situation in particular.

- ▶ ***Measures that restrict freedom must be carried out in a suitable environment and may, on no account, be carried out in the hallway or where they can be seen by other patients.***
- ▶ ***One-point restraints must be stopped due to the risk of strangulation.***



### 5.2.6 Unacceptable transfer of patients requiring placement in a psychiatric clinic

Local psychiatric care requires decentralised facilities and services in close proximity to where patients live. They must assume responsibility for the care in a region and guarantee that the entire range of psychiatric services is available within the vicinity. The range of care must therefore cover crisis intervention and acute treatment, integrative treatment and care as well as long-term nursing and care.

Normative requirements of treatment that safeguards human dignity cannot be implemented if plans are not in place and the adequate financing of psychiatric care is not guaranteed. In Carinthia, the availability of resources that are incommensurate with demand put psychiatric patients under stress. But the attending doctors and care staff in the regional hospitals in Villach and Klagenfurt are also affected. The *Land* Carinthia currently has neither a psychiatry plan nor a psychiatry coordinator. Planned standards from earlier periods have never been implemented.

Based on observations made by Commission 3, the NPM already highlighted grave deficits in psychiatric care in Carinthia in the Annual Report 2015 (see NPM Report 2015, p. 56 et seq.). With 53 beds, Villach Regional Hospital does not have the resources necessary to guarantee the treatment of patients in the Upper Carinthian districts. In addition, the room conditions are inadequate: there are six-bed rooms in Ward D and four-bed rooms in Ward E. This makes it impossible to shield seriously ill patients from sources of irritation and leaves little scope for the private sphere. In spite of empty rooms reserved for patients with supplementary hospital insurance, restraints – although impermissible on human rights grounds – have to be carried out in beds in hallways.

Insufficient capacity in Villach Regional Hospital

These inadequate conditions mean that patients hospitalised under the Hospitalisation of Mentally Ill Persons Act are examined in Villach Regional Hospital but then have to be transferred to the psychiatric ward of Klagenfurt Regional Hospital despite acutely required treatment. As Commission 3 ascertained, a total of 151 out of 231 patients hospitalised under the Hospitalisation Act were transferred to the Klagenfurt Regional Hospital in 2015. These transfers are extremely stressful for those affected. It was not denied to Commission 3 that patients who might harm themselves or others are escorted in handcuffs by the police. Transfers to other hospitals are often carried out without being accompanied by doctors or psychiatrically trained care personnel.

In response to the criticism on the part of the NPM, the Land Carinthia announced in writing that a provisional solution involving an extended psychiatric ward pursuant to the Hospitalisation Act, i.e. with 16 beds, will be implemented in Villach Regional Hospital by 2018. This will be realised prior to the already approved comprehensive refurbishment of Villach Regional

Hospital and Klagenfurt Regional Hospital. The implementation of this project seemed to be all the more urgent to the NPM, as completion of the new psychiatry construction and reconstruction in Villach and Klagenfurt is expected in 2020/2021 at the earliest.

However, the Operating Company of the Carinthian Hospitals, *KABEG (Krankenanstalten-Betriebsgesellschaft)* questioned the setting up of an additional area pursuant to the Hospitalisation Act in Villach Regional Hospital for financial reasons at the end of November 2016. The NPM will therefore strongly emphasise to the Land Carinthia that the realisation of an extended ward in Villach Regional Hospital is urgently required to improve the care situation for patients, which is unacceptable from a human rights perspective.

Styria - transfers as a result of centralising psychiatry

There are similar problems with transferring patients in Styria, because inpatient psychiatry is centralised in Graz. This is critical from a human rights perspective, insofar as it greatly limits the opportunity for families to visit patients, which is very stressful for mentally ill persons in particular.

The Psychiatry Report Styria 2009 states that local care should be guaranteed for patients through the decentralisation of inpatient psychiatry. The regionalisation of the acute inpatient area should go hand in hand with the construction and extending of outpatient and day-care clinics. This will facilitate offering cross-sector, coordinated, outpatient care and reducing inpatient hospital stays – insofar as this is reasonable and possible.

To date, however, psychiatric outpatient facilities have only been created in the hospitals in Hartberg and Bruck an der Mur. There are no inpatient services outside Graz even though systematised beds are planned for the area of Hochsteiermark Regional Hospital in the Regional Health Care Structure Plan for Styria.

The problem of currently centralised inpatient psychiatric care in Styria can be illustrated using the collaboration between the Bad Aussee Clinic with the hospitals in Graz as an example:

Since acute psychiatric treatment is not permitted in the Bad Aussee Clinic, patients have currently to be transferred via patient transport to Graz Süd-West/Standort Süd Regional Hospital without qualified personnel. The journey of some two hours alone makes these patient transport trips potentially precarious. They should be avoided in the interest of the patients. Transport is thus often carried out at night accompanied by the police.

The NPM has emphasised to the *Land* Styria that, in the interest of the patients, decentralisation and regionalisation should be pushed in the planned redesign of the psychiatric services.

- ▶ *Psychiatric care services must be aligned to the respective needs with as few restrictions for the individual as possible. Sufficient services meeting these criteria must be made available and further developed.*
- ▶ *Transfers of patients requiring hospital placement must be avoided where possible and must be accompanied by psychiatrically trained personnel.*

### 5.2.7 Involuntary placement without doctor's certificate as the norm?

The law on involuntary placement distinguishes two types of forced hospitalisation: the regular case with doctor's certificate and the emergency case, i.e. in the event of imminent danger and without a doctor's certificate.

Public safety officers are thus authorised and obliged in general to bring a person, who they consider requires involuntary placement for certain reasons, to a doctor, or to call a doctor. If the doctor certifies that the conditions for involuntary placement are given, the police must bring the person affected to a psychiatric ward or organise the same.

Only in the event of imminent danger can the police bring the person affected to a psychiatric ward without a medical examination and doctor's certificate. In reality however, the exception is becoming the rule. In rural areas in particular it can be observed that the relevant qualified doctor for examinations and certificates pursuant to the Hospitalisation of Mentally Ill Persons Act is often not available. In some regions, it is becoming increasingly difficult to fill permanent positions or to find municipal, county, parish and district doctors.

Outside cities the exception is becoming the rule

Police officers have made it clear in interviews with commissions that it is extremely stressful for them to have to decide autonomously whether a person displaying behavioural disorders is suffering from an illness which, due to acute and considerable harm to themselves or others, justifies the involuntary placement in a psychiatric hospital. It also happens that the originally perceived escalation eases during the forced hospitalisation and that doctors in the psychiatric ward then do not see a reason for admitting the person. This repeatedly causes conflict between all of those involved and questions the legitimacy of state actions.

It is thus worth considering, for example, that emergency doctors and registered medical specialists for psychiatry be legally empowered to issue certificates pursuant to the Hospitalisation Act.

- ▶ *The group of doctors authorised to issue the necessary certificate for involuntary placement should be increased in order to limit the autonomous assessment made by public safety officers to exceptions.*

### 5.2.8 The unknown Istanbul Protocol

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is the standard of the United Nations for the assessment of persons who allege torture or ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative bodies.

The purpose of the Istanbul Protocol as an internationally recognised mechanism for safeguarding human rights is thus the effective investigation of every suspicion or allegation of torture or ill-treatment by persons employed in the public service.

Documentation by medical personnel of evidence of abuse

It provides guidelines and suggestions for doctors investigating allegations of torture and documenting evidence of torture on how to effectively investigate torture and abuse allegations, and especially how to document and properly secure evidence. The guarantee that evidence is secured quickly and independently is of central importance for the rest of the investigation procedure. Accordingly, abuse that occurs in connection with a police operation must be carefully documented by a hospital and without delay.

The Federal Ministry of Health and Women's Affairs shares the view of the NPM that medical facilities and doctors have a critical role in the investigation of assaults by police officers. Upon recommendation of the NPM, the Ministry has thus informed all hospital operators about the Istanbul Protocol through the respective competent regional government. They also pointed out that implementation of this protocol must be ensured (see NPM Report 2015, p. 51 et seq.).

Ignorance in Rudolfstiftung Hospital

Due to a concrete case Commission 4 examined whether this recommendation is observed at the Rudolfstiftung hospital. The patient was admitted to the psychiatric ward of the hospital because a public medical officer prescribed this hospitalisation. During admission the patient complained about the conduct of the police and claimed that she had severe pain in her right shoulder and a large bruise.

The examination conducted by Commission 4 revealed that the commensurability of the use of coercive measures (physical strength, foot restraint) on the part of the police officers was questionable at least. However, the personnel were not aware of the recommendation by the Federal Ministry to use the Istanbul Protocol in hospitals. Documentation of the consequences of the injury was therefore only documented at a later stage.

The City of Vienna used this case as an opportunity to explain the documentation required by the Istanbul Protocol in a special guideline. The Federal Minister for Health and Women's Affairs has assured the NPM that the

politically competent persons on the regional level (health officers and hospital officers) will also be addressed directly in order to highlight the significance of the Istanbul Protocol.

- ▶ *Doctors in hospitals have a critical role in the investigation of assaults by police officers. They must therefore be trained in how the alleged consequences of injuries have to be documented for evidence purposes.*

### 5.2.9 Struggling with the care of a juvenile patient

On a visit to the Regional Clinic in the Mödling thermal region, Commission 6 observed that a minor female patient was cared for in the child and adolescent psychiatry for a long period of time, because a suitable institution for external follow-up care could not be found.

Since the age of 12, the patient had spent more than three years in psychiatric institutions due to her mental illness and had been in the child and adolescent ward in Hinterbrühl since December 2015. Providing care was very difficult because her behaviour was characterised by regular impulsive outbursts.

Mödling district court established through the filing of a proceeding by the patient advocacy that the many restraints, which were often carried out in the evening hours as part of bedtime ritual, were impermissible.

Impermissible restraints

Subsequently, there was a tragic incident in which a doctor put his foot on the patient's head to stop her from leaving a room. Mödling district court left no doubt that restricting the movement of the juvenile in a time-out period was appropriate and permissible in view of her aggressive behaviour. However, putting a foot on her head is degrading treatment and a serious violation of human rights.

Degrading treatment by putting foot on head

Hospitalisation in a psychiatric ward should be used primarily for acute crisis intervention. For this reason, suitable residence and care facilities outside the psychiatric ward have to be created quickly, in particular for minors. The NPM has explicitly advised the *Land* Lower Austria that restraints should be avoided by providing additional personnel resources and that adequate care for the patient outside a psychiatric ward must be guaranteed.

The efforts of the Network of Patient Advocates (*Vertretungsnetz-Patienten-anwaltschaft*) and the NPM ultimately achieved that the patient is receiving intensive socio-educational care in the Curative Educational Centre Hinterbrühl (*Heilpädagogisches Zentrum Hinterbrühl*) in cooperation with the child and adolescent psychiatry within the framework of a concept for

individual care for children and adolescents. A special unit for individual care was set up for this purpose.

However, it must be generally observed that there are insufficient care places available for severely traumatised adolescents with high potential for aggression. This often results in the affected persons being admitted alternately to a psychiatric ward in different follow-up care facilities.

The expansion of relevant extramural facilities throughout Austria is thus still urgently required in order to improve the necessary intensive care of persons with a distinct psychiatric illness. Substantial personnel resources have to be made available to this end.

► *The intensive care of severely traumatised adolescents with high violence potential requires specialised institutions with substantial personnel resources and flexible, individually tuneable socio-educational concepts.*

### 5.2.10 Spatial redesign of the psychiatric wards in Mauer Regional Hospital

Positive interaction of architecture and well-being

Numerous studies but also observations made during visits by the commissions substantiate that the architecture of health care institutions and facilities also plays a critical role in the recovery process and has an effect on preventing or promoting violence. Living conditions marked by high density and confinement have harmful effects on physiological processes (prolonged duration to functional defects) as well as affective (e.g. negative subjective mental state), cognitive (e.g. performance deficits) and social processes (e.g. social withdrawal).

The feeling of helplessness and resultant assumption of a passive role by the patients in the institutional environment should be avoided at all costs. This can be achieved by relevant design of the environment, for example through the active involvement of patients in designing (e.g. furnishing) or through ensuring basic conditions (e.g. sunlight, room temperature, lighting etc.). Guaranteeing a private sphere and an appreciative manner are also the condition for successful therapy, as they form the basis for the patients' trust in the institution and its treatment methods. Last but not least, adequate architecture and an environment that supports therapy also improve the quality of work and the resilience of the personnel in all areas.

Outdated architectural structures in Mauer Regional Hospital

However, when visiting the psychiatric wards in Mauer Regional Hospital, Commission 6 observed that the architectural conditions are far from meeting the standards of modern psychiatric care.

Neither the multi-bed rooms nor the confined dormitories – scantily separated by wood or glass partitions – are ideal to create sufficient private sphere, the opportunity to retreat and the possibility to organise one’s personal environment. Lockable wardrobes for private belongings are partly in the hallways and can only be opened by the care personnel. Medical and care activities for acute admissions in the crisis room as well as restraints are carried out in the presence of other patients due to limited space.

In response to this criticism by the NPM, the regional government of Lower Austria has informed that 60 beds from the ward for adult psychiatry will be transferred to new wings or newly adapted buildings by 2018. Subsequently, the competent regional minister announced that the construction of the planned neurology bed wing was stopped in order to accommodate an adult psychiatry ward with 46 beds as a priority. This was explained with the critical observations and recommendations of the NPM among other things. The ward for the treatment of alcohol addiction is also undergoing extensive renovations and will be fitted in line with the needs of the patients.

Renovation and new construction by 2018

An intensive area for patients requiring psychiatric care was set up in the child and adolescent ward in order to ensure that transfers to adult psychiatry are no longer necessary before moving to the new building in 2018.

Positive provisional solutions for child and adolescent psychiatry

The hospital operator assured the NPM that the new planning will ensure that restraints in the new wards are no longer carried out in the presence of third parties.

These decisions mean that a clear optimisation of the care of mentally ill persons can be expected in the foreseeable future in Mauer Regional Hospital and that the key importance of architectural conditions for quality assurance will be taken into account.

- ▶ *The architecture of health care institutions and facilities has an effect on the recovery process and on the occurrence of violence. Suitable architectural conditions must thus be provided to ensure quality treatment and to avoid violence.*
- ▶ *Suitable architectural conditions must be guaranteed in psychiatric wards in particular. It is unacceptable that the modernisation of psychiatric wards is often seen as lower priority than the modernisation of other wards.*



## 5.3 Child and youth welfare facilities

### 5.3.1 Introduction

**Savings on child welfare** The six commissions visited a total of 98 shared accommodations and residential homes for children and adolescents in 2016. There has been a noticeable rise in the number of complaints about financial problems from child and youth welfare facilities since the NPM commenced its work five years ago. As a result, necessary improvements in the facilities have to be postponed for financial reasons. The frequent response to criticism and suggestions from the NPM is that the recommended changes are also desirable from the operators' point of view, but cannot be implemented with the current daily rates. Attempts to increase the daily rates requested with the Laender have allegedly failed. Private operators from the NGO sector report of annual losses, which can only be offset by donations.

**Daily rates are not increased** The authorisation of new concepts designed to introduce standards compliant with contemporary pedagogical theory in the facilities is deferred. Even though the relevant departments have recognised the need for change and appraised the content of the submitted concepts as positive, the facilities are informed that there are currently no funds available to implement them. This development is a matter of great concern for the NPM.

**Number of special care places is still low** Little has changed in recent years in the repeatedly criticised situation for adolescents with psychiatric diagnoses and post-traumatic stress disorders in particular. There are still insufficient socio-therapeutic and socio-psychiatric places. When visiting child and adolescent psychiatric wards and crisis facilities, the commissions are informed that the number of post-inpatient follow-up care places still fails to meet demand. This means that adolescents requiring intensive support remain longer in inpatient care, which contributes to an individual lack of perspective and an undesired bind to the clinic. It also unnecessarily blocks the already tight number of beds in the child and adolescent psychiatric wards.

In the absence of suitable care places, minors are housed in socio-pedagogical facilities without multi-professional care. Even though their illnesses require a setting involving psychiatric medical experts, psychologists and psychotherapists, only pedagogues work there.

Facilities that house adolescents from the age of 16 together with adults were visited in Styria. Housing adolescents and adults together alone is critical. Highly frequent pedagogical measures that are not applied in adult care are particularly required in the sensitive phase of adolescents becoming independent. Minors should not live together with adults who themselves, due to their chronic psychiatric illness, have left school, cannot be integrated in the employment market, have been homeless, spent long periods of time in a psychiatric ward and have taken medication, as this can have a negative role

model effect. Furthermore, the traumatological and pedagogical care provided is insufficient without a multi-professional team in view of the illnesses of the minors in care.

There is also a lack of crisis de-escalation places in Austria. The crisis centres of the City of Vienna were full all year and in some phases even overcrowded with 13 instead of the planned 8 children. The cause was also the above-average waiting time for a suitable place in shared accommodation. Occupancy levels such as these permit only pedagogical emergency care and no professional crisis de-escalation. In Lower Austria, 16 crisis de-escalation places for under six-year-olds were closed due to restructuring and only half as many places were created at another location. In other *Laender*, there are no crisis centres at all. This means that minors have to be brought directly from their families of origin to shared accommodation. This is always a severe strain for the facilities, which thus have little information about the pending challenges with the minors and their families.

Missing crisis de-escalation places

It has also been observed that some of the problems highlighted by the NPM are recognised by the departments for child and youth welfare and protection of the *Laender*, and solutions are promised. However, subsequent visits indicated that the situation in the facilities was unchanged. It seems that the problem awareness of the technical supervision does not reach the socio-educational personnel. Implementing even the smallest demands seems to be painstaking and appears to require a lot of explanatory work. For example, improvements in connection with the right to privacy such as the provision of lockable boxes or the installation of devices that allow the rooms to be locked from the inside, are often readily agreed to the NPM, but then not implemented. On subsequent visits or visits to other shared accommodations belonging to the same private or public operator, the commissions found the boxes or safes, but the minors either had no keys for them or there were no batteries for the safes, so that they were de facto unusable. The NPM will continue to insist on exercising the right to privacy of children and adolescents in out-of-home care in the coming years.

Promises are often not kept

In some residential homes, the NPM found alarms in hallways that were in operation on a daily basis according to information from the personnel. The NPM judged the general operation of alarms as an inappropriate infringement of the right to privacy of the children and adolescents in care, and demanded that the alarms only be activated when required. The facility assured that the alarm should only be activated in warranted cases of well-founded fear and only for a certain period of time for the protection of the children and adolescents.

Infringement of the private sphere

In a facility for assisted living for young girls in Tyrol, unannounced night patrols using flashlights were carried out routinely. The minors found this procedure stressful. It disturbed their night's rest. The NPM viewed this method as an inappropriate infringement and not as a moderate measure for the

protection of the adolescents. The competent authority for child and youth welfare and protection and the operator of the facility have since agreed that attempts will be made to proceed less severely in the future. They reported that it was now possible to enter the room without using a source of light and night patrols were only carried out in apartments where it was deemed necessary.

Closure of a large residential home in Upper Austria

In a large residential home with connected workshop and school in Linz, as early as 2012 Commission 2 criticised above all the insufficient personnel and the pedagogical interventions that were unsuitable for children as a violation of human rights. As a result, a comprehensive monitoring in cooperation with the technical supervision and the NPM was carried out, which resulted in 64 recommendations. These turned out to be unfeasible. In spring 2016 the *Land* Upper Austria decided to close the major facility and to divide it into smaller residential units. Offering residential groups, workshops and a school in one closed system is outdated according to current pedagogical theory. The decision to divide the major facility was welcomed by the NPM for this reason. But the NPM also emphasised the necessity to involve all adolescents in the decision process regarding their future place of residence in a participative manner.

PRN medication - change in thinking noticeable

Gradually, there appears to be greater problem awareness in relation to the administering of prescription medication by pedagogues. The NPM had criticised the common practice in socio-pedagogical facilities that personnel without medical qualifications perform tasks requiring the relevant medical expertise. If the parameters for the necessity and the dosage are not clearly explained in the prescriptions – which was often the case in the prescriptions examined by the commissions – the pedagogical personnel decides whether the necessity is given.

The *Land* Lower Austria responded to the criticism by the NPM with instructions to the facilities that pedagogical personnel are not allowed to administer PRN medication. The *Land* Upper Austria sent the information out to all operators that the administration of all medication must be documented completely and traceably, and that doctors must be requested to give concrete instructions and prescriptions regarding the necessity for PRN medication.

However, the commissions continue to identify a wide range of shortcomings in handling of medication. For this reason, the NPM considers it necessary to introduce compulsory training for pedagogical personnel. The NPM has already addressed several *Laender* with this suggestion where warranted. A query was also directed to the Federal Ministry of Family and Youth, which confirmed that there is problem awareness regarding administering medication to children and adolescents by professional personnel in socio-pedagogical facilities. Besides, there will be an exchange of information on this topic at the next general meeting of the Child and Youth Welfare Association (*Arbeitsgemeinschaft für Kinder- und Jugendhilfe*).

As repeatedly criticised by the NPM, there is no legal right to support for young adults pursuant to the Federal Children's and Youth Service Act (*Bundes-Kinder- und Jugendhilfegesetz*). However, it did concretise the conditions for discretionary measures. The aim of the support for young adults is mainly to help them in becoming independent, which also includes the completion of vocational education. Primarily, the duration of this support is based on the individual needs of the young people and is limited to the end of the 21st year of their life.

Provision of support until completion of education

On visits to the facilities, the commissions are often told that extending the measures beyond reaching legal age is becoming increasingly difficult. Facilities reported that some *Laender* only approve an additional period of six months, which causes enormous insecurity for the young people. Many thus do not embark on a secondary school education as minors, as they fear that they will not be able to complete it. Some adolescents are even released from the care of the child and youth welfare facilities during their vocational training. The facilities often keep the young people and finance the costs with the help of donations. The NPM therefore demands that the measures are approved by the competent authorities for child and youth welfare and protection for the entire duration of the adolescents' vocational training. The decision on continued funding should be taken before the relevant young person reaches legal age, thus making it possible for the adolescents and the facilities to plan.

The NPM also often monitors whether barrier-free accessibility is guaranteed in the child and youth welfare facilities. This is bringing about a change of view with the competent authorities. More attention was paid to accessibility for persons with disabilities when remodelling existing and renting new properties. When asked about this topic, many facilities answered that they are examining whether remodelling is possible.

Barrier-free accessibility

- ▶ *The number of socio-therapeutic residential places for children and adolescents must be increased.*
- ▶ *Crisis de-escalation places must meet demand.*
- ▶ *The NPM demands the introduction of performance-related daily rates and regular adjustments.*
- ▶ *Support for young adults must be provided for the entire duration of their education.*

### 5.3.2 Monitoring priority: prevention of sexual and all other forms of violence

Follow-up training on concept content

The commissions repeatedly find very good concepts focussing on violence prevention in the facilities. However, the staff are often not aware of these. Upon enquiry by the NPM in a facility in Upper Austria, it was agreed that all of the staff has to read and sign the prevention concept when they are hired. It was promised that the personnel would receive the relevant information again to freshen their level of knowledge. There was also follow-up training on the contents of the concept in a shared accommodation facility in Vienna.

However, the commissions still report that many facilities have no sex education concept. The importance of this is thus emphasised on visits. The joint definition of standards is designed to increase the personnel's sensitivity to the topic. Social pedagogues should be instructed to recognise encroachment dynamics and take the necessary steps. When requested by the NPM, some facilities were willing to integrate sex education content in their existing concepts.

Development of socio-pedagogical concepts must be pushed

Pursuant to Section 12 of the Federal Children's and Youth Service Act, child and youth welfare services must be provided according to professionally recognised standards and current scientific knowledge. Implementation laws in the *Laender* stipulate that, when determining the suitability of child and youth welfare facilities, it must be examined whether the facility has a professionally sound socio-pedagogical concept. The regulation enacted with the Viennese Children's and Youth Service Act (*Wiener Kinder- und Jugendhilfegesetz*) regarding socio-pedagogical facilities stipulated that aspects of violence prevention and sex education must be included in the concepts. As competent authorities for child and youth welfare, the *Laender* are thus required to ensure the development and introduction of sex education concepts in all facilities. The NPM recommends asking for the presentation of a sex education concept prior to approval of a facility.

Further education programme in sex education

The Department of Child and Youth Welfare of the Land Upper Austria has taken up the topic and initiated a further education programme on the subject of sex education through the University of Applied Sciences. The Austrian Institute for Sex Education (*Österreichisches Institut für Sexualpädagogik*) will give the lectures. The NPM welcomes this initiative and promotes similar further training programmes throughout Austria. The facilities should ensure that their staff take part in this training.

- ▶ *The existence of a sex education concept should be viewed as a condition for approval of a facility.*
- ▶ *Further training programmes on the subject of sex education should be held throughout Austria.*

### 5.3.3 Critical personnel situation in shared accommodations and residential homes

The high personnel fluctuation level seems to be currently creating major problems for many facilities. This causes constant breaking of relationships, which the children experience as very stressful. On visits, minors name the loss of care givers spontaneously when asked about negative experiences in the shared accommodation.

High personnel fluctuation

On the one hand, the personnel fluctuation is the cause of adverse working conditions, and on the other, it is also the consequence thereof. As a result, the working conditions for the remaining staff become more stressful, as they have to perform additional shifts. The strained personnel situation means that new staff is often not trained. They are left alone with the responsibility too soon and work night shifts without support after just a few weeks, often – as in a residential home in Lower Austria – with responsibility for several groups. New and in the beginning very committed employees with little work experience cannot cope with this stress. Confronted with the criticism of the personnel situation by Commission 1 and following the Commission's suggestion to increase personnel levels, a private operator reported that they were informed by the *Land* during ongoing daily rate negotiations that they already employed too much staff.

Facilities in which the commissions highlighted similar problems in previous years indicated no improvement in the situation on follow-up visits. In many cases, the situation had even deteriorated. The facilities seem to have difficulty leaving this vicious circle. When facilities in the sector already have a bad reputation due to permanent personnel bottlenecks, there are fewer applications for vacancies. This makes it difficult to fill vacant positions quickly.

Experts view the frequent change of carers in out-of-home care as highly critically, above all, due to considerations surrounding attachment theories. The assumption is that children cannot develop a secure base, which is one of the main characteristics of a secure attachment, if they are cared for by constantly changing persons. Most children and adolescents have attachment disorders in out-of-home care in particular. If they are forced to experience frequent breaks in relationships there is a risk that they will be re-traumatised and have even more behavioural disorders. The frequent change of personnel is a stress factor for children suffering from attachment-related trauma. This is evident in the many children and adolescents in these facilities who regularly take psychotropic medication and are bound to child and adolescent psychiatry.

Frequent change of personnel is very problematic

It is clearly evident that there are other shortcomings in facilities with a strained personnel situation and high fluctuation. The broken relationships



have a noticeable effect on the atmosphere between the children and between members of staff.

The NPM sees an urgent need for action on the part of the competent authorities for child and youth welfare and protection to ensure full employment in the facilities and to improve the working conditions for the socio-pedagogical personnel.

- ▶ *Solutions for preventing high personnel fluctuation have to be found in order to avoid the frequent change in contact persons that is harmful for the children's well-being.*
- ▶ *An improvement in working conditions must be implemented in order to fill all of the vacant positions.*

### 5.3.4 Abrupt breaks in relationships after stays in psychiatric hospitals

Breaks in relationships have negative effects on minors

After examining the documentation in several Tyrolean facilities, Commission 1 found entries describing the change of care givers after stays in psychiatric institutions. Since the facility refuses to accept the adolescents again after they were discharged, they had to be housed in other facilities. In the opinion of experts, the situation for the children and adolescents deteriorates even more after every broken relationship. The unresolved problems reappear with intensity after some time in the new support system.

Crisis management for stabilisation

For this reason, facilities in which severely traumatised children and adolescents live have developed crisis management concepts. These are designed to avoid an escalation of the situation and that there will be no return both for the affected adolescents and the socio-pedagogical personnel afterwards. The concepts are based on the idea of the attachment theory and involve cooperation with an emergency shelter, a partner shared accommodation or psychiatric facility. The partner facility takes the minors for a short period. This change of setting can help to avoid losing the minor's place in their shared accommodation if the contact to the child is not broken off during this time. The basis of these models is the finding that no bond has been established between the care givers and the child or adolescent in the partner facility and that there will therefore be no escalation during the phase of apparent adaptation. If the care giver with whom the child has a bond maintains contact to the child at the same time, it is possible to return the child to their own facility as soon as the crisis situation ceases to exist. In 2016, Commission 6 visited a facility in Burgenland that implements this model very successfully.



A well-known model with professional foster families that has been practiced for years in Switzerland was introduced in Lower Austria and adapted to Austrian needs three years ago. Adolescents who had to leave many facilities are cared for in a shared accommodation during a crisis period. A maximum of four adolescents live there with a very high staff ratio. The *Land* has to pay a substantially higher daily rate for a period of time, but this pays off in the end, as the aim is to guide the children and adolescents back to their home. If this is not possible, they are accommodated in professional foster families who cooperate intensively with the shared accommodation. If a crisis occurs in this foster family, there is the possibility that minors can return to the shared accommodation for a short period. The facility visited by Commission 5 considers itself thus a support and hub for the foster families. They are, so to speak, a safe place in case the care does not go optimally. Some adolescents can be released to independence from this shared accommodation, but still always have the option of being able to return.

Shared accommodation as safe place during crisis

- ▶ *The NPM recommends concepts which involve crisis management to avoid breaking relationships.*
- ▶ *Models with time-out shared accommodation must be developed.*
- ▶ *As competent authorities for child and youth welfare and protection, all Laender should create facilities for crisis periods with a higher personnel ratio and a lower number of children.*

### 5.3.5 Participation

“House parliaments”, children’s teams, children’s representatives and complaints letter boxes should be mechanisms that guarantee the involvement of the children and adolescents even within the framework of institutionalised care. The interviews that the commissions conducted with the children and adolescents are aimed at identifying whether the introduction of these participative measures provides more opportunities for input and co-determination. The responses were rather disillusioning. In many facilities, children’s team meetings are no longer held or are only held at very long intervals. But even where they do take place, the adults decide at the end of the day that wishes cannot be taken into consideration, according to the children and adolescents. The minutes of children’s team meetings do not exist in many cases or they disappear to the bottom of the pile.

Need to catch up

Participation, as intended by the United Nations Convention on the Rights of the Child (UNCRC) and the Federal Constitutional Act on the Rights of Children, is more than merely the right to be heard. It is a fundamental

Child as the expert for its own life

approach that has effects in all areas of out-of-home care measures from the decision and admission process through the care period to completion of the phase of independence. According to the Quality4Children Standards, which were drafted by order of the European Council for the extra-familial care of children and young adults in Europe on the basis of UNCRC, the child is recognised as the expert for its own life. To this end, it must be informed, heard and taken seriously, and its resilience should be recognised as its greatest potential.

Even though the participatory rights are anchored in the child and youth welfare laws of the *Laender* and in the Federal Children's and Youth Service Act, several of the children and adolescents interviewed said that they are summoned to the help plan meetings but only after the adults had made all of the decisions. It does not suffice if participatory rights are only anchored in the law; they have to be lived in practice every day.

Positive examples There are facilities in Germany, especially the Children's House (*Kinderhaus*) in Berlin, which have been managed in a participative way for 30 years. Children and adolescents are even involved in decisions on the use of subsidies and personnel questions there. These facilities have shown that decisions made involving the children and adolescents are better accepted, supported and ultimately implemented. Rules and the consequences of violating regulations in particular have to be defined with the children and adolescents living in the facility and adjusted regularly so that the minors comply with them.

There are of course facilities in Austria that are already implementing these experiences and findings by involving the children more frequently in decision processes, and they are achieving success with them. In the shared accommodations of a Viennese association, children's representatives were elected and institutionalised who direct the wishes and complaints to the care team and the pedagogical management and meet each other. On the request of the children's representatives, a welcome folder for new residents and a comprehensive children's guide were drafted.

Participation as fundamental approach The involvement of children and adolescents in different projects means that they identify more with them and implement them better. Participation is of vital importance in out-of-home care in particular, as children and adolescents often have first to learn to communicate their own wishes and interests. Participation can only function if both the management of a facility and the personnel have a positive attitude to the topic. It is noticeable that the participation of the children and adolescents only happens in facilities in which the staff is also involved in the decision making processes of the facility. A very important condition for participation is that the children and adolescents can recognise and achieve positive results and developments, because only in this way can they be aware that their commitment paid off.

- ▶ *The NPM recommends “house parliaments”, children’s teams or children’s representatives as mechanisms to guarantee the participation of the children and adolescents within the framework of institutionalised care and to live this in practice.*
- ▶ *Minutes must be taken in these meetings and decisions taken must be implemented.*

### 5.3.6 Centre for eating disorders with questionable treatment methods

On several unannounced visits to a therapy centre for patients with eating disorders in Carinthia Commission 3 identified serious deficits. Consequently, the NPM contacted the *Land* Carinthia as supervisory authority and the Federal Ministry of Health and Women’s Affairs. What is especially sensitive from a human rights perspective are mixed roles arising from the fact that the head of the centre and her deputy provide the socio-pedagogical care themselves and offer psychotherapies as well.

NPM succeeds in enforcing examination by experts

Since forms for a therapy contract are handed out when signing the admission contract, there is no possibility for minors to select their own therapists. Therapy sessions are fixed without a previous therapy plan. It is therefore not clear when a care service is provided or a therapy session offered. It was also noted that the head of the centre concluded treatment contracts for chargeable therapy sessions with herself so to speak, as she was not only responsible for the care and education of some of the adolescents in care but was also in charge of their custody.

During their visits, Commission 3 observed the complete absence of any professional distance, which encourages emotional entanglement in minors and violates the professional codex for psychotherapists. Daily exercises with direct bodily contact, in which pubescent adolescents have to lay their head on the breast of the female carer and are offered baby bottles and soothers in regressive phases, were viewed as highly critical by Commission 3.

The regional government of Carinthia announced immediate measures in relation to several points of criticism in 2015, whereas an expert opinion was commissioned to clarify other issues. During a follow-up visit by Commission 3 in May 2016, it was found that the care situation for the residents was virtually unchanged and hardly any improvements could be observed. The Commission’s observations were recently directed to the regional government and the Federal Ministry of Health and Women’s Affairs, and the rectification of the deficits was demanded.

Comprehensive requirements will be prescribed

In December 2016 the content of the deficits objected to by the NPM was fully confirmed in the expert opinion commissioned by the supervisory authority. In the meantime, the competent authorities for child and youth welfare and protection have again committed to set requirements and to refine existing regulations in order to prevent professional standards being circumvented. The supervisory authority announced to the NPM that they will intend to conduct semi-annual inspections with the help of external experts in the coming two years. The Federal Ministry of Health and Women's Affairs also announced that the necessary steps will be put in place.

► *Compliance with official requirements must be closely monitored in problem facilities.*

### 5.3.7 Unaccompanied minor refugees

A large number of accommodations had to be provided within a short period due to the enormous increase in this group of asylum seekers in 2015. The number of new applications from unaccompanied minor refugees halved in 2016.

Monitoring accommodation situation

The AOB conducted *ex-officio* investigative proceedings in all of the *Laender* with the exception of Vorarlberg to determine the type of accommodation in which the unaccompanied minor refugees are housed. The result was that all *Laender* house minors up to the age of 14 in child and youth welfare facilities. The age group of the over 14-year-olds is usually cared for in facilities that provide reception conditions under the Basic Provision Agreement. Since the daily rates for shared accommodation have been increased to 95 euros, there are considerable differences in the financial possibilities of the individual facilities: 63.50 euros are paid for housing in residential homes and only 41.50 euros for fully-assisted living and housing facilities. In terms of the care provided, they differ in that a care giver is responsible for 10, 15 or 20 minors. As the minors are randomly allocated by the initial reception centre to the accommodation without any prior clearing, the places are not aligned to the needs of the individual minors.

In Carinthia, Tyrol and Burgenland there are only residential groups. In Lower Austria and Upper Austria, unaccompanied minor refugees are cared for in residential groups with a few exceptions. In Salzburg, the over 14-year-olds are first housed in residential groups. If the caring facility determines that less care is necessary, they are allocated to other types of accommodation. In Vienna, only socio-pedagogical residential groups are approved since 2015. There are still 60 care places for unaccompanied minor refugees with

low care requirements. Styria is the only *Land* without any residential groups for unaccompanied minor refugees. All minors over 14 years old are cared for in residential homes or in assisted living and housing facilities. The NPM criticises the situation in Styria and recommends approving residential groups exclusively in the future.

Although these facilities with a basic level of social services take great pains to provide the best possible care for the minors, it is not possible to guarantee the same standard of quality as child and youth welfare facilities even with the highest daily rate. Equal status with other children and adolescents housed in Austria does also not exist in residential groups. Even if it were required from a pedagogical point of view, the possibility of doubling positions is as unlikely as that of enabling leisure activities, which are particularly important for adolescents who no longer have to go to school, cannot work and are waiting to attend courses.

No equality

It becomes even more difficult for refugees when they reach legal age and move to adult housing without receiving further care. Only very few manage to complete training that they started before reaching legal age. Some facilities, above all those managed by NGOs, continue to care for the adolescents with the lower daily rate for adults and try to enable them to acquire the school-leaving qualification with the help of donations. The *Land* Salzburg has created the possibility of allowing young adults to stay in the accommodation for unaccompanied minor refugees until after their 18th birthday in special cases of hardship such as shortly before school graduation. In Vienna, there are 170 follow-up places intended to guarantee specific care for young adults. An additional 60 places are planned. The Vienna Social Fund supports the financing of school fees and travel expenses for training measures up to the 26th birthday in adult education facilities. In Tyrol, a mobile team from the regional government supports unaccompanied minor refugees from a professional point of view – if required – once they are moving out of accommodation and thereafter. Without wanting to diminish these services, it should be mentioned that they are far from being sufficient to prevent the adolescents from having to give up their training before completion, thus rendering all of the efforts for integration made by the facilities ineffective. Therefore, it is necessary to develop joint solutions for all of Austria.

Refugees in training

There are still very few special facilities for severely traumatised unaccompanied minor refugees or those with special needs. Currently, there are only care offers for six persons in Vienna and for ten in Lower Austria, and these are in no way sufficient. A facility that cares for a particularly high share of unaccompanied minor refugees with increased care requirements reported to the commission that the *Land* Lower Austria failed to reserve additional funds even for mentally ill minor refugees. The NPM was informed that all of the additional costs are already covered by the higher daily allowance paid retroactively since July 2016. During the Conference of Regional Refugee

Unaccompanied minor refugees with increased care requirements

Experts (*LandesflüchtlingsreferentInnen-Konferenz*) a list of demands was drafted in which an increase of the daily allowance up to 150 euros for higher care requirements is included. The NPM supports this demand.

The expansion of care places is being pushed in all *Laender*. However, the share of minors living in foster families is very low.

There are problems with paying for the travel expenses for unaccompanied minor refugees throughout Austria. Some *Laender* want a fixed sum arrangement, as this would dispense with the considerable administration effort required to calculate the cost for the facilities and would make the adolescents more mobile. To date, there is no agreement with the Federal Government. There is also no access to the youth ticket for public transport for unaccompanied minor refugees if they do not attend school. The course offers can often not be availed of, as the travel expenses cannot be financed.

Lack of school places and training opportunities

There were some problems due to the increase in demands for school places in Vienna at the beginning of the year. Intensive data reconciliation is now taking place between the Vienna Social Fund and the Vienna School Board regarding school places, to ensure that there will be a school place available for every unaccompanied minor refugee of school-age in the autumn.

Austria-wide early language learning not ensured

Supporting minor refugees of school age in learning the language is even more problematic, as the courses available are not sufficient. Some of the *Laender* have announced the start of basic training offers and language learning measures. The Youth College started in Vienna with 1,000 places in autumn 2016. These places are open to all adolescent immigrants between the ages of 15 and 21 and those who have already been living in Vienna for quite some time were given priority. However, they are far from being sufficient. Plans are in place to begin with measures for 15-24-year-olds in Lower Austria in spring 2017 in cooperation with the Public Employment Service Austria (AMS). These should facilitate language learning measures, obligatory school-leaving qualifications and starting vocational professions after a clearing phase. Styria extended the basic education programme in autumn 2016 as well and offers language learning measures. The NPM demands an "Austria-wide master plan" for the availability of German courses throughout the country.

The pilot operation of video interpreting was initiated with a private provider in Vienna. Caritas has also recently started offering an interpreter service for doctor's appointments. Vienna pays 30 euros per unit if qualified interpreters accompany the adolescents to therapy sessions. The NPM welcomes such initiatives and recommends expanding these projects throughout Austria.

Increased visits to new accommodations for unaccompanied minor refugees

This year again the NPM increasingly focused their visiting activities on facilities for unaccompanied minor refugees. Above all, many of the newly built facilities were inspected. In spite of the appreciable efforts made by the personnel, fault was found with hygienic conditions, strained personnel



resources, noise pollution from incomplete construction work, etc. The high demand and lack of places for unaccompanied minor refugees meant that they moved into some facilities before the necessary remodelling work was completed. After the visit by the commission in one facility in Vienna, the work was accomplished quickly and the hygiene deficits rectified. In one house in Lower Austria, the damage caused by dampness was remedied and a housekeeper was engaged who cleans the rooms together with the 50 adolescents.

In other cases, the criticism by the NPM resulted in the speedy rectification of deficits as well. In a facility in Vienna, the wing for unaccompanied minor refugees was connected to the adult wing. The NPM succeeded in having the areas separated, so that the residents of the adult area can only visit relatives or friends in the area for minors after registering. It was also achieved that uncontrolled access to the house through emergency exits is no longer possible and the risk of theft thus reduced.

On recommendation of the NPM, a shared accommodation for severely traumatised adolescents in Vienna received a combination service with two medical specialists for child and adolescent psychiatry. Problems in connection with doctors' appointments could be successfully tackled. A doctor refused to treat a refugee because he still did not have an e-card. Now, the care givers call the surgery during opening hours to give notice of the visit if the patient does not have an e-card yet. All asylum seekers in Vienna now receive an e-card within two weeks.

Due to complaints because of very poor hygienic conditions in the kitchen and sanitary installations in a facility in Styria, a supervisory inspection was conducted by the *Land* and reported thereafter that deficits addressed by the commission were rectified. The next visit by the commission indicated that the issue of medication was inadequate again and the sanitary areas were still in a desolate condition. Some of the showers did not work properly, there were faulty cisterns, and toilet seats were missing. The hallway on the ground floor was video-monitored. The NPM was assured that, in future, there would be weekly maintenance of the sanitary installations, medication would be locked away and health documentation would be put in place. The video surveillance was stopped immediately and a compensation system introduced on recommendation of the NPM.

- ▶ *The NPM demands the exclusive housing of unaccompanied minor refugees in residential groups.*
- ▶ *Special care places for multiply and severely traumatised minor refugees must be created.*
- ▶ *Care of refugees of legal age in training must be intensified.*
- ▶ *The NPM demands an Austria-wide master plan for the extensive provision of offers for language learning, in particular for minor refugees.*



### 5.3.8 Positive observations

- Positive changes after change of management** In a facility for unaccompanied minor refugees in Tyrol, far-reaching improvements were observed after changing the management. Redesigning the rooms made the hallways, common areas and rooms far more welcoming and cosy. During the visit, the adolescents were open and cheerful, independent and interested, and were not afraid to address their wishes and questions to the care team. Thanks to special school promotion, some of the adolescents were able to attend secondary schools. A new concept and the child-friendly implementation thereof enabled a shared accommodation to transform a problem facility into a showcase in a very creative way.
- Suggestions were implemented** The second visits to two more facilities for unaccompanied minor refugees in Lower Austria also indicated that all of the commission's suggestions had been implemented. What was very positively assessed was that care in the native tongue is possible in all of the necessary languages.
- Best practice** The entire staff of a socio-therapeutic shared accommodation in Burgenland had been working there for more than eleven years. Because of this, the attachment to the care givers is so strong that young adults maintain strong contacts to the shared accommodation even after they have moved out. They come by for dinner, help out at parties and trips and act as a role model for younger residents. The staffing ratio is very high, meaning that three pedagogues and one person doing community service work there at the same time during the day. In the night, there is an additional stand-by service alongside the main service. The staff are very well educated and take part regularly in further education programmes. Even the two kitchen aids have pedagogical training. Stays in psychiatric wards have not been necessary for years for children and adolescents who come from difficult family relationships and have experienced severe trauma.

## 5.4 Institutions and facilities for persons with disabilities

### 5.4.1 Introduction

In the year under review, the NPM commissions visited 76 institutions and facilities solely dedicated to persons with disabilities.

As in the previous years, public and private operators including homes, residential groups, day-care centres, workshops and rehabilitation facilities were monitored in 2016.

Broad spectrum

The NPM stepped up efforts for increasing involvement of self-advocates in the monitoring process in 2016. Thanks to the training provided by Commission 3 in particular, the NPM can rely on a group of external experts with a wide range of impairments, some of whom are supported themselves by assistants. The necessity to take a broad spectrum of experience and needs into consideration can thus be communicated to the facilities in particular in a close-to-life way.

Despite slow progress, Austria is still far from the UN Convention on the Rights of Persons with Disabilities (CRPD) goal of enabling persons with disabilities to live a self-determined life in dignity and with full social participation. The draft for a 2nd Adult Protection Law (*Erwachsenenschutzgesetz*), which has since been presented to the Parliament, is a positive signal. In accordance with Article 12 of the UN CRPD, the draft foresees graded models of supported decision-making to exercise legal capacity as opposed to surrogate heteronomy by legal guardians. The law should become effective in July 2018. The NPM assumes that this amendment will change the admission processes and dealing with persons with disabilities in facilities significantly, because heteronomy will be more difficult from the legal side at least. However, there is still much to be done.

On the suggestion of the NPM and supported by the Human Rights Advisory Council, it was also planned in the ministerial draft of the 2nd Adult Protection Law to extend the scope of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) to child and youth welfare facilities that care for minors with disabilities. Legal protection for minors in connection with measures that restrict freedom should thus be strengthened in these facilities too. However, this is no longer planned in the government bill, despite the fact that all child and youth advocates in Austria, among others, were positive about this in the review procedure of the ministerial draft. The NPM will position itself in the legislation procedure once again and will attempt to persuade the Parliament through argumentation to amend the Residential Homes Residence Act accordingly.

As already documented in the reports from the previous years, there are no initiatives and financing basis agreed between the Federal Government, the *Laender* and the municipalities to implement the measures contained in the

National Action Plan on Disability 2012-2020 as quickly as possible. There is also still no agreement between the Federal Government, the *Laender* and the municipalities to make the change in paradigm demanded in the CRPD – i.e. from a medical to a social model of disability – the basis of government action on all levels and to do justice to the recommendations of the CRPD Committee.

NGO Forum Approximately 110 representatives from human rights NGOs, the Federal Ministries and the *Laender* took part in the 3<sup>rd</sup> NGO Forum of the AOB, which took place on 4 July 2016. The topics of “Disability and poverty”, “Disability and living/working” were, among others, the focus of debate.

The CRPD sees the right to self-determination not only as defensive right but also as including positive obligations of the state to offer support. Inclusion cannot function when stereotypes and prejudice characterise the image of persons with disabilities, whose situation can be perceived as a marginal group phenomenon at the best. The CRPD unequivocally demands the departure from role clichés and one-sided, discriminatory and a reality-distorting presentation of persons with disabilities. Not only politics but also the media are responsible for the way in which society is informed about persons with disabilities.

Study: persons with disabilities in Austrian mass media

The NPM was involved in the preparation of the annual study 2015-2016 on “Persons with disabilities in Austrian mass media”. This included a financial contribution as well in order to initiate a discussion process on a broad base. This initiative is also in line with the recommendation of the CRPD Committee “to seize initiatives for creating awareness in order to effectively change the outdated charity model in the area of disability and the perception that persons with disabilities require protection”.

Inclusion needs raising awareness

The results of the media analysis, which have been available since January 2017, are sobering in general. The medial presentation of persons with disabilities is somewhere between sympathy, admiration and ignorance. Persons with disabilities are severely under-represented in mass media. Just one percent of reporting is dedicated to disability-related topics. The AOB and its cooperation with the public television channel ORF are an exception here. Under the general perception threshold, focal topics such as heteronomy are approached by the mass media via legal guardianship or personal assistance as an alternative to accommodation in facilities. Questions surrounding the financial securing and affordable barrier-free accessible living, which are of considerable relevance for persons with disabilities, are not dealt with in the media. In general, a great amount of effort is required to draw attention to the many types of discrimination of persons with disabilities. The NPM will make its contribution to this.

Missing barrier-free accessibility

As in the previous years, the commissions visited facilities for persons with disabilities in 2016 in which the lack of barrier-free accessibility gave rise to complaints. It is obvious that this results in massive restrictions in autonomy of

persons with disabilities and fortifies their dependence on others unnecessarily. Inaccessible outdoor areas with front doors and room doors that either cannot or can only be opened with difficulty, steep ramps and missing lifts, sanitary installations that are unsuitable for wheelchairs and too small sinks, mirrors or wardrobes that are installed too high, unmarked steps, missing handrails, inaccessible light switches, poor lighting and missing pictograms and guide systems for orientation were subjects of complaints. Additional barriers result from the way information such as house rules, etc. is presented. In some facilities, the structural deficits are so extensive that the commissions doubted their suitability and questioned whether the fast evacuation of the residents would be possible in case of fire.

The NPM has received numerous commitments to remove structural deficits or plan a move to barrier-free property. However, the realisation of costly reconstruction usually takes a considerable amount of time. The supervisory authorities are called upon once again at this point to pay special attention to the universal guarantee of barrier-free accessibility on their inspections. The toleration of structural measures that restrict freedom is unacceptable.

It is also a fact that the medical model is still applied by examining the person's deficits when estimating the level of disability. This currently determines above all the possibility to attend school and professional training or attain partial qualifications. It also applies in relation to therapy facilities dedicated to rehabilitation and the integration of persons with addictions and psychiatric diagnoses. The priorities must be shifted – away from promoting special structures towards the building up of inclusive education and employment models. As long as persons with disabilities work in special workshops or in permanent rehabilitation places – even if the work is for external companies among others – but have no chance on the general employment market, there can be no mention of fully realising the right to work and employment within the meaning of the CRPD.

Lack of inclusion in the school and employment areas

Visit reports from the commissions in recent years documented impressively that a focal concern of a total of approximately 22,000 users of workshops is that they are deployed according to their interests. In particular, they want their activities to be recognised as work and not merely receive a little pocket money for their efforts. During some interviews, the commissions had the impression that the users sometimes would prefer to spend more time in their shared accommodation but feel the pressure of having to go to the workshops. A fundamental reform of these special facilities would require a constructive cooperation of legislators at both the federal and the *Laender* level in order to achieve an appropriate reorganisation within the existing distribution of competencies. It is evident from a series of court decisions that the engagement of persons with disabilities in workshops is not to be considered a working relationship but is for “education and treatment” purposes. As the Human Rights Advisory Council already iterated in its statement published in 2014,

No recognition for performed work

this type of explanation, even if attributable to the prevailing national legal situation, contradicts Article 27 of the CRPD. Workshops, but also therapy facilities for drug addicts, cooperate frequently with private customers and make a profit. The clients do not usually benefit from this. Persons with disabilities rightfully feel exploited when they are guided and instructed in projects to clean buildings belonging to operator institutions or facilities, or to assume other operational tasks without receiving a monetary benefit and being allowed to save their earnings.

For the NPM it is beyond any doubt that new models to reduce the artificial barriers to professional training, to further training and to education must be developed in terms of inclusive support structures for the promotion of occupational participation. It must be guaranteed that persons with disabilities gradually find their way into working life by means of income compensation while at the same time preserving their greatest possible freedom of choice. According to the work programme 2013-2018 of the Federal Government, the autonomous social security for activities in workshops should be strengthened, the artificial barriers between the first and third employment market removed and the transfer of workers from workshops to the first employment market pushed. This has not taken place to date.

Missing possibilities for complaints

Observations made by the commissions indicate that clients with learning difficulties or mental illnesses are often afraid to complain. Common reasons for this are fear of possible negative consequences or aversion to confrontation. This becomes clear in interviews with the commissions. There must however be a possibility for all clients to complain anonymously. It is the responsibility of the management to make it clear to staff on all levels, that anonymous complaints and suggestions are also desired and will be taken seriously.

#### 5.4.2 Causes and forms of measures that restrict freedom, and violence

Although modern pedagogics for persons with disabilities is strongly orientated towards self-determination, empowerment and a life according to the normalisation principle, measures that restrict freedom are carried out in residential facilities and workshops as well. Structural barriers, but also the use of mechanical, electronic or medication-based restrictions of freedom, are repeatedly thematised in commission reports.

Inadequate documentation, formal and notification violations

The documentation of the restriction of freedom is often inadequate. The legally stipulated notification of the representative(s) of the residents is often neglected or of different quality. Some of the notifications are completed with care and are traceable; in some cases there is no mention of more sparing measures. The signatures of prescribing doctors for medication-based measures

that restrict freedom are often missing. The NPM sees its responsibility above all in sensitising the management and staff to the protection of the right to personal freedom and in referring to the notification obligations pursuant to the Nursing and Residential Homes Residence Act. Appropriate training and contact with the representatives of the residents as well as measures for ensuring the traceability of the care documentation are recommended. It is evident from the written reactions that the criticism is taken seriously and being dealt with. However, in practice the problems are usually very complex, in particular with regard to potential medication-based measures that restrict freedom.

It can be assumed that there is a need for specific psychiatric help for persons who are severely impaired in their autonomy and taking part in society. Severe disability is more often accompanied by mental disorders and barriers to communication than in case of non-disabled persons. But the specific living conditions must be taken into consideration in particular when assessing the psychiatric symptoms, because persons with severe multiple disabilities have considerably fewer possibilities to control basic aspects of their life themselves. Professional psychiatric expertise is thus necessary for determining indications and diagnosis. The heightened sensitivity of persons with cerebro-organic disorders to adverse effects and their disguise as “mental disorders” requires experience and knowledge of prescribing psychotropic medication when dealing with this vulnerable group of people in particular. This should therefore not be performed by general practitioners in the view of the NPM.

Psychiatric standards  
in psychotropic  
medication therapies

Commissions frequently observe that the evaluation of treatment with psychotropic medication is inadequate. Treatment plans from professional medical experts with explicit therapy objectives are unavailable; traceable documentation of the course of the therapy is missing. The effects and adverse effects of the psychotropic medication are at most thematised in the daily documentation if there are behavioural disorders worth mentioning. Clients who attract attention by raging, shouting, kicking and hitting others, injuring themselves repeatedly, throwing objects around or destroying them, spitting out medication and ignoring pedagogical instructions are usually experienced and assessed as difficult, aggressive and dissocial. This transfer of the understanding of the illness to the field of pedagogical action has far-reaching effects. Many employees in residential facilities often only experience the residents under the influence of psychotropic medication, but see the same as a problem-solving universal remedy. As members of non-medical professions, they are neither authorised nor in a position to assess the advantages and disadvantages, effects and adverse effects of medication. In this way, factual grey areas can emerge between the attending doctors and the facilities about who has to make decisions on whether specific measures have to be initialised and if so, which measures these should be.

Deficits due to unclear  
therapy objectives



**Multimodal therapy concepts** Guiding principles such as normalisation, integration and self-determination also depend on the behaviour and interest of the social environment, which has to change if psychosocial disorders are to be reduced or eliminated. Multimodal therapy concepts thus require the alignment of pedagogical, therapeutic and medication-based therapy with the respective clients. The NPM is of the opinion that the existence of a pedagogical framework, within which the professional treatment and therapeutic support take place, is a condition for the use of psychotropic medication in persons with disabilities. It must become clear – in close cooperation with the attending professional medical experts – how the effects of medication should be used to improve the pedagogical social strategies in everyday life and the curative pedagogical and psychological primary therapies. This implies determining which routine pedagogical, curative pedagogical and psychological social strategies can be applied as support.

**PRN medication** Commissions repeatedly describe problems with PRN medication that potentially restricts freedom without sufficient medical description of the indication. The use of neuroleptics appears to be particularly problematic when they should only be administered “symptom-oriented” to allay “disruptive” behaviour (e.g. “anxiety”, “restless activity”, etc.). The risk of inappropriate use and misuse is evident. The staff of residential groups assume a responsibility that they are not permitted to in these cases. The management of facilities is obliged to request the correction of the inadequate medical prescriptions from doctors accordingly. A further indication of the legally highly questionable assumption of responsibility is displayed in the way the refusal to take medication is treated. Doctors are rarely contacted in these cases. If nothing else works and “persuasion is to no avail”, the medication is ground and mixed with the food.

From the NPM’s point of view, it can certainly be assumed that in many cases external factors and not only behaviour, which could potentially harm the client or others, are causal in perceiving which alternatives there are to restricting freedom.

**Risk factors** The following risk factors for measures that restrict freedom are named by the commissions: staff shortages and/or high personnel fluctuation, the size of facilities, lack of support for the pedagogical personnel through additional professional services or expertise, precarious structural conditions, few possibilities to retreat, lack of supply with adequate aids, missing psychiatric diagnosis of behavioural disorders, outdated or non-individualised treatment concepts, lack of occupational and therapeutic possibilities as well as lack of communication. Sometimes it is also irritations such as the departure of the familiar care giver, new residents, a change of room or somatic complaints that contribute to behavioural disorders and culminate in aggression. The justification that measures that restrict freedom are only applied for the protection of those affected sometimes prevent awareness of the fact that



shapeable framework conditions and even the inadequate resource situation do not permit a violation of the fundamental right to freedom.

Working with persons with multiple disabilities can result in enormous strain. Prior to such crisis situations, a well-trained and efficient team can intervene and de-escalate. However, sometimes viable work alliances are missing to pursue the question of which inner mental processes trigger behaviour that is harmful to the self or others. Occasionally, the knowledge about alternatives and methods with which to react differently in stressful situations is missing. Curative pedagogical processes can only be effective if the pedagogical support is linked to the current development and action level, and the organisation of everyday life is planned individually and “suitably” and systematically implemented with activating measures.

There are also structural problems in caring for persons with complex needs, intellectual impairment and complex mental illnesses. Care situations that are highly critical from a human rights perspective can continue over longer periods of time. Commission 6 visited a residential facility in Lower Austria, for example, in which three residents repeatedly had sudden violent outbursts in spite of all efforts to avert the same. Both physical assaults against residents and attacks against the personnel are daily routine there. Great credit must be given to the private operator and the personnel for their willingness to care for highly difficult and highly vulnerable clients who were refused admission to other facilities. Criminal charges are intentionally not filed against the three, who are not criminally liable in order to avert the threat of their being committed by a court to a facility for mentally disturbed offenders or to a forensic ward within the framework of detention of mentally ill offenders. On the wish of Commission 6, the Human Rights Advisory Council will deal with the problem.

Structural problems  
foster violence

Only when a relationship can be established with the residents and when the individualised care results in changed attitudes and techniques in dealing with impulsive outbursts and challenging behaviour can the right to freedom be safeguarded and the personnel better protect themselves and others. However, it does not suffice to design routine work only under a “behavioural therapeutic setting”. It is also insufficient to unilaterally prioritise one “care model”. As important as the qualified and health-promoting care of persons with disabilities is, it cannot provide access to education, employment, leisure and interpersonal encounters.

Individualised care

The NPM made the precarious care situation in a facility of the *Land* Salzburg public through the media in agreement with the representatives of the residents after it was not possible to obtain concrete commitment for change. Thirty five persons with multiple disabilities of varying age groups are cared for in the facility. In several cases, medication-based measures that restrict freedom were deemed impermissible pursuant to the Nursing and Residential Homes Residence Act, but no consequences drawn. At the time of the first

Restriction of freedom  
with no development  
concepts

visit by the commission in October 2015, no development status statements and not a single development and education plan could be presented. Staff shortages, lack of basal stimulation and communication techniques, the absence of therapeutic interventions, completely inadequate confining structural conditions and the lack of privacy describe just a few of the most serious shortcomings observed by Commission 2 in detail. These were still largely existent on the follow-up visit in March 2016. However, the facility had been given assistance in the form of external support for the restructuring of internal processes, deployed interim pedagogical management and initiated training in supported communication and de-escalation.

**Debate in Salzburg Diet** If a court legally ascertains that a restriction of freedom was applied unjustifiably because other alternatives are available, facilities and their operators are required to take up and implement the recommendations and suggestions of the court expert promptly. A debate sparked between the regional government and the NPM on the resulting cost. The Social and Health Committee then also granted the Head of Commission 2 the possibility to make a statement on observations and recommendations for this facility. In May 2016, the Diet of Salzburg set the course for the construction of new shared accommodations with a separate daily structure and requested the members of government involved to take all of the steps necessary to ensure the best possible care for the residents by the time they move in (estimated in 2019). At the end of May 2016, personnel was increased by two fulltime positions and it was agreed that vacancies would be filled quicker. Work is being performed on development and education plans and the implementation thereof. Follow-up visits by Commission 2 will show whether the initiated measures will suffice to reduce the number of restrictions of freedom.

- ▶ *Psychotropic medication therapies require traceable pedagogical, psychological and psychiatric diagnostics and reasoned indication. Facilities must take care that therapy objectives are explained and executed in a traceable way and are evaluated regularly.*
- ▶ *Curative pedagogical processes must be designed in such a way that the pedagogical support is linked to the current development and action level, and daily routine is planned according to a multimodal therapy concept individually "suitable" to the needs.*

### 5.4.3 Augmentative and Alternative Communication

Tens of thousands of persons with physical, mental or multiple disabilities in Austria have problems in communicating through speech. Persons without (sufficient) speech often reach the limits of their possibilities to act and of their interactive and communicative competence, and thus have fewer possibilities to present themselves. Communicative difficulties always impede all of the dialogue partners involved. The focus of so called Augmentative and Alternative Communication (AAC) is thus the endeavour to help children, adolescents or adults with insufficient or missing speech gain successful communication experiences as early and as often as possible. In so doing, the body's own communication possibilities and electronic or non-electronic communication aids are used.

Tens of thousands need Augmentative and Alternative Communication (AAC)

Implementation of the right to self-determination, to independently managing one's own life, equality, education and full participation in political and public life is inconceivable without the possibility to express oneself or to communicate. There are facilities in Austria for persons with disabilities that do excellent work in this field and use AAC in many ways in all areas of life. Observations by the commissions are all the more disconcerting when they find that AAC is not or inadequately used in many facilities for persons with disabilities, and even the existing communication possibilities for persons with multiple disabilities – such as gestures, eye movements, facial expression or sounds – are overlooked or misinterpreted. Not a direct consequence, but rather a condition for impaired communicational development is the fact that children who have been diagnosed as (mentally) disabled have experienced less verbal care from a very young age in many cases. They are usually considered less capable and their abilities are underestimated.

UN CRPD demands AAC

In this way, not only fundamental principles of the CRPD are disregarded, but above all the heteronomy in care situations is reinforced. Heteronomy is a significant risk factor for violence or degrading treatment (see NPM Report 2015, p. 72). This risk always exists when emotions cannot be verbalised. For the person affected, situations like these mean that they feel like they are not taken seriously and are misunderstood. Repeated experiences of dependence and the feeling of not being an equal partner in this process can result in passivity and resignation. This condition is often described as “learned helplessness”. However, defencelessness and helplessness can lead to aggression and “behavioural disorders” and as a consequence to restrictions of freedom or social isolation.

The term AAC is a collective name for different methods, approaches or concepts aimed at improving, expanding or replacing the individual means of expression and understanding. In particular where communication is concerned, it is evident that unilateral measures do not suffice. Non-disabled dialogue partners have to make a contribution as well, if intervention in

AAC fosters self-determination and participation

AAC is to bear fruit. Every AAC intervention must begin with comprehensive diagnostics and an evaluation of the communicative competencies. This includes gathering medical results from different specialist disciplines, direct and indirect observations as well as their recording by contact persons and specialists.

The current and individual competencies of those affected are the starting point for all development steps. Objects, gestures, graphic symbols or technical aids can be used as tools.

The body's own communication signals must be heeded

Some fundamental rules of interaction and conversation technique strategies have proved to be particularly instrumental in contact with persons with impaired communication: all communicative signals should be answered; an immediate and direct response is required. The attention of the non-speaking person must be observed, own observations and assumptions should be formulated. However, the non-speaking persons should lead the communication during contact insofar as possible. Sufficient time should be left for a reaction or an answer.

AAC requires practice

The use of voice output devices differs from the natural communication forms of the body and the user usually first has to learn how to use it. It can sometimes take months until spontaneous use becomes apparent. The task of the environment is thus to create situations in which dealing with communication aids can be practiced.

Absence of AAC causes secondary disability

The absence of an AAC offer leads to a secondary disability of those affected. On the one hand, the risk of becoming a victim of physical or mental violence is increased, and on the other, the failure of elementary support measures per se must be qualified as degrading treatment.

AAC essential for violence prevention

AAC is thus of great importance in violence prevention. When analysing which measures are necessary, the term "communication" has first to be defined. Communication within the meaning of the CRPD must be broadly defined and in addition to language covers text presentation, braille, tactile communication and the like. Consequently, the measures for AAC can be different. Communication forms using the body, mapping with picture symbols, "ME books" with photos and symbols, language training, emotions cards or electronic communication aids can be used as needed.

However, even if different tools were available, specific training and knowledge are required for their use. Many employees in the area of care of persons with disabilities do not have this knowledge. In this context, it is important that not only alternative communication methods are taught but that personnel in facilities are also direct communication partners. Depending on the support requirements, care givers have to find out possibilities for the individual client to communicate. Clients further have to be involved when these measures are implemented as part of a development plan.

The condition for effective AAC is thus to train staff in the methods and implementation as well as individually adapted aids in order to be able to work together with the client purposefully. In some facilities, AAC became a focal point of the work and internal AAC experts were appointed. They ensure that gestures, sounds, pictures or noises hold a common meaning for communication partners. A positive example of a person-focused, individual approach was observed in one facility. Because one resident with severe multiple disabilities did not want to use conventional emotions cards but was very interested in photos, a folder with pictures of himself was compiled for him. The pictures showed him in different situations and moods. By selecting the right photos, he is now able to make himself understood.

Positive examples of AAC

ACC ensures that the individual moves to the focus, which is vital when working with persons with disabilities and also a fundamental standard according to the CRPD. However, many facilities did not have the necessary conditions in this respect.

As already stated in the Annual Report 2015 (see NPM Report 2015, p. 74) “a good will” or “good intentions” do not suffice for effective protection against torture or violence. The commissions encountered very committed and very conscientious staff in many facilities. However, as long as empowerment principles do not sufficiently flow into the work for persons with disabilities, care will inevitably result in dependent relationships.

Good will does not suffice

The conditions for adequate AAC were also missing in facilities in which the commissions observed violence in care, gross violations of the privacy of the clients or a general lack of respect in dealing with persons with multiple disabilities. By implication, this does not necessarily mean that violence has to be assumed in the absence of AAC. However, a correlation cannot be ruled out according to the observations by the NPM.

- ▶ *The NPM recommends that communication possibilities adapted to individual needs be opened to persons without the ability to speak or with impaired speech by means of Augmentative and Alternative Communication (AAC).*
- ▶ *AAC contributes to prevention of violence. To guarantee this, knowledge of the methods, relevant training and sufficient resources are required.*

#### 5.4.4 Developing planning and target agreements

Target agreements as cornerstones of modern work with persons with disabilities

The development diagnostics as well as the promotion of individual capabilities and independence are the cornerstone of modern work with persons with disabilities, based on the CRPD. The creation of development plans is an important instrument for this. Realistic goals based on the wishes and needs of those affected must be identified and targeted.

A target agreement is always based on a formulated target, which serves to simplify planning and implementation. There are achievement, recovery and preservation targets. Such approach aspires to enhance professional, social and everyday competencies aimed at mastering daily routine, to achieve emancipation and to gain autonomy, to develop individuality and identity as well as the ability to enter a relationship, to reinforce self-confidence, to reduce anxiety, to build relationships to the outside such as the integration in local clubs and associations, etc. The results and agreements must be documented and, if possible, signed by both sides. Agreements of this type should be seen by care givers as a work order to support persons with disabilities in achieving their targets. This process must be subsequently evaluated in detail by those involved with a view to develop new target agreements.

Commissions criticise target agreements

The commissions' reports included a large number of facilities in which target agreements were not drawn up at all or only in a superficial way. Smaller sub-goals and descriptions of measures regarding how these targets should be achieved in concrete terms or how their achievement can be determined were completely missing. Repetitive "formulas" according to which "greater independence" is aimed for are of no effect if suitable measures are not set.

Clients cannot develop potential

Based on these updates, the NPM has the impression that safety aspects have priority in permanent care and clients of facilities are not adequately supported in developing their individual potential. Assistance and support which promotes development as well as respect for self-determination and personal integrity require a stable dialogue. The goal is to open up development opportunities to persons with disabilities by means of target plans on the basis of which perspectives and plans for their lives can materialise.

Development of one's own potential is a human right

Support in developing one's own potential and abilities is the right of all persons, according to the CRPD. For this reason, it is no longer enough to simply provide good "care" for clients. A purposeful occupation is one of the basic conditions for a fulfilled life. Even persons requiring intensive support in basal groups could be offered the possibility to communicate, in particular in workshop groups (e.g. overall activities, joint work on specific products, projects, etc.).



- ▶ *The development of one's own potential is a human right and must therefore be guaranteed by the facilities. Concrete and quantifiable target and measure agreements are crucial here.*
- ▶ *Needs and wishes of those affected must have priority.*

### 5.4.5 Degrading treatment through negligence and inadequate concepts

The urgent responsibility of the NPM is to identify structures and factors that can result in torture, inhuman or degrading treatment or punishment.

Human rights violations noticed during the visits

However, the work of the commissions shows that they are confronted with actions or omissions that already constitute inhuman or degrading treatment or punishment. When prioritising recommendations by the NPM it thus makes a difference if measures are recommended preventively or if reactions to existing violations of human rights are necessary. However, the point at which borders are crossed in this respect and human rights violations are manifested cannot always be unequivocally clarified.

For example, Commission 2 made some worrisome findings on a visit in the *Land Salzburg*. A facility for adolescents and young adults with mental illnesses did not offer psycho-education or medication training, even though suicidal actions had occurred. The residents were thus refused the necessary conditions for dealing responsibly and for coping with the mental illness. There was no professional investigation of the suicides.

Neglect

At the same time, clients complained that they were confronted with derogatory comments. One client felt hurt by assertions that “he is not able to do anything and does not do anything”. A young female client who was homesick and wanted to phone her parents was called a “whiner”. Another female client was described as a “nymphomaniac who, if possible, would have sexual intercourse with every man in the place”. Residents had no say in what went on and had little scope to organise their leisure activities. Complaints of strict disciplinary measures such as bans on visitors and the like were brought to the attention of the Commission in confidential interviews. The Commission also criticised the lack of sensitivity in terms of potential restrictions of freedom, the inadequately specified prescription of PRN medication, lack of documentation and the absence of any target agreements. After several inspections by the supervisory authorities and interviews with the operator, requirements for revising the operational concept and the house regulations were set down by the technical supervision. In addition to this, externally supported workshops for the rectification of existing shortcomings were initiated (rules in the building, privacy, leisure facilities, participation, the possibility to complain, etc.). The

Derogatory language and no participation



conditions for availing of supervision were also created. The representatives of the residents were contacted regarding possible medication-based restrictions of freedom, and agreement was reached regarding the reports to be submitted. The regional government assured the NPM that a supporting professional service amounting to 0.5 fulltime equivalents should be established in 2017 to reinforce the psychological and therapeutic care in the facility.

Benchmark for degrading treatment

Whether actions or omissions are to be qualified as degrading treatment has to be assessed pursuant to Article 16 of CAT as well as pursuant to Article 3 of ECHR as an ancillary measure.

Degrading treatment or punishment invokes feelings of fear, sorrow and inferiority in the victim, degrades and humiliates them and breaks their physical or moral resistance or drives the victim to act against their will or conscience. The level of humiliation must achieve a certain minimum of severity. Reaching this extent is relative and always depends on the circumstances of the individual case. Even if unintended, a human rights violation in the sense of degrading treatment cannot be ruled out.

Disregard of privacy

This can be assumed in any case when infringements of privacy are daily routine. Members of Commission 5 happened to observe how showering actually took place for persons with multiple disabilities in a facility in Lower Austria. In the presence of the Commission, a resident was moved naked from the bathroom along the hallway to his room with the help of a lifting device. A resident was then sent to shower while a female resident sat naked on the toilet. The door of the bathroom was often open during a period of three hours offering all those who passed an unhindered view of the showering residents. When asked about these practices, the care givers mentioned the existing time pressure. The nakedness in front of others enforced by the personnel constitutes a massive human rights violation. The NPM was assured by the operator of the facility that the practice of non-consensual joint showering of men and women will be ended at once.

Violation of human dignity

According to the jurisdiction of the European Court of Human Rights (ECHR), treatment is degrading when it violates the affected person's dignity. At great risk are groups of people who are regularly or in certain circumstances in special need of protection. This often applies to persons with disabilities. Persons with severe multiple disabilities but also persons with learning difficulties who also have a psychiatric disorder are at risk in particular.

Imminent neglect despite care

In Upper Austria, Commission 2 visited a facility within the framework of "partially assisted living and housing" which provided accommodation for a 63-year-old woman and a 62-year-old man with serious mental impairments in a small, 300 years old farmhouse and in the adjacent construction site trailers. The facility explained that this remote property was arranged especially for Ms N.N. in 2012. The remoteness appeared to be conducive in view of her existing compulsive hoarding syndrome, as she had no opportunity to pursue her

shopping and hoarding addiction there. Mr N.N. moved into the construction site trailers especially installed for him in 2015. Prior to that, he had lived in solitude for decades without water and electricity. A state-of-the-art care concept with aligned pedagogical, medical and therapeutic measures that would be advisable in any case for persons with chronified mental illnesses was not created for either of them and care was limited to weekdays from 7:00 a.m. to 1:30 p.m. Beyond that the two were left to their own devices. According to Commission 2, they were both exposed to neglect and mentally not stable enough to help themselves or organise help in an emergency.

There were no development or care plans that would have documented the individual development processes in centralised areas of care and supply (daily routine, medical, social, integrative, etc.). It was only on the instigation of the NPM that the facility was closed in May 2016.

Commission 3 visited a facility in Styria that cares for girls and women between the ages of 16 and 23. In the case of all residents severe psychiatric illnesses (substance addiction, schizophrenia, personality disorders, post-traumatic stress disorders) had caused them to leave school early and prevented their integration in the employment market. The Commission found that the rehabilitation concept, which was the basis of the pedagogical interventions, was completely unsuitable and critical from a human rights perspective. The clients were forbidden to have any contact to the outside world in the first few months after admission; they were also not allowed to use their mobile phone. The house rules referred to the Disability Ombudsman of Styria; however, all telephone and written contact was monitored for months. It was thus not possible to lodge complaints. Rigid rules encroached on the personal rights of the clients. The care personnel determined the suitability of clothing. Anyone who ate outside of the set mealtimes was punished. Collective punishment was also considered impermissible in terms of human rights. Formulated therapy targets such as “no addiction relapses” are not implementable in the estimation of Commission 3, as relapses are an integral part of substance addiction illnesses. Therapeutically, they constitute a challenge over many years which cannot be met with prohibition alone. The strategy whereby clients with borderline disorders who injured themselves had to treat bleeding wounds and pay for plasters and bandaging materials from their own pocket money was also untenable. One client was taken to hospital on the day of the visit on the request of Commission 3, as she complained of severe pain. Psychotherapeutic offers and closely meshed psychiatric controls were completely missing in the facility. On the instigation of the Styrian supervisory authority, the care concept and the house rules have since been revised and a multi-professional composition of the care team has been ensured.

Rehabilitation professionally inadequate

In the opinion of the NPM degrading behaviour includes measures such as massive restrictions of self-determination and privacy, the repeated use of derogatory language, a sanction system with the aim of absolute submission,

the social isolation of persons with disabilities as well as conditions that do not counter neglect.

This should be known by all facilities but also by the supervisory authorities and observed accordingly. In accordance with the UN CRPD, the basic benchmark must be that the autonomy and self-determination of residents is strengthened in all areas as much as possible. There could be a simple rule of assessment for the question of whether a restricting measure is justified or not. Everything that does not have a therapeutic goal – or a justified educational one in the case of minors – must generally be rejected as a measure. This would bring about a reversal in the burden of proof to the disadvantage of the facilities. The assessment in individual cases will nevertheless always be necessary.

The Human Rights Advisory Council was requested to make a statement for further discussion of these questions, which is currently being drafted.

- ▶ *Facilities must take special care that persons with disabilities or a mental illness are not exposed to degrading treatment.*
- ▶ *Health promotion through therapy offers must be based on professionally recognised concepts, which allow the highest possible level of self-determination in all areas.*

#### 5.4.6 Criticism on Carinthian centres for psychosocial rehabilitation

After the closure of long-term care wards in Carinthia, centres for psychosocial rehabilitation are taking over the care and support of persons with chronic mental illnesses. In Carinthia, there is a total of 31 centres for psychosocial rehabilitation with 762 care places. There are 16 operations alone with 321 places in the St. Veit an der Glan district (source: Regional Health Care Structure Plan – Carinthia 2020, p. 70).

Farmsteads as rehabilitation centres?

These include facilities with very few persons in care, but also facilities for 40 to 80 clients. The majority of these centres are agricultural holdings, mostly remote farmsteads, which offer living and working in the farming community for a little pocket money; in some cases they have been structurally repaired with the help of these same clients in care. The perspective of leading an independent life, moving into one's own apartment, embarking on an education, joining the employment process or starting a family did not exist under these circumstances.

Besides, residents of larger residential homes are also denied access to professional occupational, social rehabilitation and therapeutic support. In 2015 and 2016, Commission 3 made monitoring and control visits to a facility that has been in operation for decades and accommodated 70 persons between the ages of 35 and 70. Residents reported in the previous year that there was no care giver available at night, that they hardly ever received visits and had little contact with the local population. Complaints were made about the lack of control over the administered pocket money, the unannounced room inspections and the impolite tone. The way in which the residents are treated has improved – as the Commission observed on a second visit – and after the intervention of the NPM assistance is now guaranteed at night. However, that does not alter the fact that only basic care (care ratio 1:9) and medical aid is provided. Psychosocial care is not included in the daily rates according to the Carinthian law on needs-based minimum benefit (*Kärntner Mindestsicherungsgesetz*).

Psychosocially trained personnel – contrary to the permit notices – is also missing from other centres for psychosocial rehabilitation visited by Commission 3. Home contracts, which are legally stipulated since 2005, were not available in any of the facilities visited.

The applicable Carinthian Equal Opportunities Act (*Kärntner Chancengleichheitsgesetz*) contains a restrictive concept of disability which is in contrary to the CRPD. It explicitly excludes chronically or psychiatrically ill and elderly persons from claims to participation and psychosocial care and rehabilitation. This constitutes a blatant discrimination of the (chronically) mentally ill persons.

The NPM informed the regional government of Carinthia several times in writing and emphasised in a meeting with the competent member of government in autumn 2016 that the inclusion of this group of people in the Carinthian Equal Opportunities Act is urgently required. The requirement for legislative amendment was also presented by the NPM in the debate in the Carinthian Diet in January 2017. The NPM has since been informed by the regional government of Carinthia that equalisation would cause additional costs amounting to 14 million euros.

To date there are only two assisted living and housing forms for mentally ill persons aged between 18 and 50 in Carinthia outside of the centres for psychosocial rehabilitation.

## **5.5 Correctional institutions**

### **5.5.1 Introduction**

The following overview is intended to present the perceived points of criticism and recommendations of the NPM regarding facilities of the penitentiary system and facilities for the detention of mentally ill offenders in the year under review. In total, 37 visits were made to correctional institutions and four visits were made to forensic departments of psychiatries. The results of this preventive human rights work are divided into seven chapters. As in the previous year's report, the further sub-division is based on the structure of the NPM's visit reports.

In particular, there are still deficiencies in the area of medical care. Therefore, "health care in prison" was again a monitoring priority for the NPM this year. The first chapter (5.5.2.) is devoted to the NPM's extensive monitoring of health care. The insights and recommendations of the NPM on the topic of "personnel" (5.5.3.) are then noted. In addition to the shortages of prison guards and medical personnel, the NPM also addressed the topic of whether prison guards should wear clearly visible name tags. The NPM made an appropriate recommendation in this regard.

Lock-up times and employment opportunities in prison facilities are also addressed in the chapter on "living conditions" (5.5.4.) as is the key issue of "women in prison". The fourth chapter deals with "access to information" (5.5.5.). The high percentage of foreign inmates, who do not speak German and the variety of languages spoken in the everyday prison life present a particular challenge. The observations of the NPM regarding "contact with the outside" (5.5.6.) are discussed in the fifth chapter and examples are given. In the sixth chapter entitled "infrastructural fixtures and fittings" (5.5.7.), the progress made on barrier-free accessibility and the joint recommendation on lockable lockers are discussed.

The final chapter (5.5.8) is devoted to the "detention of mentally ill offenders and after-care facilities". In the past year, the NPM gave more attention to inpatient care facilities in which mentally ill offenders and inmates who have been released from detention for mentally ill offenders on parole are housed.

## 5.5.2 Health care

### Presence of law enforcement personnel during medical examinations

During the reporting year the NPM gave close attention to the following question: under what conditions is the presence of prison guards required during medical examinations or treatments in Austrian correctional institutions? In the reports of the previous years (see NPM Report 2015, p. 94), the NPM noted that prison guards are present in treatment rooms during medical or nursing interventions even if there is no security risk. This practice was again observed in the course of visits to various correctional institutions in the year under review (such as the Innsbruck, Wiener Neustadt, Vienna Favoriten, Stein and Leoben correctional institutions).

Physician's office and infirmaries

It was found that, next to physicians and qualified nursing staff, prison guards are also employed in infirmaries. These auxiliary personnel – who may or may not be law enforcement officers – provide support services.

Auxiliary law enforcement personnel assist physicians

In the view of the Federal Ministry of Justice, it is the responsibility of the treating physician to determine from a technical perspective which auxiliary personnel are necessary in the individual case. According to the Federal Ministry of Justice, the auxiliary personnel assisting the institution's physician are obliged to a physician's duty of confidentiality as well. This ensures the confidentiality of the medical contact.

In the opinion of the NPM, the presence of prison guards in the treatment room during medical treatment is in conflict with the requirement of ensuring intimacy and confidentiality. Privacy and confidentiality are basic rights of the individual and are essential to the atmosphere of trust, which is a necessary component of the physician/patient treatment relationship. In correctional institutions, in particular, where the inmates are not free to choose their physicians, it is important to protect these rights [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 35].

Confidentiality is not ensured

Moreover, one of the standards established by the CPT is that every medical examination of a prisoner should be conducted out of the hearing range and – unless the attending physician so requests – out of the line of sight of prison personnel. Likewise, the maintenance of patient records should be the sole responsibility of the physician [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 36].

Sensitive data

The CPT's report to the Austrian Government regarding its visit to Austria in the autumn of 2014 [CPT/Inf (2015) 34, German, p. 39] expresses great concern regarding the lack or the inadequacy of medical confidentiality in all institutions and facilities visited: "In every prison, various tasks in connection with medical care, which are normally reserved to qualified nurses, were carried out by medical orderlies (*Sanitätsbeamten*), i.e. law enforcement

Violation of the principle of medical confidentiality

officers with only basic medical training. These health officers were usually present at medical consultations, had access to medical records (including the electronic database) and were responsible for administering prescribed medications. At the same time, they carried out their supervisory functions. This approach is a violation of the principle of medical confidentiality and jeopardises the professional independence of the prison personnel responsible for medical care.”

Health orderlies may not have supervisory functions

The CPT recommended to the Austrian authorities to “initiate a process of abolishing the practice of involving prison officers in the performance of health-care duties in all prisons in Austria. This will invariably entail an increase in nursing staff resources.” The CPT further recommended that “immediate steps be taken to ensure that medical orderlies cease to carry out custodial functions in all prisons”.

NPM recommendation

The NPM shares the considerations raised by the CPT and directed a recommendation to the Federal Minister of Justice in early 2017, demanding that correctional institutions should only use trained medical and nursing staff in order to protect the principle of physician/patient confidentiality in infirmaries and physician’s offices. This should be ensured by gradually taking the appropriate organisational measures. The medical and nursing staff may not perform any supervisory functions.

Presence only in justified exceptional cases

The NPM does not deny that possible endangerment should be avoided in the interest of the medical and nursing personnel’s right to security. This right will be protected if prison guards are utilised in exceptional cases at the request of the physician. The decision is the responsibility of the physician. To assist, the prison administration can provide a risk assessment of the patient being screened.

Therefore, the presence of a prison guard should be the exception. However, even in these cases, attention should be paid to maintaining confidentiality to the greatest possible extent through technical or structural precautions (e.g. screens, glass partitions, headphones).

Examination room should be equipped with an emergency call system

In the opinion of the NPM, the security needs of medical and nursing personnel can also be taken into account by equipping the examination rooms in correctional institutions with emergency call systems (e.g. an emergency call bell). Therefore, the NPM recommended that measures be taken to ensure that the examination rooms in correctional institutions are equipped with an emergency call system.

Vienna-Favoriten correctional institution takes first measures

In anticipation of the response of the Federal Ministry of Justice, it can be reported that the Vienna-Favoriten correctional institution will no longer have prison guards in the treatment rooms during examinations unless there is a special need for security or this is specifically requested by medical or nursing personnel.



- ▶ *Only trained health care and nursing personnel should provide services in infirmaries and physician's offices. They may not perform any supervisory functions.*
- ▶ *Prison guards may only be utilised as an exception by request of the physician due to a risk assessment.*
- ▶ *The examination rooms in correctional institutions must be equipped with an emergency call system.*

## Health examination upon arrival

Another key issue in the area of health care in this reporting year was the health examination, which is to be carried out upon arrival in the correctional institution. As already stated in the previous year's report (see NPM Report 2015, p. 91 et seq.), two central questions were of particular interest to the NPM: what does the health examination upon arrival entail and when is it conducted?

### Scope of the health examination upon arrival

The purpose of the health examination upon arrival is self-protection and the protection of others. This means that the health condition of persons should be ascertained before they are held in state custody in a facility where they are deprived of their liberty. The aim is to prevent the spread of contagious diseases and to ensure that the affected person receives adequate medical care. Moreover, another function of the health examination upon arrival is to discover any signs of mistreatment and have them medically investigated. To this end, it is necessary to make a physical evaluation of the inmate, in addition to taking a medical history.

Unfortunately, the NPM's investigations could not confirm that the standards for health examinations upon arrival established by the Federal Ministry of Justice (see NPM Report 2015, p. 92 et seq.) are actually being implemented in all correctional institutions in Austria.

Inconsistent approach

In particular, the NPM found that the health examination upon arrival does not include a full-body examination, but only the taking of a medical history. For example, this was found to be the case in the Wiener Neustadt, Innsbruck, Feldkirch, Vienna-Favoriten and Vienna-Simmering correctional institutions. Instead of an examination, the person is asked about his/her condition, the medical history and medications taken. In some cases, the person's blood pressure is measured in addition to taking the medical history. According to the NPM's findings, only the weight of very over- or under-weight persons is checked. Otherwise, the person is generally asked his/her body weight. By contrast, in the Stein correctional institution, inmates and employees stated that blood is also drawn and an electrocardiogram is taken.

Uniform federal standards required	The NPM required that there be uniform federal standards to establish the scope of the health examination upon arrival. It also suggested that, in addition to the medical history interview, inmates be subjected to a physical examination (including disrobement). In the view of the NPM, this is the only way to fulfil the purpose of the health examination upon arrival, i.e. self-protection, protection of others and the discovery of mistreatment.
Decrees of Ministry establishes standards	In August 2016, the Federal Ministry of Justice issued a decree establishing federal standards in relation to the health examination upon arrival (decree BMJ-GD42708/0002-II 3/2016). Under this decree, the health examination upon arrival will be conducted with the aid of an examination form which can be accessed in the Electronic Patient Record Module. The standard medical history form is based on the general examination forms for admission to a hospital.
Blood test	Under the decree, blood tests are only to be ordered when medically indicated. At the same time, the decree states that a general blood test should be performed before admission to prison. The NPM considers the nationwide introduction of the procedure of taking routine blood samples from newly admitted inmates and subjecting them to laboratory testing to be a positive step.
Decree is incomplete	However, although electrocardiogram tests are now mandatory if certain medications are being taken – according to a notification from the Federal Ministry of Justice – the NPM is concerned that this provision was not included in the decree.
Disrobement	In addition, it is not clear to the NPM why the decree does not also require that the clothes are taken off in the course of the health examination upon arrival. The justification expressed by the Federal Ministry of Justice is considered to be unsatisfactory: the Ministry argues that, at the initial contact, a brief inspection of the upper body (by a prison guard) is sufficient to identify any possible injuries. However, it should not be forgotten that the reason and purpose of a health examination upon arrival includes the diagnosis of injuries and the discovery of mistreatment. The guidelines of the UN Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) require the ascertainment and detailed description of all injuries as standard documentation. It is obvious that a full body inspection (including disrobement) is necessary for this.
Final result is still undetermined	Whether the standards set forth in the decree on the scope of the health examination upon arrival are sufficient or whether an amendment or a revision of the decree should be suggested will be the subject of more detailed investigation by the NPM.

### Timing of the health examination upon arrival

With respect to the timing of the health examination upon arrival, the CPT standards state that all newly arrived prisoners are to be properly questioned and physically examined by a physician as soon as possible [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 32]. If there are no unusual circumstances, the questioning and examination should take place on the date of admission, especially if pre-trial detention centres are involved.

In addition, in the report on its visit to Austria in February 2009 [CPT/Inf (2010) 5, German, p. 39], the CPT recommended that newly arrived prisoners should be examined by a physician (or a fully qualified nurse who reports to a physician) as soon as possible after admission and that the questioning and examination should take place on the date of admission – in all but exceptional cases.

Questioning and examination on the day of arrival

As already stated in the previous year's report, the Federal Ministry of Justice is of the opinion that persons brought in by the police or transferred from another correctional institution can only be immediately presented to a physician for the initial examination if the receiving institution has its own special medical facility. If the correctional institution does not have an affiliated special medical facility, it can take (a maximum of) four days, according to the Federal Ministry of Justice, until an initial examination is conducted. If an inmate expresses acute complaints, the examination is conducted immediately at the closest hospital (see NPM Report 2015, p. 92).

During its visit, the NPM noted that health examinations upon arrival cannot always be carried out within the time period required by the CPT (24 hours) due to the personnel situation in the prison facilities. Particularly worthy of criticism was the fact that not even the time period set by the Federal Ministry of Justice itself (i.e. a maximum of four days) was met in some correctional institutions.

The court prison at the Wiener Neustadt correctional institution for example, only conducted health examinations upon arrival once a week until the summer of 2016. In the regional court prison at Krems correctional institution, prisoners are also only subjected to a health examination upon arrival within seven days. By contrast, in the regional court prison at the Feldkirch correctional institution, the health examination upon arrival is conducted twice a week, and in the regional court prison at the Innsbruck correctional institution it is conducted three times a week.

Examination within seven days

The Federal Ministry of Justice has noted that the timing of the health examination upon arrival should be regarded differently at different facilities: for example, the Vienna-Favoriten correctional institution only holds prison inmates who were transferred there from other correctional institutions and.

Timing of the health examination upon arrival for transferees

These inmates therefore have already received a health examination upon arrival at the previous correctional institution.

The response of the NPM is that the situation in regional court prisons is different. In addition to prison inmates, regional court prisons also hold detainees awaiting trial who have been brought in by the police. Upon their arrival they enter prison, which means that their state of health has not yet been investigated.

Without a doubt, all inmates who are admitted to a correctional institution should be given a health examination by the institution's physician upon arrival, even in cases of persons transferred in or transferred to a different prison (see also Federal Ministry of Justice decree, BMJ-VD52201/0007-VD 2/2011).

In the coming working year, the NPM will address the question of whether the health examination upon arrival – when there has been a transfer to a different prison or other transfer – should be conducted within the same time period (24 hours) as in case of the first admission or the start of imprisonment.

- ▶ *The scope of the health examination upon arrival must be standardised in the sense of a nationwide procedure.*
- ▶ *In the interest of self-protection, the protection of others and the discovery of mistreatment, the health examination upon arrival should include a physical examination in addition to a medical history record.*
- ▶ *Conducting a health examination as soon as possible upon arrival is necessary to guarantee proper health care. Newly admitted prisoners must be subjected to a medical examination by a physician at the earliest possible time after admission.*

## No medical experiments on inmates

During one of its visits to the Vienna-Mittersteig correctional institution, the NPM became aware of a research project for which the initial results had been published in medical journals. Managers at the Vienna-Mittersteig correctional institution collaborated on this research project. They were shown as co-authors of the publications.

Inmates used as test subjects

In this study, Tropicamide was dripped on the eyelids or pupils of the test subjects – who were inmates held in detention for mentally ill offenders – to then determine their reaction to certain behaviour patterns with the aid of a computer-controlled TV pupillometer.

Pupillometry: investigation of changes in the diameter of the pupils

The pupillometry method measures changes in the diameter of the pupils; it is a physiological method of measuring mental or cognitive stress. Pupillometry

is based on the reaction of the pupils to mental stress. This reaction is measured and interpreted as an indicator of the degree of stress.

Tropicamide is a synthetic pupil-dilating medication (mydriatic) which is used in the form of eye drops as a diagnostic tool in ophthalmology. Tropicamide inhibits the parasympathetic nervous system by blocking certain receptors. It relaxes the meiotic muscle and the pupils are dilated.

Tropicamide is a medication that can only be administered with a physician's prescription.

Eye drops require prescription

Even if the instillation of eye drops is not an activity reserved to physicians under the Act on the Medical Profession, only a physician is entitled to make the decision on whether the patient may be treated with a mydriatic.

The 2015 publication mentions 139 test subjects. One of the randomly selected consent agreements bears order no. 53, so at least this number of test subjects can be assumed with certainty.

Numerous test subjects

Under the Penitentiary System Act (*Strafvollzugsgesetz*), conducting a medical experiment on prison inmates is impermissible even if they give their consent. In addition to this, the NPM had to conclude, the test subjects were not given a medical examination before the eye drops were administered.

Prohibition on medical experiments

The NPM recommended that the Federal Ministry of Justice immediately prohibits any further administration of Tropicamide to inmates in detention for mentally ill offenders for research purposes.

The issuance of the recommendation was accompanied by the demand that the employees of the Vienna-Mittersteig correctional institution who have control over inmates and decide whether to loosen prison rules withdraw from the research project, effective immediately.

The Federal Ministry of Justice accepted the recommendation. Continuation of the research project beyond 1 July 2016 was not approved.

Study halted

► ***Medical experiments on inmates are prohibited by law. The prohibition is absolute. It is irrelevant whether an adverse effect can be expected from the invasive procedure.***

## Deficiencies in psychiatric care for juveniles Austria-wide

It is generally acknowledged that mentally ill juveniles require different treatment than mentally ill adults. Therefore, minors who require psychiatric care are to be treated by a specialist in child and adolescent psychiatry.

The differences between adults and juveniles are often not appropriately taken into account in the day-to-day psychiatric work of general psychiatrists: for example, conversations with minors are not conducted differently than with adults, or both groups are given the same psychopharmacological treatment. Children and juveniles should be treated by specialists who can cater to the specific needs of this age group. This is why the speciality field of child and adolescent psychiatry was created ten years ago (in early 2007).

Innsbruck correctional institution

In past years, the NPM has repeatedly criticised the lack of specialised psychiatric care for minor inmates at the Innsbruck correctional institution. The management of the correctional institution and the Federal Ministry of Justice have given assurances since 2015 that the correctional institution is endeavouring to collaborate – or enter into an agreement – with the Innsbruck University Clinic for Child and Adolescent Psychiatry. Unfortunately, these efforts have been unsuccessful to date, so that there has been no improvement in the situation.

Gerasdorf correctional institution: CPT criticism since 2009

Subsequently, the NPM investigated adolescent psychiatric care at the Gerasdorf correctional institution, a special institution for the enforcement of custodial sentences and pre-trial detention of juveniles. Here, too, the special institution had no adolescent psychiatrists, and the juveniles were not given an appropriate medical examination by a specialist or any specialised treatment. During its visit to Austria in 2009, the CPT already criticised the Gerasdorf correctional institution for having no specialists in child and adolescent psychiatry and called this situation worrisome [CPT's report to the Austrian Government regarding its visit to Austria from 15 to 25 February 2009, CPT/Inf (2010) 5, German, p. 37]. The NPM continues to share in the CPT's criticism seven years later.

Feldkirch correctional institution

In the course of a visit to the Feldkirch correctional institution in August 2016, the NPM observed that the juveniles being held there urgently needed the expertise of an adolescent psychiatrist. For example, there were numerous indications that one juvenile may have attention deficit hyperactivity syndrome (ADHS). Nevertheless, he was not presented to a specialist in adolescent psychiatry. Likewise, one juvenile detainee awaiting trial lacked specialised care, even though this was urgently indicated by the offence with which he was charged.

Special expertise is required for addicted minors

Observations made during a visit to the Innsbruck correctional institution confirmed the NPM's view that there is a particularly urgent need for specialists in child and adolescent psychiatry to treat juveniles with addictions. Special

expertise is necessary to make the specific diagnosis of “addiction of a minor”. This relates both to the question of indication (e.g. abstinence-based therapy versus substitution therapy) and to the choice of the right substitution substance when substitution therapy seems to be appropriate.

On the basis of these findings, the NPM recommended that every effort be made to ensure that juveniles and young adults in pre-trial detention and detention for mentally ill offenders receive psychiatric care from specialists in child and adolescent psychiatry as soon as possible. Not least of all, this demand of the NPM conforms to Article 24 of the UN Convention on the Rights of the Child.

Joint recommendation made

The Federal Ministry of Justice has given its assurance that the prison administration nationwide is endeavouring to ensure adequate psychiatric care of minor inmates. At the same time, the Ministry pointed out the well-known fact that there is a serious shortage of forensic adolescent psychiatrists (in particular) throughout Austria. The NPM cannot deny that this fact makes it more difficult to hire additional specialists to care for (juvenile) inmates.

Serious shortage of physicians

The Federal Ministry of Justice gave its assurance that it is continuing to make efforts to fill the existing gap in specialists through personal contacts and cooperation agreements. However, at the same time, the Ministry argued that juveniles may be examined, diagnosed and treated by an adult psychiatrist. Although this is true, the specialists at the NPM are of the unanimous view that the psychiatric treatment of minor inmates must always be done by specialised personnel for the reasons described above.

It is gratifying that the Gerasdorf correctional institution has obtained the services of a specialist in child and adolescent psychiatry for five hours per week. The NPM continues to recommend that every effort be made to ensure that all minor inmates and young adults in Austria receive adequate psychiatric treatment.

Specialist in child and adolescent psychiatry at Gerasdorf correctional institution

- ▶ *Psychiatric care for juveniles and young adults in Austrian correctional institutions must be provided by specialists in child and adolescent psychiatry.*
- ▶ *Every effort must be made to ensure that psychiatric care is provided to juveniles and young adults in pre-trial detention and detention for mentally ill offenders by specialists in child and adolescent psychiatry.*
- ▶ *The expertise of a specialist in child and adolescent psychiatry must be obtained to engage in substitution treatment and to define the indications for substitution therapy for minor inmates.*



## Too few psychiatric specialists - Innsbruck and Stein correctional institutions

Innsbruck correctional institution

Regrettably, the lack of specialists extends beyond adolescent psychiatry. Rather, there is also a shortage of general psychiatrists to care for inmates. For example, the Innsbruck regional court prison, with a capacity of 495 inmate cells, could only provide 20 hours of psychiatric care per week in November 2015. Upon recommendation of the NPM, the hours were increased to 25 per week. But this is not enough, especially since the Innsbruck correctional institution has a separate forensic section for male drug offenders who require treatment. These inmates need a special level of psychiatric care.

Stein correctional institution

In February 2016, a shortage of specialists in psychiatry was again found at the Stein correctional institution. The outpatient psychiatric clinic at the Stein correctional institution employs only one full-time psychiatrist (40 hours per week) who is assisted by a second psychiatrist (9 hours per week). Since 2013, the correctional institution has been trying to hire a specialist in psychiatry to work 20 hours per week. The Stein correctional institution has an overall capacity of 817 inmates. Moreover, the Stein correctional institution has specialised sections for drug offenders and mentally disturbed offenders who can be held accountable for their actions; both groups require treatment.

Health risks due to the undersupply of medical services

There is a serious shortage of specialists in psychiatry. In view of the size of the institution and the number of mentally ill offenders (at the time of the visit, the Stein correctional institution had about 86 persons held in detention under Section 21 (2) of the Austrian Criminal Code (*Strafgesetzbuch*). This constitutes an undersupply of medical services and means that health risks are being accepted.

The NPM acknowledges the efforts made by the Federal Ministry of Justice. However, at the same time, the number of personnel in the psychiatric service must be increased as soon as possible. A long-term strategy must be developed to attract more medical professionals to work for the Ministry of Justice. The efforts made thus far must be intensified to guarantee that the provision of health care conforms to basic rights.

- ▶ *Additional psychiatric personnel must be hired in correctional institutions to provide adequate care for inmates. The serious nationwide shortage of specialists in psychiatry constitutes an undersupply of medical services, which means that health risks are being accepted.*

## Shortage of physicians - Wiener Neustadt and Graz-Jakomini correctional institution

In the year under review, it was found that filling general practitioner positions also presents a special challenge, in addition to the shortage of specialists in psychiatry. For example, at the Wiener Neustadt correctional institution it took one year to fill an advertised position for a general practitioner. Appropriate medical care for inmates could not be ensured during this time. The correctional institution resorted to transfers to public hospitals.

Medical position vacant for one year

The NPM also became aware of an unsatisfactory health care situation at the Graz-Jakomini correctional institution. As with the Wiener Neustadt correctional institution, the Graz-Jakomini correctional institution had to resort to external physicians after their institutional physician left. Immediate care was not guaranteed. The emergency physician and the ambulance service had to be used frequently.

Unsatisfactory provision of health care services

It is a positive sign that the Federal Ministry of Justice is having negotiations with the Federal Ministry of Defence and Sports to enter into a future cooperation agreement so that the medical capacity of the federal army can be utilised, if necessary.

Potential cooperation with the Ministry

The NPM again demands that health service in a correctional institution be able to provide medical and nursing treatment under conditions comparable to those enjoyed by patients who are at liberty [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 33].

## Deficiencies in suicide prevention - Linz correctional institution

Suicides are often the most frequent cause of death in correctional institutions. It is well-known that correctional institutions are gathering places for groups, which already are high-risk victims for suicide. The suicide of a prisoner is a stressful event for both employees and fellow prisoners.

High-risk groups

The management must clearly define the procedure for assignment to physicians and develop guidelines to govern the continuous observation and psychological and psychiatric intervention for prisoners at risk. Only in this way can suicidal behaviour be identified, assessed and treated (see “Preventing suicide in jails and prisons”, WHO Department of Mental Health and Substance Abuse, Geneva 2007).

Therefore, it is particularly worthy of criticism that of 21 inmates of the Linz correctional institution who had been coded red in the VISCI system (i.e. the Viennese Instrument for Suicidality in Correctional Institutions) in December 2015, only one person was attended by a psychiatrist.

Assessment of proneness to suicide by psychiatric specialists In the view of the NPM, it is absolutely necessary that the proneness to suicide of persons who have been coded red in the VISCI system be assessed not only by the psychological service, but also by a psychiatric expert.

The justice administration must ensure that prisoners who have been coded red in the VISCI system are sent to the psychiatric service at the earliest possible time and that medical findings and therapy proposals are prepared.

Specialised examination The fact that not all prisoners in the Linz correctional institution who disclose psychiatric illnesses in the medical history are promptly referred to a specialist in psychiatry for a specialised examination also needs to be criticised.

A stay in a correctional institution is a difficult event for most people and often perceived as stressful. It has been empirically proven that this stress has an effect on mental illnesses. It influences the illness to varying degrees and can often trigger a new episode. For these reasons, inmates who suffer from a pre-existing psychiatric condition should be sent to a specialist in psychiatry shortly after their admission to the correctional institution. A specialist should be called in, at least to review the medication-based therapy.

The NPM requires that a psychiatric expert be promptly called in for prisoners who enter detention with a psychiatric illness. Inmates who disclose pre-existing psychiatric illnesses during admission interviews should also receive psychiatric support through regular contacts.

- ▶ *It is absolutely necessary that the proneness to suicide of persons who have been coded red in the VISCI system be assessed not only by psychology specialist, but also by a psychiatric specialist.*
- ▶ *Inmates who have been coded red in the VISCI system must be sent to the psychiatric service as soon as possible and medical findings and therapy proposals must be prepared.*
- ▶ *Inmates who suffer from a (pre-existing) psychiatric illness should be sent to a specialist in psychiatry promptly after admission to the correctional institution.*
- ▶ *Inmates with (pre-existing) psychiatric illnesses should receive psychiatric support through regular contacts.*

### Video monitoring is not a means of suicide prevention - Korneuburg correctional institution

At the Korneuburg correctional institution, two new inmate cells were shown to the NPM, which have real-time video monitoring as an additional aid for suicide prevention. These inmate cells are intended for suicide-prone inmates who cannot be housed with other inmates due to their social behaviour, and for whom the use of a so-called "listener" is also not possible.

Listeners are prisoners who are available to newly admitted inmates to listen to them and engage in conversation. These persons must be trained and intensively supervised. Many (attempted) suicides have already been prevented through their use.

The NPM wishes to emphasise that long-term video monitoring is not acceptable as a means of suicide prevention. Only in acute cases, when third parties are also in danger, can placement in a single cell make sense. Even in this case, the isolation must be kept as brief as necessary, and there should be a prompt assessment by a specialist.

Isolation is appropriate in acute cases

► *The long-term placement of suicide-prone inmates in single cells is not permissible. Placement in a single cell can only be an exceptional measure for a limited period of time.*

### 5.5.3 Personnel

#### Prison guards should wear a clearly visible name tag

In the year under review, a matter of intense concern to the NPM was whether prison guards should wear a name tag. It was determined that prisoners often do not know the names of prison guards, because they have no name tags on their uniforms.

No name tag on uniforms

Under the law, prison guards are required to address inmates as “Mr” or “Ms” plus their names and to use the polite form of speech in German (“*Sie*”). The NPM does not understand why inmates cannot also address prison guards by their names. The re-socialisation concept would be well served if the form of address between prisoners and prison guards followed the practices used every day outside of the correctional institution.

Identification by name is demanded

In addition to their security functions, prison guards primarily serve support and relationship functions. A key part of their activities is to exert an educational influence over inmates. The job of a prison employee requires skills and sensitivity in dealing with people.

The prison guards are often contact persons for the inmates with regard to their work for companies providing occupational opportunities and in workshops, but also in the various sections of the correctional institution. They accompany the inmates over several months, if not over many years. The personal identification of an employee by name strengthens a communicative and relationship-oriented organisational structure, which - from a human rights point of view - is preferable to an “anonymised” organisational culture. It is part of the relationship culture between the inmates and the prison guards.

Communicative and relationship-oriented organisational culture

- Greater transparency** In the view of the NPM, wearing clearly visible name tags is a suitable means of increasing trust in prison employees. Personal identification is also of importance in order to create greater transparency, avoid the use of force, and seamlessly and effectively investigate any misconduct by prison guards. The lack of information regarding the identity of the employee can present an impediment to effective complaints. Moreover, the ability to identify the employee could avoid unjustified charges.
- Use of numbers as identification in dangerous situations** However, the NPM does not deny that prison guards may have a special need for protection in exceptional cases. Therefore, if there is a particularly dangerous situation, such as service on the prison task force or assignment to a high-security wing, identification by number rather than by name tag should be possible. However, if there is no special risk potential, a name tag is preferable to a number.
- Joint recommendation** In early 2017, the NPM recommended that the Federal Minister of Justice ensures that prison guards wear a clearly legible name tag on their uniforms. If there is a particularly dangerous situation, some other visible identifying feature (e.g. a personnel number) can be worn instead of a name tag.

► *It should generally be ensured that prison guards who work in special work clothes (uniforms) wear a clearly visible name tag for identification. In particularly dangerous situations, some other visible identifying feature (e.g. a personnel number) can be worn instead of a name tag.*

### **New working hours due to the tight personnel situation - Vienna Josefstadt correctional institution**

There is an acute shortage of personnel at the Vienna-Josefstadt correctional institution. The tight personnel situation constitutes the biggest structural barrier at the correctional institution and has a negative effect on the prison regime and the prison personnel. The frustration this causes was clearly visible during visits to the regional court prison in the past reporting year.

- Inadequate measures** The NPM has repeatedly drawn attention to the problem of the tight personnel situation and the resulting negative effects on inmates and personnel. Despite this, the measures taken by the Federal Ministry of Justice have been inadequate thus far. The NPM sees it as a positive step that the recruitment agency for justice supporting staff has hired 4.5 full-time employees for the psychological and social service and for socio-pedagogical care. It is also positive that eight additional law enforcement positions were allocated to the Vienna-Josefstadt correctional institution in September 2016. However, these measures are not adequate to permanently improve the tight personnel situation.

To relieve the personnel situation, the working hours at the Vienna-Josefstadt correctional institution were changed, initially as a test run. In July 2016 the changes became effective: day shifts on Saturdays, Sundays and holidays were shortened so that the working hours are now from 7 a.m. to 1 p.m. (instead of from 7 a.m. to 3 p.m.). The change affects all sections of the Vienna-Josefstadt correctional institution with the exception of the section for the detention of juvenile offenders and the special medical facility.

New working hours introduced

The reason for this change in working hours was again said to be the acute shortage of prison guards for day shifts from Monday to Friday. Up to 25 prison guards utilised in companies providing occupational opportunities and administration had to be recalled on regular basis. At times, personnel in the different sections had to be reduced during the day shift. The result was that support tasks could no longer be performed at all or to the previous extent. The continuing additional workload and the assignment of additional tasks were also the main reasons for dissatisfaction among personnel.

Acute shortage of prison guards

The goal of the change in working hours was to strengthen day shifts from Monday to Friday. Since there are no targeted support measures in the sections from 1 p.m. to 3 p.m. on Saturdays, Sundays and holidays (generally lock-up), the lock-up times were increased during this period.

Goal: increase day shifts from Monday to Friday

In principle, the strengthening of day shifts from Monday to Friday is positive, since this can ensure better support in the sections and increased staffing at companies providing occupational opportunities. In turn, this should improve the employment situation. However, it is unacceptable when an improvement in the daily structure on weekdays leads to a deterioration of the prison regime on weekends and holidays. The NPM recommends that the acute shortage of prison guards at the Vienna-Josefstadt correctional institution be remedied, so that the daily structure on weekends can be improved without increasing the lock-up times. An additional increase in the already long lock-up times on weekends should be avoided.

Weekend lock-up times have been increased

The NPM recommends that additional law enforcement and support personnel be hired at the Vienna-Josefstadt correctional institution to reduce lock-up times on weekends.

► *The lock-up times should be reduced (particularly on weekends and holidays). An additional increase in the already long lock-up times on weekends should be avoided in any case.*

## Personnel shortage in the juvenile section - Vienna-Josefstadt correctional institution

Juveniles are particularly vulnerable

The tight personnel situation has also had a negative effect on the juvenile section of the Vienna-Josefstadt correctional institution. In the past, the NPM has stressed that the particular vulnerability and special needs of juveniles in detention must be adequately taken into account. This includes, among other things, only utilising employees in juvenile sections who have been trained and are experienced with handling juveniles. These employees should have appropriate pedagogical training [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 86].

Pool of autonomous employees for the juvenile section

The NPM recommends that both the day shift and the night shift be staffed exclusively with juvenile section employees. In addition, the pool of autonomous employees should be expanded to include employees specially trained for juvenile offenders. They should have a special interest in juvenile offenders and complete the training programme entitled “Detention of juvenile offenders as a field of work” (*Arbeitsfeld Jugendvollzug*).

Criticism of the use of prison guards from other sections

During a follow-up visit to the juvenile section in May 2016, juveniles again reported negative experiences with prison guards from other sections. In particular, one problem seemed to be that rules were applied differently by the juvenile section team and employees from other sections. By contrast, the juveniles seemed to have a good understanding of and a friendly attitude towards the employees permanently assigned to the juvenile section. A very positive observation was that two social education workers are now employed by the section during the day to provide support to juveniles (each for 29 hours per week).

The documents viewed showed that prison guards who are not employed by the juvenile section and have not been specially trained to handle juveniles are regularly assigned to the night shift in the juvenile section. This is subject of criticism.

Rules are documented in the log book in writing

With respect to the criticism regarding employees from other sections, the Federal Ministry of Justice gave its assurance that new, well-functioning communication structures have since been implemented for the juvenile section and for officers from other sections. General and specific rules are documented by written entries in the section’s log book and also communicated verbally.

Autonomous personnel pool and seminar on detention of juvenile offenders

The qualitative improvement in the performance of the employees utilised in the detention of juvenile offenders should be positively highlighted. The collaboration with external specialists on the seminar entitled “Detention of juvenile offenders” (*Jugendvollzug*) is also gratifying. This course for prison guards elaborates on such topics as the psychological aspects of adolescence, age-specific pedagogic interventions, conflict management, violence and youth culture, psychiatric disorders and the problem of addiction in juveniles.



Moreover, according to the Federal Ministry of Justice, nine additional employees have registered for the seminar on the “Detention of juvenile offenders”, which began in the autumn of 2016.

Another sign of progress is that four additional law enforcement positions were allocated to the juvenile section in September 2016. With respect to the problem of the level of staffing on the night shift at the juvenile section, which has been raised repeatedly, one must await the results of the nationwide evaluation of the capacity during the night shift. These results are expected in the first half of 2017.

Four new positions and evaluation of the strength of the night shift

In the view of the NPM, steps must be taken to ensure that the night shift has the necessary number of employees so that there are no lengthy absences from the observation point. The NPM is concerned that inmate cells cannot be observed by the on-duty prison guards at all times.

- ▶ *Steps must be taken to ensure that juveniles in detention are supported by personnel who are specially trained regarding their needs and requirements.*
- ▶ *An autonomous pool of employees should be available to the juvenile sections. These employees should have a special interest in juvenile offenders and have completed the training programme on “Detention of juvenile offenders as a field of work”.*
- ▶ *Night shift posts should be staffed with a sufficient number of personnel to ensure that inmate cells can be observed at all times.*

## Detention of juvenile offenders - position for socio-pedagogical personnel

The NPM supports the intensive efforts to hire socio-pedagogical personnel to provide support to juveniles that have begun in the past year. The social pedagogues are important contact persons and confidants for juveniles. In both Linz correctional institution and Vienna-Josefstadt correctional institution positions for social pedagogues were increased in the year under review.

Positions for socio-pedagogical personnel have been established

The fact that the inmate cells at the Vienna-Josefstadt correctional institution are open for a longer period of time in the afternoons is in no small part due to the employment of social pedagogues. It is also gratifying that the inmate cells for juveniles at the Linz correctional institution are now open until 6:45 p.m. on weekdays. In the past year, neither socio-pedagogical nor psychological personnel have been on site during the weekend at the Linz correctional institution and the Vienna-Josefstadt correctional institution. Therefore, weekend service must be provided by the prison guards alone. The NPM suggests that this be changed.

Support for juveniles on weekends

It is gratifying that social pedagogues will also provide service on the weekend at the Linz correctional institution in the future. This means that inmate cells in the juvenile section can remain open until 5:00 p.m. on weekends and holidays. In consonance with the concept of the socio-pedagogical service, such leisure time activities as volleyball, table tennis and power training shall be offered to juveniles and young adults. It is also positive that the Vienna-Josefstadt correctional institution has applied for a third position for socio-pedagogical personnel so it can also ensure adequate specialised support to juveniles on weekends.

### Guards wearing uniforms when they take juveniles outside - Vienna Josefstadt correctional institution

Guards should only wear civilian clothing when taking juveniles outside

The NPM found that prison guards at the Vienna-Josefstadt correctional institution always wear their uniforms when they take juveniles outside and never wear civilian clothing. The NPM warned the correctional institution to comply with the provisions of the Juvenile Court Act (*Jugendgerichtsgesetz*), which state that care should be taken to avoid publicly humiliating juvenile prison inmates when taking them outside or transferring them. Therefore, unless there are specific concerns in an individual case, officers should wear civilian clothing when taking juvenile prison inmates outside or when transferring them.

Based on this criticism, the management of the Vienna-Josefstadt correctional institution reminded employees of these provisions of law.

- ▶ *Unless there are specific concerns in an individual situation, prison guards have to wear civilian clothing when taking juveniles outside. Prison guards have to comply with this requirement.*

#### 5.5.4 Living conditions

##### Lock-up times are too long and employment opportunities are too sparse

Since the beginning of its activities in July 2012, the NPM has been tireless in pointing out the nationwide structural problems in penal institutions regarding excessively long lock-up times and inadequate employment opportunities for inmates (see NPM Report 2012, p. 24; NPM Report 2013, p. 54 et seq.; NPM Report 2014, p. 83 et seq., and NPM Report 2015, p. 106 et seq.). In this reporting year, too, the NPM has criticised the lack of training

and employment opportunities in numerous correctional institutions and demanded the expansion of activity programmes.

As in the past, the structural deficiencies with respect to employment opportunities and activity programmes are primarily attributable to a lack of human resources in the prison guard service. Workshops often remain closed and access to companies providing occupational opportunities is not offered due to a lack of personnel to supervise and guide inmates in their work.

For example, from the start of 2015 to mid-year, there were about 31 days on which operations at the Graz-Jakomini correctional institution were shut down due to the shortage of prison guards. Ultimately, not even half of the inmates at the Graz-Jakomini correctional institution worked, and about 50 workstations were unused.

Graz-Jakomini  
correctional institution

At the St. Pölten correctional institution, too, companies providing occupational opportunities, such as the carpentry workshop, were underutilised despite very good equipment due to a lack of trained professionals. Therefore, about one-third of the inmates were unemployed in April 2016.

St. Pölten  
correctional institution

At the Linz correctional institution, only 25% of the inmates were employed in December 2015. There were only 74 jobs while the institution had a maximum capacity of 222 persons. This is inadequate in all cases.

Linz correctional  
institution

At the Feldkirch correctional institution, it has turned out that, in addition to the shortage of prison guards, the limited space also constitutes a barrier to the expansion of employment opportunities. The only remedy would be an addition or a new construction. Moreover, due to the personnel situation at this correctional institution, there are days on which operations are shut down at companies providing occupational opportunities.

Feldkirch  
correctional institution

Seven years ago, the CPT expressed concern about the long lock-up times [Report of the CPT on the visit to Austria from 15 to 25 February 2009, CPT/Inf (2010) 5, German, p. 30]. It is worthy of particular criticism that unemployed inmates are often locked up almost the whole day (23 hours). During a follow-up visit in 2014, the CPT again expressed that it is a matter of serious concern that "...despite a specific recommendation made after the 2009 visit, major staff shortages were once again observed in the prisons visited, which inevitably had a negative impact on the prisoners' access to out-of-cell" [Report of the CPT on the visit to Austria from 22 September to 1 October 2014, CPT/Inf (2015) 34, German, p. 7 and p. 33]. In particular, the available workshops and other facilities at the Graz-Karlau and Graz-Jakomini correctional institutions were largely unutilised due to understaffing.

CPT's criticism

The NPM does not deny that the organisation of appropriate activity programmes can be very difficult, particularly for institutions with a rapidly changing inmate population, such as court prisons. Nevertheless, it must be emphasised that prisoners should not be locked in their inmate cells 23

hours per day with nothing to do, regardless of whether they are convicts or detainees awaiting trial. Therefore, in addition to expanding employment activities, reducing the lock-up times for unemployed prisoners is a central concern of the NPM. In particular, steps should be taken to offer prisoners more time for activities outside of the cell, including on Fridays and weekends [CPT/Inf (2015) 34, German, p. 36].

It is undisputed that meaningful opportunities for work, exercise and training are indispensable and have an enormous influence on the quality of life in correctional institutions [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 17 et seq.]. The lack of employment opportunities in combination with other negative factors can lead to a significant deterioration in living conditions, which can result in inhumane and degrading detention conditions. Under the law, the administration of the judiciary must ensure that every prison inmate can perform useful work.

There is no doubt that a lack of appropriate activities has an adverse effect on every prisoner. However, it has a particularly serious effect on juveniles, who have a special need for physical activity and intellectual stimulation. Juveniles who have been deprived of their liberty should be offered an extensive programme of education, sports, occupational training and leisure time as well as other appropriate activities. Physical education should be an important part of this programme [CPT/Inf/E (2002) 1 – rev. 2010, German, pp. 85 et seq.).

Further efforts are needed to increase the employment rate throughout Austria. The argument that external craftsmen cannot be made available to all correctional institutions (by the recruitment agency for justice supporting staff) due to the budgetary situation is not an adequate justification for the days on which operations at companies providing occupational opportunities are shut down and for the sparse employment opportunities.

Positive changes at  
the Linz correctional  
institution

Finally, however, it should be noted on the positive side that measures are being taken in many correctional institutions to ensure that inmate cells remain open for a longer period of time during the week. For example, at the Linz correctional institution the doors to inmate cells are now open from mid-morning until 3:00 p.m. in the women's section, the ground floor section and the infirmary. In addition, certain sub-sections will be governed by the "loosened dentention" in the future "in which the doors to inmate cells are not locked during the day shift".

- ▶ *It should be ensured that every prison inmate can perform useful work. Employment opportunities should be expanded to increase the employment rate.*
- ▶ *Steps should be taken to offer prisoners more time for activities outside the inmate cell, including on Fridays and weekends. The lock-up times must be shortened, particularly for unemployed prisoners. Lock-up times of 23 hours per day are intolerable.*
- ▶ *Persons who have been deprived of their liberty should be offered appropriate activities. This applies to juveniles, in particular. In addition to education and occupational or other training, sports activities should also be an important part of this programme.*

## Too little living space - overcrowding of inmate cells

The state has a special duty of care when it takes measures that deprive individuals of their liberty. This includes ensuring that the inmates are given adequate individual living space. Inmate cells must be situated and furnished in such a way that prisoners are housed humanely and health hazards are avoided. In order to prevent a violation of Article 3 of the European Convention on Human Rights (ECHR), suitable measures must be taken to resolve the problem of overcrowding.

Overcrowding: not enough individual living space

In the previous year's report (see NPM Report 2015, p. 104 et seq.) it was stated that overcrowding can be inhumane or degrading per se from a physical perspective. If it is necessary to care for more inmates than originally planned, there is an adverse effect on all the services and activities of the correctional institution. The entire quality of life may deteriorate to a significant degree. Adequate occupancy of inmate cells is an important factor of the prison climate for the inmates themselves and for their interactions with prison guards.

In the Feldkirch correctional institution, inmates in one- to two-person cells have very little available living space. In addition, it was observed that there is no ability to withdraw into a private sphere in six-person cells. In particular, in view of the long lock-up times (up to 23 hours per day), inmates should have the ability to withdraw from social interaction to protect their privacy, in the opinion of the NPM.

Feldkirch correctional institution

In the past, the NPM found that prisoners at the Suben correctional institution were housed in inmate cells that were too small because of double occupancy. This causes enormous mental stress in particular due to the long lock-up times. The NPM demanded that these cells be occupied by only one person. Unfortunately, this requirement was only partially implemented. Double occupancy of a small inmate cell can constitute a violation of Article 3 of the ECHR, in consideration of the rigid lock-up times.

Suben correctional institution

## Smoking in correctional institutions

Jakomini correctional institution, Paulustor satellite facility

The duty of care not only requires that all detainees have adequate living space, but the state must also guarantee that inmates do not impair their health through their consumption habits. Smokers and non-smokers must be equally protected from the effects of tobacco smoke. The fact that inmates sleep in nicotine-polluted inmate cells results in detention conditions that are harmful to their health. The NPM will pay special attention to the topic of protecting inmates against the carcinogenic effects of tobacco smoke during its visits in 2017.

► *When the state takes measures that deprive persons of their liberty, it has a special duty of care which includes ensuring that the inmates are given adequate individual living space and that they do not harm each other by tobacco consumption.*

## Developments with respect to women in prison

Women in correctional institutions are disadvantaged

The situation of female inmates in correctional institutions has been monitored over the past three years. In the past working year, the NPM has again focussed on this group of persons needing special protection. The needs of female juvenile offenders deserve particular attention. They may not receive less care, treatment and training than male juvenile offenders. Equal treatment must be guaranteed (see A/RES/40/33, 29 November 1985, United Nations Standard Minimum Rules for the Administration of Juvenile Justice [“Beijing Rules”], Rule 26.4, p. 20).

Less favourable treatment at the Vienna Josefstadt correctional institution

In the past, discrimination in the area of work and recreational activities was primarily found in the court prisons (see Annual Report 2015, p. 109 et seq.) In the year under review, less favourable treatment of female prisoners was again found. For example, in the Vienna-Josefstadt correctional institution, female juveniles are locked in their inmate cells for longer periods of time and they have fewer educational and leisure activities available to them than male inmates.

The NPM demanded that juvenile female prisoners have the same access to school and occupational training as juvenile male prisoners (A/RES/65/229, 21 December 2010, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for the Treatment of Women [“Bangkok Rules”], Rule 37).

Improvement in the prison regime

Due to the NPM’s criticism, additional learning and leisure activities were provided to female juveniles at the Vienna-Josefstadt correctional institution. Now female juveniles will be able to participate in school lessons together with male juveniles. In addition, the lock-up time on one afternoon was reduced.

In the past, the Federal Ministry of Justice has pointed out that the number of young female inmates is low and, at times, there are no female juveniles in custody. Among other things, this means that offerings designed especially for female juveniles are very personnel-intensive and at times remain unutilised.

Low number of female juveniles

Although the problem is understandable, the low number of female juveniles in custody cannot justify the rigid lock-up times and the lack of daily structure. To avoid less favourable treatment of young women in custody in the future, the NPM suggested more joint training and employment opportunities for juvenile males and females.

It is gratifying that the Federal Ministry of Justice issued a decree on “Minimum standards for women in Austrian correctional institutions” (“*Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten*”) in the spring of 2016, which must now be implemented in individual correctional institutions.

Minimum standards as an important step

The decree states, among other things, that female prisons should generally be run in such a way that inmates are housed in shared accommodations (*Wohngruppenvollzug*). This means that inmate cells are open. The purpose is to return inmates to a life of social responsibility.

At the beginning of detention there should be a screening to determine the form of employment for which the inmate appears to be suited and what prior knowledge she possesses. The NPM regards it as particularly positive that the decree expressly encourages a mixed employment of both women and men in companies providing occupational opportunities. The NPM hopes that this increases the employment rate for females. Female inmates should be offered the opportunity to learn various jobs through the process of job rotation.

Employment measures

Another demand of the NPM, namely mandatory training and continuing education for prison guards working in the women’s sections, is now codified in the decree.

The individual correctional institutions were called upon to develop appropriate proposals on how to implement these minimum standards. Some of the concepts are promising and ambitious. The NPM will continue to follow this development in the coming working year.

- ▶ *Female inmates may not be discriminated against based on gender.*
- ▶ *The low number of female juveniles in custody cannot be used to justify worse detention conditions.*
- ▶ *The newly created minimum standards for women in prisons must be implemented as soon as possible.*



## Muslim prayer room has too little capacity - Vienna-Josefstadt correctional institution

Muslim inmates at the Vienna-Josefstadt correctional institution repeatedly complained that it is not possible to attend Friday prayers. One inmate stated that he had been in custody for ten months and has not been able to meet his religious obligations a single time.

Restrictions on participation in worship services

The law states that every prisoner has the right to participate in community worship services at the institution, unless this is inadvisable due to security concerns. The Vienna-Josefstadt correctional institution makes a room available for Friday prayers, which only has capacity for about 30 persons. This is inadequate since a total of 277 inmates at the Vienna-Josefstadt correctional institution belonged to the Muslim faith in March 2016.

The NPM repeatedly suggested that a larger room or a second room be made available for Muslim worship services. According to the Federal Ministry of Justice, this is difficult to manage because a place to perform the ritual washing must be close to the prayer room. Moreover, a second prayer room would not improve the situation at the present time, because the Islamic Religious Community in Austria (*Islamische Glaubensgemeinschaft in Österreich*) only sends one Islamic minister to the Vienna-Josefstadt correctional institution. The latter cannot hold worship services every Friday due to other commitments and is available for one-on-one counselling only to a limited extent.

Basic right to freedom of religion

The current situation violates the right to participate in community worship services and community religious events and, in general, the basic right to freedom of religion. Regrettably, no measures have been taken to convert a larger room into a prayer room. Rather, the Federal Ministry of Justice states that due to the lack of alternatives at the present time, it will only take note of the NPM's criticism.

The NPM recommends that all inmates be given the opportunity to participate in community worship services, unless this is inadvisable due to security concerns. All inmates should be permitted to meet the needs of their religious and spiritual life, particularly by attending worship services.

- ▶ *Inmates must be enabled to participate in community worship services, unless this is inadvisable due to security concerns.*
- ▶ *Every inmate must be permitted to meet the needs of his/her religious and spiritual life, particularly by attending worship services or gatherings at the correctional institution.*

## Problematic hygienic conditions at the former special medical facility - Stein correctional institution

Hygienic conditions at the former special medical facility, which is now the infirmary of the Stein correctional institution, were considered to be problematic. For example, a patient was found in dirty clothing – in a dirty inmate cell with filthy sanitary facilities. Due to the condition of his health, the patient was unable to clean his cell himself. He was promised assistance in cleaning his cell, but this was dependent on whether the maintenance worker had time.

Dirty inmate cells of patients needing care

In addition, it was observed that a sheet in an inmate cell did not cover the entire mattress and the blanket (under the cover) had not been cleaned. The patient did not receive a new blanket and a new pillow despite asking for them. In addition, food was improperly stored due to the lack of refrigerators in infirmary detention cells.

The NPM suggested that the hygienic condition of the mattresses, pillows and blankets as well as the sanitary facilities in the inmate cells of the special medical facility be checked and that any problems be remedied. Proper inmate cell hygiene must be ensured for inmates who are unable to clean their cell due to physical or mental afflictions.

Due to the NPM's criticism, washable and urine-resistant mattresses, blankets and pillows are now cleaned at regular intervals. According to the Federal Ministry of Justice, the hygienic condition of all mattresses, pillows and blankets of the inmates in the current infirmary are checked monthly and replaced, if necessary.

Cleaning at regular intervals

The Federal Ministry of Justice explained that specialised external workers or a qualified nurse with additional hygiene training does the cleaning and implements the necessary hygienic measures at the infirmary. The latter inspects the wards and the outpatient clinic at regular intervals and makes recommendations to the relevant section head, if necessary. In addition to the general cleaning plan, there is a separate cleaning and work plan for the cells of inmates needing care. It is particularly regrettable to the NPM that such deficiencies were found in the ward despite these measures.

Personnel with special hygiene training

According to the Federal Ministry of Justice, an almost two-year nationwide evaluation of hygiene standards merely led to the conclusion that they differ among the correctional institutions. To obtain uniform standards, the superintendent of the general directorate of prisons and detention developed a hygiene regulation ("*General hygiene guidelines for correctional institutions*" – "*Allgemeine Hygienerichtlinie für Justizanstalten*"). Training sessions in hygiene, which have been carried out since the autumn of 2016, have continued in 2017. One must wait and see whether these measures will improve the hygiene standards.

General hygiene guidelines for correctional institutions

- ▶ *The hygienic condition of all mattresses, blankets and pillows in infirmary detention cells must be checked monthly. They must be cleaned at regular intervals and replaced, when necessary.*
- ▶ *It must be ensured that patients needing care who are unable to clean their inmate cells themselves and to maintain adequate bodily hygiene receive adequate assistance.*

### 5.5.5 Access to information

#### The challenge of language diversity - video interpreters

Video interpreting introduced in eight facilities

The previous year's report (see NPM Report 2015, p. 97 et seq.) discussed the special challenge of language diversity and the successful pilot project entitled "Video interpreting in correctional institutions". It is gratifying that in the interim video interpreting has been introduced in the medical areas of eight correctional institutions and satellite facilities (Eisenstadt, Wiener Neustadt, Korneuburg, Graz-Jakomini, Innsbruck, Suben and Vienna-Josefstadt correctional institutions and the Wilhelmshöhe satellite facility). For the first time in the penal system, professional video interpreting services can be accessed in these facilities.

Nationwide introduction planned for 2017

Interpreters for the most commonly spoken languages (20 principal and 50 secondary languages as well as sign language) are available to medical personnel from 7:00 a.m. to 6:00 p.m. on working days within 120 seconds (without prior notice). The feedback from employees and inmates was equally very positive. According to the Federal Ministry of Justice, the use of video interpreters across the board in the field of medical care in all Austrian correctional institutions is scheduled for 2017.

Where the video interpreting system has not yet been implemented, language diversity continues to be a barrier in everyday prison life. It is particularly concerning that an interpreter is not utilised in numerous correctional institutions (e.g. the Korneuburg, Feldkirch and Stein correctional institutions) when there are communication problems during medical interventions or discussions of medical results. Moreover, the common practice still seems to be utilising fellow prisoners for assistance in translation when there are communication problems.

Korneuburg correctional institution: video interpreting system not used

In August 2016, the NPM discovered that employees did not use the video interpreting system after it was introduced into the Korneuburg correctional institution. Employees still utilised fellow inmates when there were language barriers. Based on the NPM's criticism, the Federal Ministry of Justice instructed the institution to use the video interpreting system and provide translation services solely through the use of video interpreters in the medical area.

Particularly in sensitive areas, such as physician-patient discussions, it is not appropriate to utilise fellow prisoners for translation purposes. Both in the medical area and with respect to other personal matters, the constitutionally guaranteed right of privacy requires that fellow prisoners do not obtain sensitive data. Therefore, inmates may not be utilised as interpreters. In addition, medical communications from the physician to the inmate generally require an adequate form of disclosure that is clear and intelligible to those involved.

Protection of privacy

The NPM again recommends the introduction of the video interpreting system in all Austrian correctional institutions as soon as possible. Until this system is implemented on a nationwide basis, appropriate precautions must be taken to quickly eliminate the aforementioned deficiencies. If there are communication barriers in the area of medical care, an interpreter should be utilised. Inmates are not to be involved to provide translation services. Medical clarification and the provision of health care must not fail due to language barriers.

### **Expansion of video interpreting system to include other specialised areas**

As already mentioned in the previous year's report, the NPM suggested that the video interpreting system be expanded to include other specialised areas and the areas of admission and administrative penalty unit. At the end of August 2016, the pilot project on video interpreting began to operate in the area of administrative penalty proceedings and the juvenile section of the Vienna-Josefstadt correctional institution. The pilot project was scheduled to last one year. This at least partially implemented the recommendation of the NPM to expand professional video interpreting solutions to include other specialised areas beyond the medical area.

One-year pilot project: administrative penalty proceedings and the juvenile section

The Federal Ministry of Justice has emphasised that the administrative penalty unit at the Vienna-Josefstadt correctional institution has thus far given very positive feedback. According to the reports, the interpreters were able to convey facts very well and to provide lay persons with extensive and comprehensible explanations of complicated legal provisions. The constant availability means that a considerable amount of time is saved. The professionalism of the translation services provides legal clarity and legal certainty to all persons involved.

Positive experiences reported

In the juvenile section, the video interpreting system is primarily used in exploration and support discussions conducted by the specialised services and in psychological crisis intervention. Since psychological crisis interventions are primarily carried out on the verbal level and mental crises require interventions that are quick and clearly understandable to the inmate, the video interpreting system is an essential aid in support work. In addition, the juvenile section of the Vienna-Josefstadt correctional institution particularly emphasises that

the system provides the opportunity to translate and understand even rare dialects of various languages.

- ▶ *When there are communication problems in the medical area or in administrative penalty proceedings, trained interpreters should be utilised.*
- ▶ *Medical clarification and the provision of health care to mentally ill offenders should not fail due to language barriers.*
- ▶ *The video interpreting system should be made available as soon as possible Austria-wide in all facilities for the detention of mentally ill offenders. If the video interpreting system is available, it should be used.*
- ▶ *Use of the video interpreting system should be expanded to include other specialised services (e.g. the psychological service and social services) as well as the areas of admission and the administrative penalty unit.*
- ▶ *Inmates must not be utilised to provide translation services.*

## 5.5.6 Contact to the outside

### Pilot project on Internet telephony

High cost of international calls

It is gratifying that the costs of domestic telephone calls have been reduced by the new telephone contract for inmate calls and the introduction of a new telephone system, provided by the company PKE. Unfortunately, the costs of international calls remain very high. Therefore, the NPM suggested the use of Internet telephony as a cost-effective alternative.

Pilot project at Graz-Karlau, Stein and Garsten correctional institutions

The Federal Ministry of Justice reports that a one-year pilot project on Internet telephony will start in the first quarter of 2017. Until now, Internet telephony was only used in the Graz-Karlau correctional institution. In the interim, the Stein and Garsten correctional institutions were also chosen as locations for implementation of the pilot project. The plan is to carry out the test run in both the visitors' areas and the inmate sections of the respective correctional institutions.

Nationwide introduction of Internet telephony demanded

The NPM suggests that the test run be expanded to include other correctional institutions. It recommends that Internet telephony be offered nationwide.

- ▶ *The use of Internet telephony should be made possible in all correctional institution as a low-cost alternative for contacting family members abroad.*
- ▶ *A resolute effort should be made to expand the test run of Internet telephony to include other correctional institutions.*

## Unreasonable visiting hours

At the Ried im Innkreis correctional institution, no visitors can be received on Friday and on the weekend. The NPM considers this inadequate. It is recommended that visiting hours be established on the weekend so that visits can be made by persons who work during the week.

Ried im Innkreis  
correctional institution

The NPM also suggested that the visiting hours at the Suben correctional institution be expanded. Visitors should also be received in the afternoon or early evening. Regrettably, a follow-up visit in April 2016 showed that the recommendation had not been followed.

Suben correctional  
institution

In its last report (see NPM Report 2015, p. 110 et seq.), the NPM criticised the visiting hours at the Klagenfurt correctional institution and with respect to the incarceration of juvenile offenders at the Innsbruck correctional institution. Both institutions did not consider the realities of working people, particularly when it is necessary to take travel time into account.

For purposes of re-socialisation and maintenance of familial relationships, the NPM considers it necessary that prisoners at the Ried im Innkreis and Suben correctional institutions be able to receive visits on at least one workday and in the afternoon or early evening on weekends. The visiting hours should also permit working people to visit inmates, because regular contacts with the outside are crucial for maintaining social relationships.

Of course, the NPM is aware that, by law, visiting hours are to be established by the prison management on four days of the week, of which at least one must be in the evening or on the weekend. Accordingly, the management of the correctional institution has the option to enable visits during evening hours or on the weekends.

The fact that an evening visit or visiting hours on the weekend is provided by law merely sets a minimum requirement in the opinion of the NPM. By reference to the CPT standards, it should be emphasised that encouraging contacts with the outside should be the guiding principle [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 18]. Inmates must be enabled to maintain relationships with family and close friends and to have reasonable contact with the outside world.

Therefore, it should again be emphasised that working people must take holiday leave on working days to visit an inmate under these circumstances. For the purpose of re-socialisation, the NPM reiterates its recommendation that visiting hours be changed so that visitors can be received in the afternoon or early evening on at least one working day or on Sundays.

NPM suggests visiting  
hours in the afternoon  
or evening

The Federal Ministry of Justice replied that it is not possible to expand the visiting hours due to the tight personnel situation – or that this could only be accomplished at the expense of other programmes (e.g. group outings). If an

Ministry rejects NPM's  
recommendation

expansion of visiting hours is not possible for the time being, it would at least be an interim solution to change the visiting hours so that visitors could be received in the afternoon or early evening of at least one working day or on the weekend.

- ▶ *Visiting hours should be structured in such a way that working people can also make use of them.*
- ▶ *Visits should be possible in the afternoon or early evening on at least one working day or on weekends.*

### 5.5.7 Infrastructural fixtures and fittings

#### Lockable boxes in multiple inmate cells demanded

Test runs in the Salzburg and Suben correctional institution

In the spring of 2016, the NPM recommended that multiple inmate cells be equipped with lockable lockers. For the time being, the Federal Ministry of Justice did not wish to implement this recommendation of the NPM. However, it decided to carry out a one-year test run at the Salzburg and Suben correctional institutions. An interim report after a half year showed that inmates were satisfied and there were no problems at either institution. A final decision on whether to expand the practice Austria-wide will not be made until after the test run has been evaluated.

In accordance with the recommendation of the NPM, it was demanded that lockable lockers be purchased in the former special medical facility, now the infirmary of Stein correctional institution. Lockable boxes should be available where private property is particularly at risk due to large turnovers. This is typically the case in multiple inmate cells. This resulted in the demand that inmates have the opportunity to lock up personal items.

Lockable lockers at the Stein correctional institution

The news from the Federal Ministry of Justice that every inmate in the infirmary at the Stein correctional institution has had a lockable locker since July 2016 is gratifying.

- ▶ *All multiple inmate cells should be equipped with lockable lockers.*



## Barrier-free accessibility - still a need to catch up

In past years, the NPM indicated that many correctional institutions are still not barrier-free. For example, out of 40 correctional institutions and satellite facilities, only 16 had one or more inmate cells for persons with disabilities in 2014 (see NPM Report 2014, p. 96). The NPM demands that structural adaptations take priority so that correctional institutions can be equipped to accommodate persons with disabilities.

Obvious deficiency

It is gratifying that the newly constructed Puch/Urstein correctional institution meets all the infrastructural requirements of a modern penal system (see NPM Report 2015, p. 120). Moreover, the expansion of the Asten Centre for Forensic Science was completed at the end of May 2015. The Federal Ministry of Justice has assured the NPM that the building project was carried out in accordance with the requirements for barrier-free accessibility. In addition, there is a plan to expand the Gerasdorf correctional institution into a youth centre of excellence during the period from 2017 to 2019. Barrier-free accessibility is being included in the planning.

In past years, by reference to Article 14 (2) of the UN Convention on the Rights of Persons with Disabilities (CRPD) the NPM advocated that persons with disabilities who have been deprived of their liberty based on a proceeding be granted the same living conditions as the other inmates. As is well-known, the Convention requires treaty states to take suitable measures to guarantee persons with disabilities equal access to the physical environment, as well as to means of transportation, information and communications. Furthermore, it has to be ensured that these persons have access to other facilities and services that are open or available to the public.

The NPM continues to demand that existing structures be adapted to become barrier-free as soon as possible. The remodelling of buildings and additional constructions are to be initiated as soon as possible. Structural systems, technical equipment for daily use, information-processing systems and other aspects of life are defined as “barrier-free” when they are accessible to and usable by persons with disabilities in the customary manner, i.e. without special difficulty and generally without assistance.

Accessible and usable without assistance

In the past year, the NPM has brought in experts in barrier-free accessibility to review the realisation of the announced renovation work at particular correctional institutions. For example, in the case of the Graz-Karlau correctional institution, the Federal Ministry of Justice has stated that the construction of the new visitor centre, which was completed at the end of September 2014, was carried out in accordance with the requirements of barrier-free accessibility. Unfortunately, this could not be confirmed by specialists. The Federal Ministry of Justice received numerous suggestions for creating or improving barrier-free accessibility to the visitor centre. Likewise, the NPM voiced several criticisms

Graz-Karlau and Suben correctional institutions

and proposals for improvements with respect to barrier-free accessibility in the geriatric section of the Suben correctional institution.

**Additional reviews** The NPM will ensure that these promises are kept in the coming year. In addition, the priority need for barrier-free areas in the southern *Laender* must be stressed again. Any relocation of an inmate solely for this reason tears him/her away from his social environment. Such measures bar the way to re-socialisation.

- ▶ *Existing structures must be adapted to be barrier-free as soon as possible. Building remodelling and additional constructions must be initiated as quickly as possible.*
- ▶ *Facilities for the detention of mentally ill offenders should be accessible to persons with disabilities in the customary manner, without special difficulty and generally without assistance.*

## 5.5.8 Detention of mentally ill offenders and after-care facilities

### Detention of mentally ill offenders - structural shortcomings

**Continuing criticism** The NPM must again express its criticism in relation to the detention of mentally ill offenders. It is true that the existing sections for inmates with mental health care needs at the Stein, Garsten and Graz-Karlau correctional institutions were reorganised into “departments” until new therapeutic centres will be constructed. However, the structural shortcomings have not changed. This is based on the inmates’ assessments and is manifested in the lack of trained professionals, particularly psychotherapists, as well as the absence of an institution comparable to the Network for Patient Advocates. This also applies to after-care facilities, which are to some extent unsuitable, e.g. the location and furnishings of the forensic shared accommodation in Liebenfels, Carinthia, or the lack of appropriate therapeutic offerings, as was found to be the case in Pöfing-Brunn in Styria.

**Need for greater investment** Many suggestions match the improvement proposals to be found in the report of the working group, which was submitted to the Federal Ministry of Justice in January 2015. It has been reported that most of the recommendations submitted to the Federal Ministry of Justice will be implemented in a draft “Criminal Hospitalisation Act” (*Strafrechtliches Unterbringungsgesetz*). More can be said when the text is available and the law enters into force.

## Need for multiple improvements in an after-care facility

At the end of January 2016, the NPM inspected one after-care facility in Vienna. During the visit, numerous structural defects were noticed: broken tiles, a missing mirror in a bathroom, no source of water in a client room, a fist-sized hole in a wall and a protruding cable.

Dilapidated appearances

The cleanliness in the individual rooms and the common areas also seemed very much in need of improvement. Up until the time of the visit, the cleaning was done solely by the clients. The floors were dirty. There were smudges on the kitchen furniture.

Dirty eating and residential areas

The NPM doubts that the clients – some of whom are severely mentally impaired – are able to ensure a reasonable standard of hygiene in the facility. In response to this criticism, the management of the facility developed a guide for cleaning the various areas. The care staff was directed to give instruction to the clients and assist them with the house work. In addition, a professional cleaning company was hired to give the entire house a thorough cleaning every quarter. This includes the clients' rooms and all common rooms and areas.

The NPM's suggestion to involve the clients more often was also followed. Thus, in the future, there will be weekly group home discussions for individual residential groups. The purpose is to discuss the wishes and concerns of the clients (including with respect to leisure time options and joint planning of activities and programmes) and to allow complaints to be made. Complaints can also be made anonymously by dropping them into a mailbox.

Inclusion of clients

► *Persons with mental impairments should receive professional support in cleaning their dining and living areas. A clean environment and involvement in the planning of leisure time results in a feeling of self-esteem and security. Both have a positive effect on recovery.*

## Needs-oriented, integrative care at one social centre

"A meeting place for old and young". This is how a social centre sees itself. The facility was opened in 2013 and is intended for 92 residents; 14 places are available for forensic patients – before and after conditional release.

Meeting place

During its visit, the NPM found a new, modern building with an architecturally sophisticated design and a spacious garden.

One enters the building through the main entrance on the first floor level. On the ground floor, there are residential groups for persons with dementia, who can easily go out into the garden at any time.

**Safe use** Thanks to the structure of the building, persons with dementia – who have a loss of orientation and an increased urge to move – have sufficient options for moving about safely.

**Cafeteria as a place to meet** Ghettoisation is avoided by the cafeteria in the entrance area, which is also visited by pupils of the nearby new secondary school. They also eat lunch together with the residents of the nursing home. This makes it possible for the generations to meet without constraint.

Even if such contact sometimes has the potential for conflict, it strengthens the principle of integration.

## **5.6 Police detention centres**

### **5.6.1 Introduction**

**21 visits to police detention centres** In the reporting year, the commissions made 21 visits to police detention centres, the Vorderberg detention centre and the Zinnergasse family shelter. The working groups with the Federal Ministry of the Interior continued their focus on the topics of “Detention in police detention centres and other detention centres” and “Suicide prevention”.

The experience of past years shows that the Federal Ministry of the Interior perceives the recommendations of the NPM as something positive. However, in-depth measures, e.g. those requiring structural changes, take a long time in being implemented. Therefore, in follow-up visits, the commissions often complain about deficiencies that have already been addressed multiple times in the past.

### **5.6.2 Working group on conditions of detention in police detention centres**

The working group on the “Overall concept of detention pending forced return” initially dedicated itself primarily to the situation of persons in detention pending forced return. However, the working group has increasingly dealt with matters aimed at improving the living conditions and conditions of detention of all persons held in police detention centres. Therefore, the working group changed its name to the “Working group on detention in police detention centres and other detention centres” in April 2016. The working group also held regular meetings in 2016.

In the Annual Report 2015 (see NPM Report 2015, pp. 122 et seq.) the NPM reported on its establishment of framework conditions regarding three matters: detention in single cells including specially secured cells, the practice of detention pending forced return in the form of open detention and improvements to visiting hours and visiting rules. Decrees of the Federal Ministry of the Interior are needed to implement these standards, as well as physical measures (e.g. structural adaptations). An amendment of the Detention Regulation (*Anhalteordnung*), which has been promised by the Federal Ministry of the Interior over the medium term, would also be essential.

Therefore, in May 2016 the NPM recommended that the Federal Ministry of the Interior implement the standards for detention in police detention centres as quickly as possible. In its initial response in July 2016, the Federal Ministry of the Interior welcomed this recommendation and endorsed the standards, which had been jointly developed with the NPM. The Federal Ministry of the Interior also stated that it had already implemented the agreed-upon detention pending forced return in the form of open detention in a decree dated 7 May 2015. This decree also contains provisions on managing hunger strikes, which, according to the observations of the commissions, have not yet been implemented.

Recommendation of the NPM

The Directive on Workplaces must be adapted in order to implement the standards on single cells, including specially secured inmate cells, as well as visiting hours and visiting rules. The Ministry deployed an internal working group to update the directive in March 2016. Factual investigations regarding the implementation of the recommendations can be conducted based on the adapted guidelines in the future. The Federal Ministry of the Interior promised to complete the adaptation of the Directive on Workplaces by the end of November 2016. Implementation of the structural, organisational and personnel measures was planned to occur thereafter.

Internal adaption of guidelines by the Federal Ministry of the Interior

Finally, the Federal Ministry of the Interior stated that it would include all structural standards in an appendix to the Directive on Workplaces. The Ministry plans to issue a decree summarising all the structural requirements contained in the standards so that these standards can be taken into account when detention cells or police detention centres are newly constructed, added on or remodelled. The standards are to be implemented through a simple decree issued to police departments, even before completion of the revision of the Directive on Workplaces.

Furthermore, the Federal Ministry of the Interior wishes to adopt a decree to enable table visits (see NPM Report 2015, p. 122), i.e. visits without partition walls or at free-standing tables. Moreover, this decree would increase the number of visits per week to at least two half-hour visits. The table visits will be implemented immediately as far as the available space and operational requirements permit. Otherwise, they will be taken into account in space planning for newly constructed, added on or remodelled buildings.

Table visits and length of the visit

Infra-red cameras for security cells

The Federal Ministry of the Interior also wishes to implement the standards for designing single cells, including specially secured inmate cells, by decree (see NPM Report 2014, p. 119). The decree would ensure that, in the future, video monitoring in police detention centres would be done independently of any light source, by use of infra-red cameras. Transmissions of videos of the toilet area would be indistinct. In addition, the Federal Ministry of the Interior gave its assurance that in the future, when buildings are newly constructed, added on or remodelled, all police detention centres will have three types of single cells (i.e. padded or rubberised security cells, tiled security cells and other single cells), depending on the available space.

With a decree issued in May 2015, the Federal Ministry of the Interior implemented the agreed-upon standard for detention pending forced return in the form of open detention (cells that are open all day) nationwide. Therefore, persons in detention pending forced return may only be held in closed cells if certain exclusion criteria are met.

Extension of lock-up times is violation of decree

In the Annual Report 2015 (see NPM Report 2015, p. 121 et seq.), the NPM issued a positive report on this agreement. However, in the course of a visit to the Hernalser Gürtel police detention centre in July 2016, the NPM determined that the following requirement of the decree had been disregarded: “The cell doors in the open detention area must be kept open from 8:00 a.m. to 9:00 p.m.”.

Some weeks before the NPM visit, after several conflicts between persons of different regional origins who were being held in detention pending forced return, there was a brawl involving several inmates. For this reason, the management of the police detention centre decided to lock all persons in detention pending forced return who were in the open detention in their cells at 5:30 p.m.

The NPM found this action, which violated the decree, to be questionable. The fact that every cell in open detention was equipped with a TV set at the same time did not change this opinion. In particular, the open-ended deviation from the relevant provision of the decree was disproportionate to the cause. Moreover, at the time of the NPM’s visit, all the prisoners who had been involved in the brawl had long ago left the police detention centre. Therefore, the NPM suggested that lock-up times at the police detention centre should conform to the decree.

During a working group meeting, the NPM pointed out that the Federal Ministry of the Interior had not actively addressed the difficulties in implementing open detention for persons in detention pending forced return. The NPM further criticised, that the delegation had only become aware of this fact by accident during a visit. The representative of the Federal Ministry of the Interior explained that, even though the practice had violated the decree, it has been a necessary de-escalation measure. The decree is being revised. In



the future, deviations from the agreed-upon standard of open detention will have to be reported to the Ministry and the NPM. If the deviation continues for a longer period of time, there must be monthly reports with justifications.

Despite these irritations, the working group was able to finish developing standards for employment and leisure-time opportunities for detainees during the reporting year (see NPM Report 2015, p. 123 et seq.). It reached consensus that the agreed-upon standards should apply to prisoners serving an administrative penalty and persons in detention pending forced return.

In order to offer detainees access to information about the outside world, detainees will be ensured the opportunity to purchase foreign-language print media in the future. In addition, radio and TV sets are to be provided in communal rooms. After controls are put in place, detainees should be enabled to use their own radios and TV sets in all cells, except for specially secured cells. The power supply and the connections for the reception of multi-language radio and TV programmes in the communal rooms and all cells (except for specially secured cells) should be provided no later than when a building is newly constructed, added on or remodelled. Each of the cells should be equipped with an electrical outlet that is switchable from the outside.

Information about the outside world

To foster social contacts among detainees, the working group agrees that detainees should be able to use the communal rooms, and board games should be made available.

The working group was also able to agree on a core statement on opportunities for detainees to have physical exercise, which was already addressed in the Annual Report 2015 (see NPM Report 2015, p. 124). In the future, detainees are to be given the opportunity to engage in outdoor exercise for at least one hour per day. If this is not possible due to the weather, an opportunity to engage in physical exercise in some other way should be ensured. In the future, police detention centres have to provide an adequate supply of the following (sports) equipment in functional condition: basketball hoops, balls, table football tables, small sports mats (e.g. for yoga) and, if there is sufficient space, table tennis equipment and Thera bands, which, however, must first be checked for their suitability for use.

Physical movement

In 2016, the working group addressed the detainees' telephone contact with the outside world. Section 19 (1) of the Detention Regulation provides that, in justified cases, prisoners must be able to have telephone conversations under supervision at their own expense. In general, persons in detention pending forced return are to be enabled to use the telephone without supervision at their own expense – as long as this does not generate an unreasonable effort from an organisational perspective, it does not disturb the daily routine and the Detention Regulation does not otherwise provide. For this purpose, mobile phones can be handed out for the duration of the telephone conversation. The former Human Rights Advisory Board at the Federal Ministry of the Interior

Telephone contact with the outside world



already proposed that electronic communications by persons in detention pending forced return should only be restricted if the purpose of detention pending forced return requires this in an individual case.

The NPM endorses this proposal. Moreover, for a long time, the NPM has been aware of the different practices in police detention centres with respect to handing out mobile phones to detainees: some of these practices are restrictive and some are very tolerant. There are also different policies on providing phone card telephones in various police detention centres. In addition, the provisions on the hours when persons in detention pending forced return can use the telephone are more or less flexible in some police detention centres depending on the number of inmates.

The working group agreed that all detainees in police detention centres should have the ability to have telephone conversations at their own expense and that these conversations should generally be unsupervised to protect their privacy. The working group initially intended to prescribe the installation of uniform phone card telephones in all police detention centres. However, since the manufacturer of phone card telephones intends to stop production, the working group refrained from prescribing a certain type of telephone device. Therefore, all places of detention must provide barrier-free access to telephones. Barrier-free use must be ensured, if necessary, e.g. for hearing-impaired prisoners. Restrictions should only be permissible in accordance with the provisions of the law, particularly the Austrian Code of Criminal Procedure, and must be documented.

Flexible organisation of  
telephone contacts

All police detention centres should also ensure that detainees can use the telephone for a length of time commensurate with the purpose of the telephone conversation, to an adequate extent and multiple times per week. Moreover, to establish the first contact (see Section 19 (2) of the Detention Regulation), telephone conversations outside of the usual hours should be enabled in justified cases.

Due to the increasingly wide distribution of mobile phones with photographic and video functions (particularly smartphones with Internet access), the working group agreed to take the security aspects as well as the protection of the privacy of the detainees into account. The use of their own mobile phones should therefore not become the rule. However, if provisions for telephone service at the place of detention are not favourable, it should be ensured that detainees are given their own mobile phones to find telephone numbers and to give those with limited financial resources, who still have a phone credit, the opportunity to make phone calls.

The Federal Ministry of the Interior informed the NPM about a plan to start using video telephony via the Internet (Skype) in the Hernalser Gürtel police detention centre at the beginning of 2017 as a pilot project. The NPM will observe the progress of the pilot project and report on it.

Due to the poor hygiene conditions repeatedly observed in recent years, primarily at the Hernalser Gürtel police detention centre, the NPM addressed the Federal Ministry of the Interior with this matter in the working group as well. The commissions criticised the failure to supply prisoners with sufficiently large towels and dish cloths, the distribution of sheets and bedding that was worn out or not completely clean and the equipping of inmate cells with shabby mattresses and dirty pillows. The commission suggested that the inmate cells be thoroughly cleaned on a regular basis. The Federal Ministry of the Interior promised to take measures to improve cleaning and replace shabby furnishings. It remains to be seen whether actions such as using quilt covers instead of sheets can permanently eliminate hygiene deficiencies in the future.

Inadequate hygiene

In light of the variety of showering options being offered, the working group saw the necessity of creating uniform provisions in this regard. It was especially important to the NPM that prisoners be ensured access to hygienic sanitary facilities which offer hot water and protect the prisoner's privacy at all times.

Expansion of showering options

The Federal Ministry of the Interior made reference to the "Hygiene guidelines for police detention centres" and promised to have the office of the medical superintendent revise them with the following objectives:

Detainees are to be informed of their showering options in the future. From a hygienic perspective, frequent showers are desirable, at least twice per week. In any case, women should be enabled to shower daily during menstruation and menopause. In addition, women are to be provided with hygiene articles, such as sanitary towels and tampons, when necessary.

Supplements to hygiene guidelines

Moreover, privacy screens should be placed in shower rooms for multiple persons as visual barriers. Likewise, it should be possible to use the shower room alone. After repeated criticism of the incomplete structural partitioning of toilet areas in cells for multiple inmates (see NPM Report 2015, p. 132 et seq.), the working group agreed on the conclusion that toilets in cells for multiple inmates should be walled in on all sides.

In 2016, the working group expanded its agenda to include several new tasks. The following topics will receive further action: the NPM's proposals on revisions to the Detention Regulation, electronically controlled Internet access, video telephony, overcoming language barriers (interpreting, video interpreting in the medical area and in other areas), taking the special needs of LGBT (Lesbian, Gay, Bisexual and Transgender) persons into account, open detention for prisoners serving an administrative penalty, cell lighting during bedtime hours, separation of the curative and examining activities of physicians, definition of the term "fitness to undergo detention" as well as nicotine consumption and "stop-smoking" programmes during detention.

In light of the delays reported above, the standards developed thus far should be implemented as quickly as possible through decrees, amendments to the Detention Regulation or specific measures (e.g. structural adaptations).

### 5.6.3 Working group on suicide prevention

In the Annual Report 2015 (see NPM Report 2015, pp. 125 et seq.) the NPM described the reasons for establishing this working group and its goals. The working group continued its activities in 2016 and held a total of six meetings to formulate nationwide guidelines for suicide prevention for persons in police detention.

Medical history sheet  
adapted

As the first item on the agenda, the working group successfully completed its revision of the medical history sheet. In the future, the new “health questionnaire” will be distributed to all detained persons in their own languages during the medical examination conducted upon admission. The information is intended to permit medical personnel to establish the condition of the detainee’s health as soon as possible after arrest in order to make a decision as to whether urgent suicide prevention measures must be taken.

Video interpreting

In this connection, the NPM again stresses the importance of sufficiently good language comprehension by the prisoner and the medical personnel. To eliminate any deficiencies, the Federal Ministry of the Interior started using a video interpreting system in the medical area on a test basis in February 2016. This one-year evaluation phase, which is limited to the *Laender* Burgenland, Tyrol and Vienna, was still in effect as of the editorial close.

In the view of the NPM, the video interpreting system constitutes a useful aid in overcoming language barriers between detainees and (medical) police detention centre personnel. The video interpreting system already in use in the Vordernberg detention centre’s medical area has proven its worth. The NPM finds it desirable to expand the use of video interpreting services to encompass the entire country and all areas. However, the results of the test phase are not yet available.

The working group investigated the Federal Ministry of Justice’s standards for suicide prevention in the detention of mentally ill offenders. The working group used these standards as a guide in discussing the topics of training and continuing education for personnel, processing of new admissions, returns from outside activities, transfers of inmates, procedure when a risk of suicide has been found, ensuring an environment that is preventive of suicide, documentation and analysis of information, procedure after a suicide and the on-site reflection on occurred suicide attempts.

The working group agreed that the most important thing is to sensitise the medical personnel and the guards through training and continuing education. The new basic training course, which takes effect 1 December 2016, devotes a total of 48 educational units to the topic of “applied psychology”. Of this, 28 units are devoted to helping the mentally ill persons and their families, to suicide prevention and to the treatment of mentally ill persons. In addition, law enforcement personnel can voluntarily complete three additional seminars on treatment of mentally ill persons as part of their further training.

The availability of public health officers/physicians constitutes a basic problem. As already stated in the Annual Report 2015 (see NPM Report 2015, p. 127), Vienna is privileged to cooperate in this regard with Verein Dialog (i.e. an association for addiction care and assistance). Vorarlberg has also found a good solution. The Federal Ministry of the Interior intends to establish a working group, together with the Federal Ministry of Health and Women’s Affairs, to counteract the shortage of physicians in the *Laender*.

Shortage of medical personnel

Towards the end of the reporting year, the working group began to formulate specific standards for suicide prevention based on the investigations that were conducted. The CPT’s standards for handling suicide-prone persons [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 38] were given special weight in developing these standards. In particular, there should be a thorough examination when prisoners are admitted, they should be monitored on an ongoing basis during imprisonment, and they should be screened again in the course of their release from imprisonment.

Training sessions should make persons aware of the topic of suicide prevention in detention and in proceedings under the immigration laws. This information should initially be imparted to all law enforcement officers during basic training. Repetition reinforces what was learned and ensures it has a lasting effect. Therefore, training sessions should be part of continuing education.

Training of personnel

The training sessions should provide basic information on risk groups and risk factors (personality profile of the prisoner, family or social background, mental illnesses), signs of suicide-proneness and how to handle suicide crises and the trainee’s own emotions (psycho-hygiene).

The “health questionnaire” (medical history sheet) should be used in the course of admission. Law enforcement officers should promptly give the medical history sheet to detainees. They should be written in a language the detainee understands. The filled-out health questionnaire will serve as the basis for the subsequent medical examination by police physicians.

If there is a suspected danger of suicide, a medical assessment should quickly be made. The prisoner is to be monitored until then. Access to dangerous items (e.g. broken glass, belts, ties, window grilles, etc.) should be prevented. Depending on the result of the medical examination, a suitable form of

Procedure if there is a danger of suicide - emergency measures

detention should be ordered for the prisoner (a single cell or communal cell) and a psychiatric opinion should be sought, if necessary. If a specialist in psychiatry recommends additional suicide prevention measures, the public health officers have to include these recommendations in the follow-up examination.

The working group will also address the following topics: documentation and disclosure of information when there is a specific risk of suicide, procedure after a suicide (attempt) and on-site reflections on suicide. In addition, there should be a discussion of measures to ensure a flow of information between the Federal Ministry of the Interior and the Federal Ministry of Justice, since prisoners are transferred from correctional institutions to police detention centres (and vice versa). Data protection law aspects should also be taken into account.

In addition, the following topics are on the agenda: obtaining medical assessment when there is a threat of suicide, NPM proposals on amendments to the form entitled “Police physician’s assessment of the detainee’s soundness of mind” (“*Zurechnungsfähigkeit Polizeiamtsärztliches Gutachten*”), treatment of substance-impaired persons and a discussion regarding the fitness of detainees to undergo detention.

#### **5.6.4 Fire prevention at police detention centres**

In the Annual Report 2015 (see NPM Report 2015, p. 134 et seq.) the NPM reported on a death at the Villach police detention centre. A detainee died from smoke inhalation after leaning the mattress of his inmate cell against the open cell door and setting it on fire.

No fire alarm in inmate cells

It is reasonable to assume that there are no general provisions that govern the fire protection systems in police detention centres nationwide. Therefore, the NPM considers it useful to make the fire prevention level in police detention centres uniform and to adapt it to the standard in effect in correctional institutions. The Technical Guidelines for Fire Prevention on “Structural and technical fire protection in correctional institutions” has been in effect in correctional institutions since 2011. Therefore, the NPM also asked the Federal Ministry of the Interior whether it intends to make these guidelines applicable by issuing a decree, or if it intends to establish uniform minimum standards for fire prevention in police detention centres.

The Federal Ministry of the Interior stated that safety systems and a fire prevention concept already exist. Prisoners can sound the alarm if there is a fire in a cell. Furthermore, fire alarm equipment has been installed in newly

constructed or remodelled buildings and during the technical or structural retrofitting of old structures (see NPM Report 2015, p. 134 et seq.).

However, the biggest source of danger is not the building itself but the intentional or negligent acts of detainees, the improper use of items as well as accidents. The greatest number of fire victims are persons who die from smoke inhalation. Therefore, the Federal Ministry of the Interior is already conceptualising technical and structural means of dissipating the gases released through combustion. Nevertheless, uniform standards should be established by decree.

Moreover, the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) at the Federal Ministry of the Interior has dealt with the topic of “fire prevention during detention pending forced return”. In June 2016, this Committee decided to establish a technical group, which will include a representative of the NPM. A task of the technical group is to formulate measures to prevent persons from setting detention areas on fire with open fire or glowing embers. Moreover, the technical group will discuss system-engineering measures to ensure that the fire is extinguished and that timely and reliable notification of the spread of the fire is provided by alarm equipment.

Establishment of a technical group at the Federal Ministry

During a follow-up visit to the Villach police detention centre, the NPM found that all cells had been equipped with new, non-flammable mattresses in the interim.

- ▶ *Uniform standards should be established for fire protection at police detention centres nationwide. The level of fire prevention should at least be adapted to meet the standards for correctional institutions.*

### 5.6.5 Partitioning of the toilet areas in cells for multiple inmates

The NPM already addressed the inadequate partitioning of toilet areas in cells for multiple inmates in 2014 and 2015 (see NPM Report 2014, pp. 123 et seq. and NPM Report 2015, pp. 132 et seq.).

Primarily with respect to the Graz police detention centre, the NPM again voiced criticism of the lack of partitioning between toilet areas and the rest of the cell in cells for multiple inmates. At the same time, the NPM made reference to the planned remodelling of the washrooms in cells for multiple inmates which the management of the police detention centre had discussed with the commission in detail. However, it still had to be clarified whether the

structural partitioning of the toilet areas would have a 10-cm opening near the ceiling of the cell or not.

Complete structural separation is planned

At the last meeting of the working group on “detention in police detention centres and other detention centres”, the Federal Ministry of the Interior stated, after a brief discussion of this question, that the partitioning of the toilet areas in cells for multiple inmates at the Graz police detention centre should be floor-to-ceiling (i.e. without an opening). The NPM will follow up on the implementation of the remodelling measures and hopes that the Federal Ministry of the Interior soon promises to make similar adaptations at the other police detention centres as well.

- *The toilets in cells for multiple inmates should be completely walled off to protect privacy and for hygienic reasons.*

### 5.6.6 Improper conversational tone on the part of the employees

Using the informal term of address with prisoners

During a visit to the Graz police detention centre in early November 2015, the commission observed a law enforcement officer speaking to a prisoner in the corridor using the informal form of address in German (“*du*”). The NPM asked the Federal Ministry of the Interior to inform the employees working in police detention centres that an appropriate conversational tone must be maintained and that detainees should not be addressed using “*du*” but the formal form of address in German (“*Sie*”).

The Federal Ministry of the Interior stated that there were regular training sessions that stressed maintaining a proper conversational tone and complying with guidelines. Therefore, police detention centre employees are being sensitised to this matter. However, the Federal Ministry of the Interior used this criticism as a reason to point out to the police detention centre employee his obligations when dealing with detainees.

The commission also asked to view information on the medical history of a detainee. One officer refused to do so due to the absence of the superintendent of the police detention centre. Another officer wished to obtain the permission of the public prosecutors’ office before allowing a confidential conversation with a prisoner. The NPM criticised this interference with its work. Thereafter, the Federal Ministry of the Interior stated that it had informed police detention centre personnel of the rights of the NPM in detail.

Renewed criticism of the conversational tone

During a follow-up visit to the Graz police detention centre in late March 2016, four inmates reported that many police detention centre employees



often use the informal form of address with them or call people with drug addictions “druggies”. The officer on duty who was asked about this said, among other things, that the use of the informal form of address and the casual conversational tone would not change since this conduct towards inmates “often occurs”. Therefore, the NPM again had to demand that the Federal Ministry of the Interior require a proper conversational tone.

In response to the NPM’s repeated criticism, the Federal Ministry of the Interior stated that the police department of Styria had taken organisational law measures to prevent similar occurrences in the future. In addition, the officer’s superiors strictly instructed him to comply with the relevant code of conduct when dealing with detainees.

These problems show the importance of regular monitoring by the NPM. Whether the Federal Ministry of the Interior will actually keep its promises or whether the measures taken at the police stations will have lasting effect can only be reviewed in follow-up visits.

- ▶ *The law enforcement officers working in police detention centres have to use the formal form of address (“Sie”) when speaking to detainees. They have to maintain a proper conversational tone with detainees and comply with the requirements of the guidelines.*

### 5.6.7 Restriction of the right to spiritual counselling

During a visit to the Salzburg police detention centre in November 2015, the commission found that no spiritual counselling visits had been made since October 2015. In the course of the examination, it was determined that the police detention centre employees “sent [the counsellors] away” due to the increased demand for them resulting from the influx of refugees.

The NPM took this incident as a reason to remind the Federal Ministry of the Interior of the provisions of Section 11 of the Detention Regulation, which state that, upon request, detainees, including those in single detention, must be permitted to have a visit from a spiritual counsellor – not only during visiting hours, but anytime. The NPM further emphasised that depriving detainees of the right to spiritual counselling was disproportionate to the reasons given for this measure (i.e. security concerns and overloading of police detention centre personnel).

Counsellors sent away  
due to overloading

The NPM demanded that the Federal Ministry of the Interior creates the organisational and personnel conditions necessary to ensure that detainees can exercise their right to spiritual counselling in the future. The Federal Ministry of the Interior replied that, after prompt organisational measures

were taken in connection with the handling of applications for asylum, regular spiritual counselling has again been ensured.

- *Upon request, detainees must be enabled to have a visit from a spiritual counsellor. Any restriction of the right to regular spiritual counselling must be proportionate to the reason for the restriction.*

### 5.6.8 Vordernberg detention centre

Treatment of hunger strikers violated decree

During a visit to the Vordernberg detention centre in late February 2016, the commission learned that two persons on hunger strike, who were in detention pending forced return, were not placed in open detention, but in locked single cells. An officer stated that the reason for this measure was that this was the only way to check whether the prisoners were eating or not.

The NPM complained to the Federal Ministry of the Interior that this procedure did not conform to the decree of the Federal Ministry of the Interior on how to handle hunger strikers who are in detention pending forced return. Under this decree, a hunger striking person may only be excluded from the open station for necessary medical supervision or to provide special care, if this is not possible at the open station. The Federal Ministry of the Interior accepted this criticism and stated that it had issued an official order requiring that hunger strikers be treated in conformity with the decree and that standards should be complied with in the future.

Lack of privacy screens

In response to the NPM's criticism of the lack of privacy screens between two residential groups and the lack of curtains in all residential groups, the Federal Ministry of the Interior stated that privacy screens and curtains would not be installed until April 2016 because they were not in the budget. The Federal Ministry of the Interior promised to equip the residential groups in this manner as soon as possible, but at a reduced level due to the tight budgetary situation.

During the visit in July 2016, the commission experienced intolerably hot temperatures in several rooms in the detention centre – mainly those facing the sun. Its assessment in this regard was particularly critical with respect to the rooms in the outpatient clinic area, which have no air-conditioning. The commission suggested measures to ensure adequate room temperature, especially in the summer months, in areas of the facility that are strongly affected by direct sunshine.

Poor crisis management after attempted escape

In mid-July 2016, the commission again visited the detention centre and observed deficiencies. These included deficiencies in crisis management since an inmate was placed in a specially secured cell after an attempted escape

without formal justification. No interpreter and no physician was called in. The commission also found deficiencies with respect to access to information on detention, legal counselling and providing information regarding inmate rights in an understandable language.

The NPM sought the notification of measures to review and ensure the quality of return counselling and legal counselling. The sparse employment opportunities, the daily structure and the kiosk offerings were also brought up. The NPM also suggested installing protective devices against the strong direct sunshine in parts of the detention centre in summer. Besides, it criticised the fact that the rooms intended for curative medical care were being used by police physicians.

The NPM also asked the Federal Ministry of the Interior for information regarding planned measures to review and ensure the quality of the provision of health care. The commission observed deficiencies in health care services provided by the company hired to perform this function. As of the editorial close, the Federal Ministry of the Interior had not replied.

In November 2016, the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe (PACE) and the Association for the Prevention of Torture (APT) visited the detention centre together with the NPM. In addition to making positive findings, including findings with regard to the handling of open detention and the architectural design, the PACE delegation suggested several improvements in a letter to the management of the police detention centre. This letter is also in the possession of the NPM. In particular, the delegation found that the guards reported fatigue due to the increase in the occupancy of the facility. Therefore, the delegation suggested an appropriate increase in the number of guards.

Visit to the detention centre by PACE and APT

Some prisoners reported that they did not know why they were being detained or for how long. Therefore, the delegation suggested that access to information be improved. Likewise, the delegation proposed that language barriers be lowered in connection with the control menus for the information terminals (start screens only in German or English). The delegation pointed out that the “Additional information for persons in detention pending forced return – Vordernberg detention centre”, which was last modified in 2014, did not clearly explain the right to legal counselling. Moreover, the information that this counselling was provided by NGOs, hired for this purpose, was not clearly explained. Therefore, the delegation proposed that the informational brochure be revised.

The AOB took the statements made by the PACE delegation as a reason to initiate an *ex-officio* investigative proceeding and to request that the Federal Ministry of the Interior respond to these points of criticism. There was no response as of the editorial close.

*Ex-officio* investigative proceedings

### 5.6.9 Positive observations

- Wiener Neustadt police detention centre
- The handling of the open detention policy for persons in detention pending forced return at the Wiener Neustadt police detention centre should be held up as an example of good practice. In particular, the detainees may go to the exercise yard without time restrictions between 7:00 a.m. and 10:00 p.m. and can also use their mobile phones there. The prisoners can utilise numerous pieces of sports equipment, board games and their own game consoles. The rules on visiting hours also seemed to be very accommodating. The Wiener Neustadt police detention centre is no longer used for detention pending forced return, but now mainly houses prisoners serving an administrative penalty.
- Steyr police detention centre
- At the Steyr police detention centre, which is exclusively used for the detention of prisoners serving an administrative penalty, a very positive highlight is that the cells are open between 8:00 a.m. and 10:00 p.m. This is noteworthy because detention in open stations is generally only intended for persons in detention pending forced return. The prisoners can shower every day and use their mobile phones and laptops at any time. The respectful treatment of prisoners by the police detention centre personnel was expressly praised by the commission.

## 5.7 Police stations

### 5.7.1 Introduction

The commissions made 47 visits to police stations in the year under review. As in previous years, the visits focused on equipment, furnishings and hygiene in the detention areas and the proper documentation of measures that restrict freedom.

Since an unfavourable and burdensome work situation – due to excessive demands for additional services – can have a negative effect on the detainees' situation, this topic is also a regular focus for the commissions.

In the autumn of 2016 the NPM asked the Human Rights Advisory Council to clarify the following matters relating to short-term police detention: insufficient availability of public health officers/physicians, lack of privacy during medical examinations by public health officers and permissibility of locating inmate cells in basements. As of the editorial close, the NPM had received a statement from the Human Rights Advisory Council regarding the shortage of physicians (see chapter 5.7.3).

### 5.7.2 Degrading detention

During its visit to the police station at the Traiskirchen Initial Reception Centre in the summer of 2015, the commission observed that ten juveniles were held for several hours in a detention area that was only 10 m<sup>2</sup> large and showed a room temperature of 50°C. The commission experienced an intolerable smell and saw an apathetic person lying on the floor.

Ten persons jammed together in 10 m<sup>2</sup>

Article 3 of the ECHR prohibits, *inter alia*, degrading treatment of any person. Treatment is degrading if it shows gross disregard for human dignity (see decision B 350/76 of the Constitutional Court of Austria dated 6.10.1977). Under the CPT standards, a person being held for a short period of time must be placed in a police cell that is at least 7 m<sup>2</sup> large [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 8, margin no. 43]. Moreover, Section 4 (1) and (1)(a) of the Code of Detention Regulation guarantees humane detention. The Directive on Workplaces (decree dated April 2013, BMI-OA1520/0008-II/10/c/2013) establishes the dimensions of a detention area in which multiple persons can be held for a short period of time at 20 m<sup>2</sup>. The term “multiple persons” is not defined in greater detail.

Citing the case law of the European Court of Human Rights regarding Article 3 of the European Convention on Human Rights (see European Court of Human Rights, 15.7.2002, No. 47095/99), the NPM complained that detention at the Traiskirchen Initial Reception Centre police station is degrading. The

Federal Ministry promises improvements

Federal Ministry of the Interior promised to quickly improve the conditions of detention.

During a visit to the West Initial Reception Centre police station, the commission viewed the detention book which showed that, on one occasion, six persons were simultaneously held for two hours and, on another occasion, ten persons were simultaneously held three and a half hours in the 7.5 m<sup>2</sup> large detention area.

The NPM complained that this massive overcrowding constituted maladministration. Since the Federal Ministry of the Interior was unable to promise any spatial improvement, the NPM suggested using the space at nearby police stations if many persons are to be detained at the same time.

- *Detention areas may only be occupied in accordance with their size. There should be no overcrowding even when there is an urgent need for space. At risk of overcrowding, detainees must be moved to other police stations.*

### 5.7.3 Insufficient availability of public health officers/physicians

Numerous observations by the commissions revealed that there are sometimes very long waiting times in police stations before detained persons are examined. The reason for these delays is the insufficient availability of physicians. The commissions consider the long waiting times for examinations to be particularly problematic, since the results of such examinations are used to determine fitness to undergo detention or referral to a psychiatric section.

Best practice in  
Vorarlberg

The NPM found that there is currently no coordinated approach for all of Austria. A comparison of the *Laender* showed that Vorarlberg had ensured comprehensive medical care since December 2015 with a combination of an on-call model and a physician pool solution. A project working group including the police department of Vorarlberg and the *Land* of Vorarlberg effectuated these improvements. The collaboration was necessary because legislation for and implementation of the public health service are the responsibility of the *Laender*.

Long waiting times at  
rural police stations

In several statements, the Federal Ministry of the Interior described a shortage of public health officers and municipal and public physicians – primarily in the rural regions (see NPM Report 2013, p. 84). This was also evident when the commission visited the Weitra police station. Lower Austria has an on-call model, but in remote regions the arrival time at the police station can take up to one and a half hours.

Even in Vienna, where the police departments have a large number of police public medical officers and an on-call service (“Aesculapian service”) at its availability and where there is generally a good supply of physicians, a commission observed long waiting times for examinations in police stations.

Knowing that the insufficient availability of physicians in Austria (reduction in the number of physicians who have a contract with public health insurance offices, relative unattractiveness of contractual commitments in the coroner’s area) is a problem that affects multiple authorities, the NPM approached the Human Rights Advisory Council in September 2016.

In its statement, the Human Rights Advisory Council emphasised that it is desirable from a human rights perspective to implement the Vorarlberg model in every region of Austria. In addition, better compensation for police physicians and public medical officers could create an incentive. In the absence of a statutory basis, the Federal Ministry of the Interior is not able to hire police physicians as employees or on a freelance basis. The Human Rights Advisory Council stated that a uniform provision is unlikely due to the numerous decision-makers (*Laender*, Federal Ministry of the Interior, Federal Ministry of Health and Women’s Affairs, Medical Chambers). In the view of the NPM, the Federal Ministry of the Interior should examine whether the “Vorarlberg model” can be implemented in other *Laender*, particularly in rural areas, to prevent an extended deprivation of liberty for purely organisational reasons.

No solution in sight

- *The duration of any deprivation of liberty should be limited to what is absolutely necessary. Detentions by the police may not be extended because physicians cannot be reached within a reasonable period of time. Therefore, the Federal Ministry of the Interior has to take appropriate organisational measures.*

#### 5.7.4 Inadequate documentation of detentions

During their visits, the commissions routinely examine the detention books and detention logs at the particular police station. Deprivations of liberty are serious interventions and must be fully documented. The commissions noted deficiencies in this reporting year, too.

In the Annual Report 2015 (see NPM Report 2015, p. 139) the NPM has already pointed out that detained persons have certain information and notification rights, which must be protected. Otherwise, their constitutionally guaranteed right to personal freedom is violated. Public security officers have to inform detainees of their rights and document this. By signature the detained person confirms the receipt, invocation or waiver of these information and notification rights. If a person refuses to sign, the police officer has to note this

Information regarding rights and documentation



in the log. Special measures, such as handcuffing a detainee and removing the handcuffs, must be fully documented and justified, e.g. if the detainee is handcuffed for a lengthy period of time.

As in past years (see NPM Report 2015, p. 139), the commissions once again found deficiencies in the documentation of detentions in this reporting year. The NPM again complained about the deficiencies in documenting the removal of handcuffs and the lack of signatures of detained persons on transcripts and documents. Information on the reason for the arrest was also missing and the detention books were maintained in a confusing manner.

In the course of the concluding meetings with police station management, the commissions usually attempt to ensure that such deficiencies in documentation will not happen again in the future. When complaints were made, the Federal Ministry of the Interior has immediately taken training and sensitisation measures.

Uniform detention book  
to be implemented

Encouragingly, the Federal Ministry of the Interior accepted the recommendation of the NPM for uniform documentation of detention to be used nationwide (see NPM Report 2015, p. 140). The Federal Ministry of the Interior promised a new edition of the previous detention book form and a decree on the matter.

► *Detention in police stations must be fully and understandably documented. To improve the process, a uniform detention book should be used nationwide.*

### 5.7.5 Inadequate equipment at police stations

Shortage of personnel

Based on conversations with employees in many police stations, the commissions determined that they have a heavy workload due to fact that they work many hours of overtime. In most cases, this has been attributable to understaffing of the police station. In the Reichenau police station, four permanent positions had not been filled and the number of overtime hours worked in 2015 was two-thirds higher than the average for police departments in Tyrol. There were also four unfilled positions at the Wals police station.

It is understandable to the NPM that sick days, assignments, training sessions, transfers and retirements can lead to a level of personnel that is temporarily below the level organisationally required for the individual police station. However, excessive overtime figures at individual police stations should be avoided through organisational measures, since stress and heavy workloads can also have a negative effect on the detained persons.

The Federal Ministry of the Interior is aware of the negative effects of heavy workloads. Therefore, since the autumn of 2016, the mental burden on the workplace is being evaluated nationwide.

Measures to reduce the workload

When there are structural deficiencies, the commissions mainly use the concluding meetings with police station management to seek improvement while on-site. However, local police station management can generally not resolve problems that can only be eliminated at a high financial cost. Therefore, it is necessary to contact the Federal Ministry of the Interior in these cases.

In the reporting period, the NPM complained about the deficiencies in housekeeping and hygiene, the lack of security door systems, poorly heated and illuminated inmate cells as well as the lack of toilets for female personnel. The NPM criticised a specially secured cell referred to as a “rubber cell”, dirty ceilings in detention rooms, and the lack of an air-conditioner. Moreover, the exclusively non-vegetarian meals served to detained persons in a police station did not take cultural and religious requirements into consideration. Encouragingly, the Federal Ministry of the Interior immediately eliminated many of these deficiencies.

A point of criticism that can generally not be eliminated – or at least not quickly – is the lack of barrier-free accessibility. In the staged plan under the Federal Act on Equal Opportunities for People with Disabilities Act (*Bundesbehindertengleichstellungsgesetz*), the Federal Ministry of the Interior has worked out when each police station is to be designed to be barrier-free. Barrier-free accessibility is technically infeasible for about 300 police stations, which are not included in the staged plan. These police stations must be relocated by the end of 2019 or other organisational solutions must be found. The NPM again insisted that police stations be made barrier-free as quickly as possible.

In some cases, the commissions found that police stations were falsely designated as barrier-free. The Federal Ministry of the Interior promised a quick review of the staged plan immediately implemented measures to make police stations easier to reach (construction of a ramp, relocation of the intercom system). Renting new space was also promised during the reporting period.

NPM recommendations quickly adopted

- ▶ *The actual personnel level in police stations should correspond to what is organisationally required, in order to avoid stress and heavy workloads, which can also affect detainees.*
- ▶ *Police stations must be hygienic and have their own staff protection systems and a separate toilet area for female personnel.*
- ▶ *Inmate cells in police stations must be adequately illuminated and heated.*
- ▶ *Persons detained in police stations must also be offered vegetarian meals.*
- ▶ *Police stations should be barrier-free. The existing staged plan under the Federal Act on Equal Opportunities for People with Disabilities Act must be followed. In urgent cases, situations must be remedied beforehand.*

### 5.7.6 Deactivatable call bells in detention areas

During a visit to the Wals police station, the commission found that the call bell in the detention area could easily be confused with a light switch. Moreover, the call bell system was deactivated. When questioned, the head of the police station said that it was only switched on if the area was occupied.

Contact must always be possible

The Detention Regulation states that inmate cells must have suitable equipment for contacting the guards. This provision is usually fulfilled by installing a call bell system. The CPT standards [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 16, margin no. 48], also argue that persons in police custody must always be able to contact the guards.

The NPM understands that detainees can disrupt operations by constantly activating the call bell. However, the NPM rejects the option of switching off the call bell system: if incarcerated persons are deprived of this method of contact, there is a risk that there will be no timely response to their needs or to any emergency situations. In addition, there is the risk that persons will forget to activate the call bell system.

Call bell system is labelled and activated

The police department of Salzburg eliminated this deficiency immediately. The call bell switch is now labelled and the call bell system is permanently switched on.

► *The call bell system should be permanently activated and the call bell switch should be clearly identifiable so that persons in police custody can always contact the guards.*

### 5.7.7 Detention rooms in the basement of the police station

The commissions continually criticise inmate cells in the basements of police stations (see NPM Report 2013, p. 83). In the St. Johann im Pongau police station, the commission found that the single cells in the basement were equipped with a call bell and an intercom system, but they were two levels below the police station. The NPM complained about the distance from the standby service room and the possible danger if, for example, substance-impaired detainees are led down the steep and narrow steps to the inmate cells. An aggravating factor was that multiple persons were held in single cells – even if this was a rare occurrence and only for a short period of time.

The NPM also criticised inmate cells in the basement of the Kufstein police station. One of the cells was not vandal-proof. The lighting in the inmate cells was inadequate. It was evident from the detention documentation that excesses had occurred in the inmate cells at the police station. Unfortunately,

the Federal Ministry of the Interior refused to relocate the inmate cells in both cases.

In the Völkermarkt police station, the commission found that the detention areas could only be reached by a steep and narrow staircase down to the basement, which they judged to be a potential hazard both to detained persons and to law enforcement officers. However, in this case the problem should be resolved in the foreseeable future since local police station management stated that the police station is about to move into a new building.

The isolated location of inmate cells in basements can intensify the situation for psychically unstable detainees. The poor lighting and ventilation in basement cells is also detrimental. In addition, it is often difficult to reach cells located in the basement and they are far away from the workplaces of the law enforcement officers.

Are inmate cells in the basement objectionable?

For all these reasons, the NPM submitted an enquiry regarding the permissibility of inmate cells in the basements of police stations to the Human Rights Advisory Council. However, as of the editorial close, a reply from the Human Rights Advisory Council has not been received.

Enquiry to the Human Rights Advisory Council

### 5.7.8 Positive observations

For every visit, the commissions record their observations in a visit report. Commissions also observe positive aspects and improvements and share them in the concluding meetings. In several cases, the commissions requested that the NPM also brought their positive findings to the attention of the Federal Ministry of the Interior, i.e. the highest body, in writing. Both the Federal Ministry of the Interior and the relevant police stations gave recognition to this.

Commission 5 had a positive impression of the Kärntnertorpassage police station in January 2016: this barrier-free police station has its own initial treatment room to protect privacy. The law enforcement officers routinely inform homeless persons about protected sleeping places and basic services. The Commission also praised the networking with the media and employees of *Wiener Linien* (Vienna's public transport operator) as a way to find perpetrators.

An exemplary police station on all levels

Commission 4 also had positive impressions of its visit to the Enkplatz police station in September 2016: in general, police officers are not present at medical examinations. There are two in-house trained law enforcement officers who, in cases of violence in the family, offer to talk to all those involved. The personnel management is also trend-setting since the management handles allegations of abuse in face-to-face meetings with the affected employees.

Learning psychiatry as continuing education In this reporting year, the commissions found exemplary cooperation, a good working atmosphere and bright, friendly police stations at some visits. The commissions also gave positive emphasis to the following: full documentation of measures that restrict freedom, the effort to make few arrests and the careful filing of records. Also worthy of recognition are the level of knowledge and lecturing activities of committed law enforcement officers in schools, as well as the continuing education programmes offered. Thus, the employees of the Krottenbachstrasse police station are permitted to spend a day in the Otto Wagner Hospital in order to develop a better understanding of the mentally ill.

## 5.8 Coercive acts

### 5.8.1 Introduction

43 police operations were observed In 2016, the commissions observed a total of 43 acts of direct administrative power and coercive measures, including eight (forced) returns and 35 demonstrations, inspections regarding basic reception conditions, football games, raids and other large police operations.

Large operations As in past years, there were, in the view of the NPM, no or hardly any complaints regarding police operations at football games and during targeted campaigns. Major events were often examples of professional conduct by law enforcement officers. Merely in the course of one football game at the *Wiener Allianz Stadium* there was an impression that groups of fans inside and outside the stadium were not kept sufficiently separated, but there were no incidents. The police department of Vienna confirmed this, but mainly attributed the problems to structural conditions and the laws governing events. They agreed to enter into a dialogue with the event organiser.

Observations of demonstrations and forced returns (returns to non-EU states) or returns (returns to EU states under the Dublin Regulation) and the conduct of contact meetings prior to these official acts provided a more ambivalent picture. In many operations, such as during the demonstrations against the 2016 Vienna Academics Ball, the conduct of the police was much improved in comparison to previous years. In other operations, there was reason for criticism.

Monitoring of a return flight For the first time, a delegation accompanied the return of persons to Croatia by airplane. Together with the Federal Office for Immigration and Asylum and the Federal Ministry of the Interior, the NPM had previously developed a procedure to ensure that future observations of such flights would run smoothly.

### 5.8.2 Human rights observers during forced returns

In the Annual Report 2015 (see NPM Report 2015, p. 145) it was reported that within the framework of “Forced Return Monitoring (FReM)” – a project which was carried out jointly with the International Centre for Migration Policy Development (ICMPD) – employees of the Association of Human Rights Austria (*Verein Menschenrechte Österreich*) and the Association for Human Life (*Verein Menschen-Leben*) were trained to work as human rights observers. These employees were then given the task of making such observations.

The Federal Ministry of the Interior invited both associations to nominate persons to be trained as monitors. In 2016 ten persons from the Association of Human Rights Austria and one person from the Association for Human Life were nominated and trained.

Since the reports on the observations were sent to the NPM, it was noted that the flights were always accompanied by employees of the Association of Human Rights Austria. The Federal Ministry of the Interior stated that an employee of the Association for Human Life participated as a trainee on the charter flight to Kosovo in April 2015. Unfortunately, she did not participate in any further charter flights. Under an additional project between the Federal Ministry of the Interior and the ICMPD, which had its opening conference in mid-November 2016 in Vienna, the pool of human rights observers is to be expanded.

### 5.8.3 Deficiencies in interpreting services

This year the NPM once again found that bilingual employees of the Association of Human Rights Austria, who are not trained interpreters, were nevertheless used as interpreters during (forced) returns (see NPM Report 2015, p. 146 et seq.). According to the observations of the commissions, the employees of the Association of Human Rights Austria tended to exert influence over the persons being deported or returned by seeking to “convince” them to cooperate with the officers, not to make any trouble and not to defend themselves against the (forced) return.

Employees of the Association of Human Rights Austria may be bilingual. However, they function as return counsellors, which is incompatible with the role of a professional interpreter. Therefore, conflicts of interest often arise. For this reason, in 2014 in an *ex-officio* act and in many other cases the AOB criticised the practice of utilising employees of the Association of Human Rights Austria, instead of professional interpreters, for translation purposes (see NPM Report 2014, p. 139 et seq.).

Members of the Association of Human Rights Austria as interpreters

Clarification of medical history sheet by telephone

In one case, an employee of the Association of Human Rights Austria was contacted by phone and asked to talk to a person being deported with the aim to verify why this person had reported on the medical history sheet that she had had suicidal thoughts. In the phone conversation with the bilingual return counsellor, the deportee changed her statement and said she had misunderstood the question. As a result, the information on the medical history sheet was changed. Thereafter, the woman was not placed under continuous monitoring as would have been necessary and required for suicidal persons during deportation proceedings.

The NPM doubts whether a bilingual return counsellor, who is not trained as an interpreter, can handle such a delicate matter by phone. For this reason, the NPM reminded the Federal Ministry of the Interior of its responsibility for persons who are in state care or state custody. Even though there was no incident during this forced return, the Federal Ministry of the Interior would be called to account in a similar situation if a suicide was carried out or attempted.

Interpreter for the wrong language

In another case, the officers who organised the contact meeting gave too little thought to the language of the deportee when obtaining an interpreter. Therefore, the woman being deported could not understand the information she received from the Arabic-speaking interpreter. Not until a Kurdish-speaking employee of the Association of Human Rights Austria was contacted by phone could the woman obtain the necessary information. The Federal Ministry of the Interior promised to be more careful in the future when choosing suitable interpreters.

Interpreter assumes official duties

In addition, the NPM criticised a case where the officers let interpreters perform official duties. First, the officers discussed the most important points with the interpreters. Then the interpreters conducted the meeting on their own. The NPM pointed out that the sole task of a professional interpreter is to translate the words of the officers who are conducting the meeting.

The NPM also criticised the fact that – with the exception of one police woman – all the other officers who arrested a family for the purpose of forced return wore police uniforms. This is contrary to an internal decree of the Federal Ministry of the Interior, which states that officers have to wear civilian clothing during forced returns of families. Moreover, no physician was present at the arrest, even though it was known that one child suffered from epilepsy.

- ▶ *The functions of the return counsellor and those of the professional interpreter must be strictly separated during forced returns.*
- ▶ *Police officers must ensure that they take official actions themselves and that these actions are not taken by interpreters.*
- ▶ *If the medical history sheet on health matters is not understandable, a professional interpreter must be called in to clarify open questions.*



#### 5.8.4 NPM's participation in a return by air

As already explained in the Annual Report 2015 (see NPM Report 2015, p. 144 et seq.), the Human Rights Advisory Council issued a statement announcing that the monitoring of (forced) returns are under the mandate of the NPM. In the autumn of 2015, there was a discussion with the Federal Ministry of the Interior which resulted in a 2016 decree on accompanied forced returns.

The details of the participation were clarified in further discussions with representatives of the Federal Office for Immigration and Asylum and the Schwechat city police squad. At the end of 2016, the heads of two commissions accompanied a return to Croatia.

The collaboration with the Federal Office for Immigration and Asylum and the Schwechat city police squad ran well. The return was unproblematic. However, this was not a "high-risk" return case. Some questions about the forwarding of information to the NPM must still be clarified. However, by the editorial close, there was still no statement from the Federal Ministry of the Interior.

#### 5.8.5 Schwechat special transit area

In 2014, a person who was being detained in the Schwechat special transit area (*Sondertransit*) twice sewed his lips closed to avoid being returned to another Dublin country. The competent commission visited this person twice and asked the Ministry of the Interior for his medical history. The commission criticised that the translations of the notices provided to persons being returned were not well done and made no sense.

Place of detention  
of liberty?

The Federal Ministry of the Interior conceded that there were technical problems with the translation and gave its assurance that these technical problems would be resolved in the future. However, the Federal Ministry of the Interior refused to send the medical history, arguing that the special transit area in the Vienna Schwechat Airport was not a "place of deprivation of liberty". Therefore, the provisions of the OPCAT did not apply. This would mean that certain decrees that protect persons being detained in police detention centres pending forced return would not apply in the special transit area.

The NPM requested a statement from the Human Rights Advisory Council on this matter. The Council determined that the term "place of deprivation of liberty" within the meaning of Article 4 of the OPCAT should be interpreted broadly in conformity with international interpretation practice of the OPCAT. Therefore, the OPCAT's area of applicability extends to the special transit area at the Vienna Schwechat Airport. This is the case even if – in the specific case – the alien's stay at the special transit area does not qualify as an arrest or

imprisonment within the meaning of Article 5 of the ECHR or the Personal Liberty Act (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*) in accordance with the case law of the European Court of Human Rights.

A decision about which decrees apply to persons in the special transit area should be made separately for each individual decree and for each guideline.

Upon the statement of the Human Rights Advisory Council, the Federal Ministry of the Interior forwarded the medical history of the man who had sewed his lips closed. Thereafter, the NPM emphasised to the Federal Ministry of the Interior that certain decrees of the Ministry that apply to persons being detained in police detention centres pending forced return and that protect them (such as the decree on the treatment of hunger strikers in detention pending forced return) should also apply to persons who are located at the special transit area at the Vienna Schwechat Airport.

► *The special transit area at Schwechat Airport is a “place of deprivation of liberty” within the meaning of the OPCAT. Therefore, all human rights principles that apply to places of deprivation of liberty must also apply to the rooms in the special transit area.*

### 5.8.6 Demonstrations

Demonstrations against the Academics Ball

As was the case in the previous year (see NPM Report 2015, pp. 150 et seq.), there were again improvements in the police deployment to observe demonstrations against the Vienna Academics Ball in 2016.

In addition to providing general security and giving greater scrutiny to the “Black Bloc”, the police acted with prudence and sought to de-escalate matters during the entire demonstration. Moreover, the officers did not allow various groups to provoke them. Nevertheless, the commissions criticised that the behaviour of the officers was at times rough and provocative when controlling the demonstrators.

In one case, the police did not intervene against persons who were sitting on the ground and shouting slogans in front of the *MuseumsQuartier*. The officers withdrew, and thereafter the sit-in broke up with no intervention by the police. The commissions also reported that officers approached many barriers with helmets removed, shields down and in loose formation, which also contributed to de-escalation.

The NPM recommended that “reddened skin” be included in the documentation of injuries, even though this does not constitute an injury in the view of the Federal Ministry of the Interior.

Other demonstrations were not handled as well. For example, the NPM does not understand why the crowd was encircled during the operation in response to the PEGIDA demonstration in Vienna in February 2016. This meant that over 400 persons could not leave the site for more than three hours. The Federal Ministry of the Interior justified the encirclement by stating that three persons had been reported for suspicion of violating Section 285 of the Austrian Criminal Code (“Preventing or disrupting an assembly”). In light of the requirements of proportionality and economy, this approach was incomprehensible.

PEGIDA demonstration

The loudspeaker announcements by the police were also very hard to understand. These technical problems occurred less frequently than in previous years, but they have not yet been fully resolved. The NPM emphasised that the inability to hear the announcements could also lead to legal problems, e.g. if the announcement related to threatened coercive measures. Therefore, the technical equipment should be improved so that loudspeaker announcements can be readily heard and understood.

In another case, the announcement of an order to disperse could not be understood completely. Although the announcement could be heard in some places, there was not enough time to comply with the police order and leave the area. Simultaneously with the order to leave the area, police cordons were formed and the police began to encircle the demonstrators. The delegation observed that peaceful demonstrators were unable to leave the encirclement.

Demonstration against the *Burschenbund* Ball in Linz

During a demonstration at the end of 2015 in the course of the large refugee migration, there were excesses by the “left-wing” and “right-wing” demonstrators in Spielfeld. Based on the commission’s observations, the reason was that there were too few police officers deployed. As a result the officers also acted aggressively towards the demonstrators.

Demonstration in Spielfeld

This occurrence cannot solely be explained by the argument put forth by the Federal Ministry of the Interior, which states that participants had not stayed on the approved march route which had been announced by the head of the demonstration. Experiences in several similar situations should have shown the police that demonstrators do not always follow the announced and approved march routes and splinter groups form. This was particularly relevant in the case at hand, since, due to the large refugee migration in 2015, the demonstrations and counter-demonstrations were particularly emotionally loaded and conflict-prone.

The NPM could understand the argument of the Federal Ministry of the Interior that it is very difficult to control demonstrators in rural areas. Nevertheless,

the NPM suggested that an appropriately large number of officers should be deployed in the future.

- ▶ *The police should have appropriate technical equipment to make understandable announcements to demonstrators which should give them an opportunity to comply with police orders.*
- ▶ *The police must carefully weigh whether encirclement is necessary, justified and proportional. Peaceful demonstrators should be given the opportunity to leave the area in due time.*

### 5.8.7 Targeted campaigns

**Disrespectful behaviour** During an inspection regarding basic reception conditions, the commissions criticised that officers behaved very differently. Many employees politely asked for identity cards and obtained the consent of the residents before entering their apartments. However, other officers acted in a very authoritarian manner (loud and in a commanding tone and with clearly authoritarian body language). Some officers wore uniforms, others wore civilian clothing. Moreover, the commissions observed cases in which apartments were entered and closets were opened without the consent of the affected persons.

The Federal Ministry of the Interior responded to the criticism and assured the NPM that the officers would be sensitised in the future to ensure proper and respectful behaviour.

**„Voluntary“ arrest?** In the course of one targeted campaign in the inner city of Innsbruck and the environs of the main train station, a man was picked up for drug use and was “voluntarily” taken to the police station. According to the commission, it was questionable whether the affected person was actually aware that this was supposed to be voluntary.

The Federal Ministry of the Interior gave its assurance that creating awareness in law enforcement officers of the “fine borders” between voluntary compliance and the exercise of moderate authority is a special concern of the police department of Tyrol. The Ministry gladly accepted the suggestion of sensitising police officers in this regard. The Bureau of Legal Affairs of the police department of Tyrol would also consider introducing a “small contribution from the NPM” in the form of a monthly newsletter. In this way, the broad base of officers could again be informed and sensitised.

**Monitoring based on skin colour?** During a monitoring action in the course of Schengen compensatory measures, the commissions criticised the fact that the colour of the travellers’ skin was generally the deciding factor in selecting persons to be monitored. This is problematic from a human rights perspective: skin colour is not an indicator of nationality or the lawfulness of the person’s stay in Austria. Moreover, skin

colour may not be used as a suspicious circumstance indicating unlawful conduct. Even though the Federal Ministry of the Interior denied that persons were being selected for monitoring based on their skin colour, the NPM again pointed out the problem to the Federal Ministry of the Interior.

- ▶ *In the course of inspections regarding basic monitoring reception conditions, all police officers must be respectful and polite, particularly when entering apartments, which are very private areas. Furthermore, they should wear civilian clothing.*
- ▶ *The difference between voluntarily accompanying a police officer and an arrest must be carefully explained to the affected person. The affected person must be aware of the “voluntary” nature of this action.*

### 5.8.8 Inadequate notice of police actions

The Commission 1 had the impression that it had received very little information regarding forced returns, major events and demonstrations in the *Land Vorarlberg*. A nationwide decree provides that the NPM must be notified of police operations. The Federal Ministry of the Interior expressed its regret at the inadequate notification of the Commission by the police department and gave its assurance that this was an isolated case. The police department will make every effort to avoid such occurrences in the future. Employees were reminded of the duty to notify the NPM during training sessions.

Compliance with the Notification Decree

### 5.8.9 Positive observations

Many positive observations of police operations have been made in all areas. In many cases, the officers immediately responded to criticism.

Thus, in one case, the Federal Ministry of the Interior announced that it had immediately accepted a recommendation of the commission. In the course of a visit, the commission had suggested abandoning the practice of holding visiting hours in the locked area of the Leoben police detention centre. Thereafter, the management of the police detention centre announced that visits would be held in other areas in the future. The Federal Ministry of the Interior also accepted a proposal from the NPM and had a form entitled “Information for Detainees” translated into Somali.

Suggestions of the commission have been promptly implemented

In several cases, the commissions observed very well planned and well-implemented police operations during demonstrations. In these cases, the police were on site in the appropriate strength. The officers acted properly and respectfully and were clear and unambiguous in their behaviour towards the demonstrators.

Implementation of the 3-D strategy has been exemplary

In other cases, the police demonstrated in an exemplary manner how the 3-D strategy is to be implemented. For the most part, the officers remained in the background for as long as possible and did not allow the demonstrators to provoke them. The accompanying officers remained at a distance from the demonstrators and did not wear helmets or carry shields.

During a demonstration in front of the Zeidlergasse Refugee Shelter in Vienna, the NPM found that the officers informed passers-by about the situation in a calm and polite way when asked questions during their deployment. The separation of demonstrators and counter-demonstrators by forming a corridor and a wedge worked very well.

When arrests were necessary during demonstrations and football games, the officers' behaviour was generally appropriate and controlled.

The fact that the commissions observed fewer football games is attributable to their experience over the years and the resulting fact that the police acts professionally in this area. When football games with high-risk groups of fans were observed, the commissions consistently gained a positive impression. This applied to the preparations for the deployment and the deployment plan as well as to the procedure during the game and the conduct of the officers as the groups of fans streamed out.

Monitoring of provision of reception conditions

The NPM had a positive assessment of an identity check at the Erdberg Asylum Centre: most officers wore civilian clothing and the uniformed officers remained in the background. The officers were accompanied by employees of humanitarian agencies to reduce fear on the part of the persons being checked. The commission especially noticed the officers' respectful and humane treatment of the asylum seekers.

In one case, a female officer acted in such an exemplary manner in the course of an inspection regarding basic reception conditions in Klagenfurt-Land that the commission expressly mentioned her great sensitivity to the residents' situation in the report.

Even very difficult operations, such as checking for narcotics at the Innsbruck train station, were well and professionally conducted by the officers, in the opinion of the commission. The use of physical force was reasonable in the view of the commission and limited to the duration of the attack.

In another case, regarding observation of red light districts and bars in Burgenland in August 2016, the commission expressly requested that their positive observations be provided to the Federal Ministry of the Interior in writing, which the NPM was glad to do.

The cooperation between the individual delegations of the commissions and the task groups generally worked very well. Any problems or misunderstandings were discussed and cleared up between the respective commission and the officers in a concluding meeting after the operation. Good cooperation



## 6 Recommendations of the Austrian National Preventive Mechanism

### 6.1 Retirement and nursing homes

#### Living Conditions

Retirement and nursing homes are not an adequate living environment for young persons with disabilities. (2013)

Unusual mealtimes and early bedtimes are an expression of structural violence and should be avoided. Evening activities are necessary for residents with dementia who have insomnia and are restless. (2013, 2015)

The wishes of the residents should be taken into consideration when scheduling mealtimes; nutritional recommendations should be followed. According to these recommendations, when meals are being provided to a residential community, three main meals and two snacks are ideal. The time between meals should not be longer than five hours and the time between supper and breakfast should not be longer than twelve hours. (2013)

Outdoor access must be ensured once a day, in particular for residents with mobility impairments. (2015)

The right to privacy must be maintained, both when providing care-related assistance and when configuring rooms with multiple occupants (visual barriers by way of screens, etc.). (2013)

When safe and humane care cannot be guaranteed, the residents must be transferred to another facility. Supervisory authorities are called upon to act quickly. (2014)

#### Educational, work-related and occupational activities

The NPM calls for more activity and occupational offerings during the day as well as regular access to outdoor spaces in order to increase well-being and to avoid complications. (2015)

#### Measures to restrict freedom

Care that is based on human dignity and human rights is unthinkable without the active protection of personal freedom. Therefore, this right to respect calls for institutions and facilities to rethink the use of measures that restrict freedom in their own practice and to examine themselves self-critically on a regular basis. (2014)

Measures that restrict freedom often become unnecessary after psychosocial interventions, personal attention and consideration of individual needs. (2014)

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Equipment with the necessary materials for care in accordance with current standards as an alternative to measures that restrict freedom (low-profile beds, beds equipped with split side guards, bed alarm systems, sensor mats, etc.) have to be ensured. (2014)

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Any coercive measure is excessive if a suitable and milder directive is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel. (2014)

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Restrictions of freedom by way of medication are subject to control by the courts and must be reported by facility management to residents' representatives as part of enforcement of the rights of the individual. (2014)

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It is recommended that restraints only be used along with the medicinal products authorised for that purpose. (2015)

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The NPM calls for the compulsory introduction of training in prevention of falls and care concepts for persons with dementia in order to avoid measures that restrict freedom. (2015)

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#### Health care system

Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls. (2014)

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Residents' individual risk of falling must be recorded not only when they enter a facility but on a regular basis, particularly if the condition of their health or their medication changes. (2015)

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Fall incidents must be carefully analysed, centrally documented and evaluated. (2015)

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Doctors and professional nursing staff must always try to recognise the causes for restlessness, tendencies to run away and potential risks of falls and to remedy them without restraints if possible. (2015)

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It must be ensured that persons in facilities for the elderly can freely choose their doctors. (2014)

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Care by specialists must be ensured without restrictions. (2014)

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Before medications are prescribed, the type, extent, implementation, expected consequences/side effects and risks of the medication treatment must be explained to the persons affected and their informed consent must be obtained. It is not admissible to administer medications unobtrusively with food without obtaining informed consent from the persons affected. (2014)

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The starting point of strategies to avoid inappropriate polypharmacy for geriatric patients is often a complex and time-intensive medication anamnesis. The extent to which medication is suitable must be evaluated in each individual case and, if appropriate, an intervention in the form of a medication adjustment must be carried out. At the same time it should be remembered: evaluations and stocktaking must be carried out at regular intervals. (2015)

Administering medicines is fundamentally the job of doctors that can be delegated to qualified nursing staff within the scope of a field of activity for which they are jointly responsible, provided that the amount, dose, and type and time of administration is noted in written form in the patients' charts by the doctors authorised to issue prescriptions. (2014)

PRN medication is permitted in individual cases if the criteria for the assessment of timing and dose of the medication to be administered are unambiguous, beyond any doubt and verifiable according to the doctor's instructions and without the nursing staff making inadmissible diagnostic or therapeutic decisions at their own discretion that exceed their competence. (2014)

Non-medication-based measures to minimise sleep disorders should be used systematically and documented. (2015)

It is necessary to recognise and assess the pain felt by residents on a regular basis and to counter this by way of measures to alleviate pain. (2015)

Professional treatment of pain requires cooperation between nursing staff and doctors, with inclusion of the persons affected and their relatives. (2015)

Training of the entire nursing staff with regard to recognition and assessment of pain in cognitively impaired persons is absolutely necessary. (2015)

Research is needed with regard to drug safety for the very elderly both in and outside of stationary long-term care. (2014)

## Personnel

Staff resources, especially during the night shift, must be adequate enough to guarantee the safety of the residents. Care personnel must be able to undertake unforeseen assistance and care promptly, recognise emergencies early on and hear calls for help. (2014)

In order to maintain and improve the working capability of personnel, it is necessary to have professional psychological supervision that takes place during working hours with external supervisors who can select the care teams. This improves psychological hygiene and helps to prevent burnout, bullying/harassment and violence. (2013)

More specific education of doctors with regard to treatment of elderly patients with medication is necessary. (2014)

Implementation of insights based on health care science and the application of important assessment instruments, including from the perspective of preventive and human rights monitoring – e.g. for risk assessment in connection with fall prevention, pain, hygiene, malnutrition, skin damage – requires a reorientation and professionalisation of care. (2014)

## 6.2 Hospitals and psychiatric clinics

### Infrastructural fixtures and fittings

The configuration of the space and the organisational procedures in psychiatric institutions can contribute significantly to the prevention of violence and aggression. (2014)

Residential and rehabilitation possibilities for persons with chronic mental disorders must be expanded in order to prevent effects that require hospitalisation. (2014)

### Living conditions

Children and juveniles may not be housed and treated in adult psychiatric wards. According to the CPT, this is a violation of preventive human rights and professional standards. (2015)

Availability of psychiatric care must be planned in a forward-looking way and flexibly adjusted to the regional conditions. (2014)

Non-residential facilities for gerontopsychiatric patients must be increased in order to avoid hospital stays that are no longer medically indicated. (2015)

Protection of women and girls against exploitation, violence and abuse must be comprehensively guaranteed in accordance with the provisions of international law and Austrian regulations. (2015)

### Measures that restrict freedom

Operators of hospitals and psychiatric institutions must ensure – as far as personnel, concept and organisation are concerned – that there be as many graduated response possibilities with regard to intervention intensity as possible before coercive measures are used. (2014)

De-escalation management and work on the prevention of multi-dimensional violence and fall help to prevent measures that restrict freedom. (2014)

Consensus-based treatment agreements can reduce the frequency and duration of coercive measures. (2013)

Restraints and isolation are not therapeutic interventions but purely security measures that are used when a therapeutic approach is not possible. If their use appears to be unavoidable, it is necessary to maintain human dignity and guarantee legal certainty. Interventions must be kept as short and as non-intrusive as possible. (2014)

Any coercive measure is excessive if a suitable and milder approach is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel. (2014)

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If restraints are used as a last resort, they may not be perceived by the persons affected as a threat, nor may the way that the restraint process was undertaken increase feelings of powerlessness and fear. (2013)

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Placement of patients in beds set up in hallways accompanied by the use of restraints is an unacceptable violation of their human dignity and their fundamental personal rights. Restraint of patients must take place out of sight of third parties. Use of restraints must always be accompanied by constant and direct supervision in the form of a watch by an attendant. Restraining straps on beds may not be constantly visible. (2014)

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CPT recommendations from 2015 regarding permanent and direct supervision when patients are being restrained, beds in hallways and introduction of central registers in psychiatric facilities must be implemented. (2015)

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After they have been restrained, patients must be supervised 1:1 “constantly, directly and personally” as the CPT has been demanding for years. (2014)

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In implementation of a recommendation by the CPT, a central register must be set up in all psychiatric hospitals and wards to record cases where measures to restrict freedom of movement were used in order to be able to evaluate their use and frequency without consulting patient records. (2014)

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Restraint persisting over several days is extremely alarming from a human rights perspective and should fundamentally be avoided. In special cases, seamless documentation and monitoring must be ensured. (2014)

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Locking ward doors must be considered a measure that restricts freedom and must not result in an inadmissible “*de facto* compulsory admission” of unaccompanied minors. (2015)

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Potentially overwhelming situations that can result from joint care of adolescents, some of whom are being treated under the Hospitalisation of Mentally Ill Persons Act and some of whom are being treated voluntarily, must be minimised. (2015)

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De-escalation can take place at various different levels. It begins with prevention of aggression, in a conversation that seeks to calm an agitated patient and then ranging from conflict resolution without “losers to restraints, which must be used with the least invasive impact on the patient while maintaining the patient’s dignity. (2014)

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When the use of net beds is discontinued, alternatives to measures restricting freedom must be considered and realised. (2014)

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## Security measures

Holding a mentally ill person prior to the application of mechanical restraints is already part of psychiatric health care and nursing. This means that carrying out such actions is reserved to the nursing staff under the Federal Act on Healthcare and Nursing Professions. Given the lack of any statutory basis, private security companies appointed by hospitals are not allowed to implement nursing measures and to participate in the application of restraints. (2014)

## Health care system

Prevention of falls: When being admitted to hospital, all patients should be observed and questioned with regard to fall risk factors. There should be regular analyses in each ward with regard to frequent reasons for falls in order to minimise risks (damp or slippery floors, poor lighting, lack of grab bars, high steps, etc.). A multi-professional team should plan measures, distribute information and implement therapeutic interventions. (2014)

Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls. (2014)

## Personnel

Inclusion and participation of private security personnel in patient care is inadmissible and may not occur. Concomitant arrangements are necessary to maintain patients' personal rights and to enable measures to ensure staff safety. (2014)

When allegations are made against hospital staff, competent professional support for alleged victims must be guaranteed, while suspicions are being investigated as well as beyond that. (2015)

The preservation of evidence by physicians in hospital must be carried out comprehensively and sensitively vis-à-vis the victim. (2015)

The guiding criteria for professional action must be the principles of voluntary action, (assisted) self-determination, participative decision-making, intensive care and occupational activity – if necessary during acute crises at a ratio of 1:1. This requires resources, patience and personal attention, equal footing between staff and patient, respectful attitude vis-à-vis individual life patterns, as well as ongoing qualification of staff in dealing with crisis situations, violence and aggression. (2014)

Aspects such as communication, information and transparency of action while maintaining privacy and self-determination are highly important, especially vis-à-vis people who are ill. Gender-specific issues and vulnerabilities always require particular attention. (2014)

More training possibilities for specialists in the child and adolescent psychiatry speciality field are urgently needed. (2014)

Austria-wide guidelines must be developed in accordance with the recommendations of the CPT by the Societies for Psychiatry and Psychotherapy and for Child and Adolescent Psychiatry. (2015)

The NPM is convinced that implementation of the Istanbul Protocol in hospitals must be supported by way of education and training. (2015)

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### **6.3 Child and youth welfare facilities**

#### Infrastructural fixtures and fittings

Facilities operated by child and youth welfare organisations must be fully accessible. (2014)

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Improvements are needed regarding the right to a private sphere and channels and options for active participation. Lockable storage lockers should be part of minimum provision. (2015)

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#### Living conditions

Placement of minors should be in close proximity to the parents' residence unless this is inadvisable for pedagogical reasons. (2014)

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House and group rules must be developed in a participatory process with the minors; children's parliaments and the like must be established in all institutions and facilities. (2014)

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Individual privacy must be enabled for minors as well; while staff should be able to open doors, it should be possible to lock them from the inside. (2015)

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Changes need to be made to basic conditions of children and adolescents' environment which create opportunities for sexual violence. (2015)

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The differentiation between children and juveniles under full residential care both under and outside of reception conditions under the Basic Provision Agreement contradicts the UN Convention on the Rights of the Child and must therefore be rejected. Unaccompanied minor refugees are subject to the full protection of the operator of child and youth welfare organisations and are entitled to care that is appropriate to their needs and based on the latest developments in pedagogy. Occupation and recreational opportunities in facilities for unaccompanied minor refugees must be expanded. More budget resources from funds provided under the reception conditions are needed to make psychosocial care and integration easier. Uniform minimum standards across Austria for the care of unaccompanied minor refugees are necessary. (2014)

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Mass accommodation is unsuitable for unaccompanied minor refugees and asylum seekers. The NPM therefore recommends that they be housed appropriately in line with needs of young persons. (2015)

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The NPM recommends that all unaccompanied minor refugees be promptly taken into custody at federal support facilities and transferred them to *Land* accommodation which fulfils the reception conditions under the Basic Provision Agreement. (2015)

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In the view of the NPM, follow-up care for young adults to ensure success in training courses is needed once the unaccompanied minor refugee has turned 18. (2015)

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All *Laender* must fulfil their care responsibilities themselves by way of suitable institutions and facilities, in order to avoid breakdowns of relationships that do not support the welfare of the children. (2014)

Violence prevention concepts need to be developed and implemented at all child and youth welfare facilities. (2015)

Special crisis centres for children and adolescents with psychiatric diagnoses need to be set up. (2015)

The structures in homes hamper work in accordance with the insights that social pedagogy provides. The effect of negative group dynamics can be much stronger than that of pedagogical and therapeutic social and conflict training or additional mechanisms that are supposed to support development of the personality, behavioural changes, as well as school and occupational integration. Smaller regional “family-style” care facilities should replace large homes. (2014)

Degrading punishments as pedagogical measures in child and youth welfare facilities are prohibited pursuant to Article 3 of ECHR. (2015)

Responses to undesirable behaviour must be made immediately and must be directly connected to the behaviour. They further must be discussed with the minors in question. (2015)

Rule violations must be handled individually. (2015)

Models for redress need to be established, as an alternative to sanction systems. (2015)

#### Educational, work-related and occupational activities

The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

#### Security measures

Upbringing that is free of violence must be fully ensured for all minors. (2014)

Imposing group punishment is inadmissible. (2013)

Pedagogical consequences as a reaction to disruptive or abnormal behaviour may not be excessive or humiliating. (2013)

#### Health care system

Particular caution is necessary with regard to medication being used off-label. (2014)

PRN medication may not be administered by pedagogic staff. (2014)

Documentation regarding administering of medications must be clear and comprehensive. (2015)

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Physicians must provide concrete instructions and prescriptions. (2015)

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When administering prescription medications such as psychotropic medication, close attention must be paid to side-effects and interactions. (2015)

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## Personnel

In addition to basic training, socio-pedagogic staff must have special competence in dealing with violence in crisis situations. Mandatory training and continuing education on this subject, the inclusion of violence prevention in institutional models and codes of practice, as well as the appointment of a violence protection specialist are absolutely necessary measures to prevent violence. (2013)

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Assistance opportunities must be individualised, including within the framework of full residential care in institutions and facilities. (2014)

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Scientifically-based plans by the *Laender* to assist children and juveniles must include care deficits and measures to remedy them. (2014)

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Laws governing occupations and professions and the training of social pedagogues should be standardised Austria-wide (agreement under Section 15a of the Austrian Federal Constitution) (2014)

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Sex education and prevention of violence and sexual assault are indispensable. Effective prevention must teach the different types of boundary violations and encourage children and juveniles to get help, to insist on their right to physical and sexual self-determination and to critically question gender role stereotypes. (2014)

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A sex education concept must be devised and implemented in all child and youth welfare facilities. (2015)

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The legal entitlement to assistance of young adults should be embedded in legislation and case management should be improved. (2014)

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Needs assessments must be carried out regularly to ensure that capacity for children and adolescents with mental illnesses is increased as necessary. The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

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## 6.4 Institutions and facilities for persons with disabilities

### Infrastructural fixtures and fittings

Structural shortcomings and a lack of comprehensive barrier-free accessibility impair the social development of persons with disabilities and must therefore be avoided. (2014)

### Living conditions

Persons with disabilities have to be enabled to plan their everyday life according to their own personal needs and to participate in society. The concept of social space and community issues (*Sozialraumorientierung*) should be used. (2014)

For persons being cared for in institutions and facilities, self-advocacy must be ensured regardless of the kind of disability. Suitable support measures are necessary. Peer-to-peer sharing of information should be promoted. (2014)

If an operator organisation offers a residential place as well as a day structure, the individual in question *de facto* lives within a very narrow control system. This linkage between working and living spaces fosters power relations and unilateral dependency and should be avoided, also according to the UN CRPD. (2015)

The NPM calls for measures to enable persons with disabilities to live self-determined lives also at an advanced age. However, strict requirements regarding attendance at day workshops are an obstacle to this. (2015)

Rehabilitation (provision of assistance for persons with disabilities) must be enabled by sufficient resources in residential facilities for persons with psychiatric diagnoses and addictions. (2015)

Promotion of equal opportunities for participation by persons with mental illnesses or disabilities is particularly important. (2015)

After the official country review of Austria within the scope of the UN Convention on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities recommended that Austria should undertake additional measures to “protect women, men, girls and boys with disabilities against exploitation, violence and abuse”. The NPM also calls for this. (2014)

Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner. (2015)

New, more flexible structures for elderly persons with disabilities will therefore be needed, particularly in terms of residential, occupational and leisure needs. (2015)

Dismantling large-scale institutions and a consistent reorientation toward aid in the form of personal assistance and offerings within the socio-spatial sphere is the core piece of disability policies that conform to human rights principles. (2014)

It is an intrinsic quality of large-scale institutions that the basic attitude vis-à-vis persons with disabilities is primarily protective rather than an attitude that is based on resources and strengths. But also personal contacts and supportive relationships that might be possible in the vicinity are – at the very least – made more difficult when residents are transferred to homes that are further away. As a result of the size of the facilities, individual needs and wishes are addressed in a more inferior way. Increased efforts to drive de-institutionalisation forward are necessary. Comprehensive overall concepts are lacking and must be developed. (2014)

The NPM calls for the establishment of emergency plans for persons with disabilities among refugees as provided for under the UN CRPD. (2015)

### Educational, work-related and occupational activities

Integration into normal jobs should be adequately promoted and wages in day-care centres/ occupational workshops must guarantee entitlements under social insurance law. (2014)

Employment of persons with disabilities in sheltered workshops in their current legal and factual configuration does not comply with the provisions of UN CRPD, especially with Section 27 “Work and employment”. This is specifically but not exclusively because the persons with disabilities who work in these workshops are – without exception – not considered employees under labour law by the Austrian legal system and are not covered by any social insurance from this employment (except for statutory accident insurance). The ability of all persons with disabilities, who are currently employed in (sheltered) workshops, of earning a living should be guaranteed regardless of their individual performance capability and apart from the current social welfare or minimum benefit system. (2014)

### Complaint management

In all institutions and facilities, persons with disabilities must have an adequate opportunity to submit complaints. (2013)

Care home agreements in written form are obligatory for persons with disabilities. Agreements must be simply and comprehensibly worded. The persons involved must be able to understand and follow the content. (2014)

### Measures that restrict freedom

Measures that restrict freedom, which are used to compensate a lack of barrier-free accessibility or space and personnel shortages, are without exception inadmissible and are an expression of structural violence. (2013)

Psychosocial interventions and individual care are always preferable to isolation and measures that restrict freedom. Measures that restrict freedom and that are ordered because patients are a threat to themselves or others must be both the least severe means of control and the last resort. (2014)

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Minors with learning disabilities or who are mentally ill may not be subjected to any age-atypical measures that restrict freedom. Just like adults, they are entitled to a review of these measures by the court. (2014)

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When measures that restrict freedom are used allegedly to protect patients against being a threat to themselves or others, particular care and a review of the alternatives is always necessary. (2014)

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The use of time-out rooms may not be the result of inadequate care, insufficient medical or psychiatric care or unsuitable settings and presumes a crisis intervention plan and de-escalation training for the staff; it is solely for the temporary protection of the person in question or other persons in the event of acute aggression against third parties and it is not a permissible measure to discipline or sanction other abnormal behaviour; it should be as brief as possible, with constant observation and the opportunity for calming conversations; it must occur in an environment that is free of fear, stimulus-free and with no risk of injury; it must be documented and reported to the representative(s) of the residents as a measure to restrict freedom; it must be accompanied by observations and analyses of interaction that can show the interplay between the behaviour of the persons involved and actions/reactions of staff or other residents. (2014)

#### Health care system

Persons with disabilities are entitled to the very highest level of health. In the view of the NPM, inclusive access to medical care must be expanded. (2015)

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Assistive technologies (e.g. apps for communicating with doctors in sign language) should be developed further and made available Austria-wide. (2015)

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More complex conditions and multiple disabilities often require specially optimised care. This must not be a question of resources. The development of the personality in children and juveniles with major mental or physical disabilities depends in large part on whether and how they are supported in perceiving their environment, grasping it in the truest sense of the word and being able to explore it themselves.

#### Personnel

Inadequate staffing during day or night shifts, poorly adjusted aids or insufficient advancement of mental or practical capabilities for persons with disabilities have the effect of hampering social development and are therefore circumstances that must be avoided. (2014)

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## 6.5 Correctional institutions

### Infrastructural fixtures and fittings

Structural adaptations to ensure that correctional institutions are equipped to accommodate persons with disabilities should take priority. (2014)

Comprehensive barrier-free accessibility has to be ensured. (2015)

Forensic wards/psychiatric institutions: if six-person rooms cannot be separated structurally, setting up mobile partitions can increase privacy. (2014)

Furnishing a three-person inmate cell with two bunk beds should be avoided due to the possible overcrowding of the cell. (2014)

Specially secured cells must have suitable places to sit or recline. (2015)

If specially secured cells are not in use due to their equipment and furnishings, they should be rendered unusable. Finally, the room should be removed from the cell layout plan. (2014)

Also holding cells for multiple persons must have a privacy screen and an odour barrier separating the sanitary facilities from the rest of the cell. They furthermore must have sufficient light for reading and let in daylight. (2015)

In multiple inmate cells, inmates must be provided with storage lockers that can be locked. (2014)

The structure of a special medical facility must meet the standards for a medical facility. Defective cell calling equipment and emergency call bells must be replaced immediately. (2015)

### Living conditions

Time and exercise outdoors makes inmates healthier and should – depending on the weather – be made possible for at least one hour each day. Especially older, fragile or sick persons must be enabled to spend time in the fresh air at regular intervals to maintain their health or promote recovery. (2014)

Cells of juvenile detainees should remain open longer at the weekends. In order to avoid violent assaults among juvenile detainees, a structured and balanced daily routine must be established with the shortest possible lock-up times. Personnel shortages may not adversely affect juvenile detainees. (2015)

To the extent possible, the religion of the inmates should be taken into consideration with regard to the selection of food. (2013)

Body searches should be carried out in such a manner that the person being searched does not have to disrobe completely. Requiring full disrobement during searches violates the principle that searches should be conducted in a considerate manner. (2015)

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The prices of consumer goods in the institution's supermarkets or kiosks must not be higher than those in the surrounding supermarkets. (2015)

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#### Contact with the outside

Tables that are too large prevent touching during visits and should therefore be replaced. (2014)

Evening and weekend visits should be facilitated, in particular in juvenile sections. (2015)

The opportunity to use Skype telephony should be introduced nationwide as soon as possible. (2015)

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#### Educational, work-related and occupational activities

Inmates should not have to choose between work and the rights to which they are entitled, such as outdoor exercise. (2014)

Every prisoner should carry out useful work or participate in meaningful activities. An as high as possible employment rate and a balanced programme of activities should be sought after. (2015)

The expansion of occupational opportunities for women must be promoted, including in court prisons. (2014, 2015)

Companies providing occupational opportunities are in principle also open to women; the possibility of joint performance of work by women and men should be promoted. (2015)

In particular, women should not be financially disadvantaged by the lack of employment opportunities. (2014)

Women should have equal access to leisure-time activities. (2014)

Workshops must be expanded as soon as possible. (2015)

The current practice of learning platforms, as offered in twelve correctional institutions, should be evaluated in the near future. (2014)

A total ban on Internet access and computer use is inadmissible. Permanent steps must be taken to provide abuse-proof access to the Internet for continuing education purposes. (2014)

Correctional institutions must ensure that inmates who lack a primary school education receive the necessary instruction at the primary school level. In any case, an opportunity to receive this school education should be provided if there is a large number of inmates to whom this applies. (2013)

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#### Access to information within institutions and facilities

Inmates should know the punishment they can expect for various forms of disruptive and abnormal behaviour. Providing this data to inmates is preventive in nature. This data should offer decision-makers a background for establishing a uniform ruling practice. (2014)

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Information notices must be revised as soon as possible if there is a change in the law. (2014)

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Access to information does not only mean that information is provided. Information must be provided to the inmates in a language and vocabulary they can understand. (2013)

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Prisoners should have access to the house rules, in which they must be informed inter alia of their right to daily time outdoors. The house rules must also be made available in foreign languages. (2015)

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### Complaint management

The establishment of a complaint register must be vigorously pursued. The systematic recording of complaints in a register is a prerequisite for responding to deficiencies and making improvements. The structured recording and evaluation of complaints must be expanded continuously. (2014, 2015)

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### Measures that restrict freedom

Task force trainings may not cause longer lock-up times. (2014)

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Forensic wards/psychiatric institutions: Strapping a patient to a hospital bed is only permitted when it is absolutely necessary due to the progression of the disease. The external conditions accompanying the restraint may not be frightening to the person affected. During the period of restraint, this type of detention must be continually questioned. The form on "Restrictions on the freedom of movement", recommended by the NPM, must be prepared. (2014)

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Potentially suicidal inmates may not be housed in a single cell. Video monitoring does not rule out suicide by the persons at risk during an unobserved moment. (2014)

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### Security measures

Saliva tests should replace urine tests because they are less intrusive by nature. All institutions should make saliva tests available as soon as possible. (2014)

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If the Federal Ministry of Justice assigns a person in detention to a public psychiatric facility, the Ministry is responsible for deficits in their infrastructure. If the Federal Ministry of Justice cannot ensure that these deficits are remedied, the persons affected must be housed in a facility run by the Federal Ministry of Justice itself. (2014)

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A condescending and insulting tone is an affront to human dignity. (2014)

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**Health care system**

Preventive examinations are part of standard medical care. (2014)

Psychiatric and psychological care is part of health care and, as such, must be ensured by the institutions. (2014)

Regular visits, in particular, should help prevent the physical and emotional neglect of long-time inmates. (2014, 2015)

A provision on who can dispense and administer what medicines to inmates and when must be developed. (2014)

Anomalies in the prescription of psychotropic medication can be quickly detected with the aid of the “Medication Management” control module. The monthly reports are to be screened for prescription practices. (2014)

Inmates are entitled to the same level of medical care and nursing as persons at liberty in hospitals and nursing homes. Deploying an interpreter during medical care is absolutely necessary. (2014, 2015)

An office of the medical superintendent must be established by law for quality assurance purposes and in order to ensure professional oversight for physicians in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. (2014; recommendation was implemented in 2015)

The introduction of video interpreting in the medical area must be pursued in all facilities of the penitentiary system and facilities for the detention of mentally ill offenders. (2015)

The maintenance of an electronic record of nursing care is indispensable. The ability to trace the individual instances of treatment and care shall ensure increased care in dealing with prisoners in need of nursing care. (2015)

The NPM considers it necessary to hire additional medical personnel, particularly for the purpose of psychiatric care, in numerous correctional institutions in order to guarantee adequate medical care to prisoners. (2015)

If it is absolutely necessary to have a prison guard present at the examination of a detainee, this should only be a person of the same gender. (2015)

If data are to be included in the Electronic Patient Record Module in order to clarify an allegation of abuse, there must be a statutory basis for doing so. (2015)

Additional lock-up time is not a proper means of protecting an inmate suffering from an eating disorder. (2015)

Placebo medication is only tolerable if the individual in question is informed and gives his/her consent. (2015)

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The ordering of urine tests should be noted in a register in order to ensure a traceability of random urine tests. (2013; recommendation was implemented in 2015)

## Personnel

Efforts to find an amicable solution with respect to personnel matters may not be so protracted that there is an adverse impact on the interests of inmates. (2014)

The night shift in the juvenile department should only be staffed with juvenile department employees. (2014)

Only employees with pedagogic training should escort juvenile detainees when they are taken outside. (2015)

The administration of the judiciary should make a targeted search for suitable employees for the detention of juvenile offenders. Such employees should be offered attractive working conditions after completing the relevant training. (2014)

Having to deal with suicides often leads to stress disorders long afterwards. This should be minimised through measures taken by the employer. (2014)

The administration of the judiciary must make every effort to ensure that seeking psychotherapeutic care is not viewed as a weakness. (2014)

Sexual harassment is an affront to human dignity. Derogatory or hurtful statements and depictions are also unacceptable and therefore must be avoided. (2014)

The employer must ensure that the sexual autonomy, sexual integrity and privacy of employees are not endangered. Therefore, the employer must ensure that no pictures of naked women are hung in staff rooms. (2014)

## 6.6 Barracks

### Infrastructural fixtures and fittings

When barracks are remodelled or when new barracks are built, military detention areas should be equipped with separate sanitary facilities in future. (2014)

## 6.7 Police institutions

### Infrastructural fixtures and fittings

The toilet areas in the cells for multiple inmates must be structurally separated. (2014)

Budgetary priority should be given to planning and implementing the construction of structurally partitioned toilet facilities in cells for multiple inmates at all police detention centres. (2015)

An endeavour should be made to fully partition the toilet area – even for short-term detentions – for new construction, new rentals and remodelled buildings. (2015)

Cells for multiple inmates without (fully) walled-in toilet areas may not house more than one inmate until they have been renovated. (2014)

Social areas must be created for inmates serving an administrative penalty. (2014)

Police detention centres must be cleaned regularly and at proper intervals. (2014)

The showers must be checked regularly (particularly the direction in which the shower water sprays) and repaired, if necessary (replacement of shower heads). (2014)

Alarm buttons must be adequately labelled to enable detained persons to contact the guards. (2015)

Police stations must be hygienic, well-kept and equipped with functioning heating systems. (2014, 2015)

Police stations and police detention centres must have toilet facilities for female personnel. (2015)

Inmates must be given daily access to restroom sinks with warm water connections. (2014)

A permanently activated call bell system must be provided so that persons in police custody can always contact the guards. (2014)

Police stations must be accessible barrier-free. The existing staged plan under the Federal Equal Opportunities for People with Disabilities Act must be followed. The approximately 300 police stations not contained in this plan must be relocated by 31 December 2019, or another organisational solution must be found. (2015)

The Federal Ministry of the Interior should issue uniform requirements for fire protection systems in police detention centres nationwide and adapt the level of fire protection to at least meet the standards applicable to correctional institutions. (2015)

Each inmate cell must be equipped with an electrical outlet, which is switchable from outside (with distributor sockets, if appropriate) in order to connect private devices such as radios or TV sets, thereby providing detainees with further occupational opportunities. (2015)

### Access to information within institutions and facilities

Repatriation counsellors cannot replace professional interpreters. Repatriation counselling and interpreting services must be provided by different persons. (2014)

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Prompt translation into 27 languages of the information in the “Infomat” for detainees awaiting forced returns in police detention centres and in the Vordernberg detention centre is necessary. (2014)

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### Measures that restrict freedom

A stay in a lockable inmate cell is only voluntary if there is no doubt that the affected person is aware that this stay is voluntary. (2014)

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Detention at police stations must be seamlessly documented to ensure that the deprivation of liberty is verifiable. (2015)

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Under the Detention Regulation , the reason for placing an inmate in a specially secured cell must be documented in each individual case. (2014)

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### Health care system

A clear definition of the term “fitness to undergo detention” should be provided in the Detention Regulation. (2015)

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Particular sensitivity should be used in determining whether a person is unfit to undergo detention due to mental impairment. If there is a clear indication of mental impairment on the medical history sheet or in the detention log, a psychiatrist must be called in. (2015)

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A precise verbal exchange with the person being examined is necessary. An interpreter must be called in, if necessary. (2015)

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Police physicians must have access to psychiatric expertise at all times, regardless of the day of the week and the time of day. (2015)

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It is necessary to develop criteria for the provision of adequate health care to inebriated, substance-impaired or mentally ill persons and persons who are a danger to themselves. (2015)

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In the event that there is a risk of self-harm, where medically necessary, transfer to specialist clinics should be preferred to accommodation in specially secured cells. (2015)

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Before ending detention, police physicians should inform persons found to be unfit to undergo detention of any additional medical measures and possibilities, in order to recommend any follow-up care to the person released. (2015)

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An interpreter or a bilingual person must be deployed when conducting a medical examination of a non-German-speaking detainee. (2014)

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Information regarding the deployment of an interpreter or a bilingual person must be documented in the detention logs. (2014)

Every inmate must be provided with the medical history sheet in his or her native language regardless of any knowledge of German. (2014)

A guideline must be developed, which takes into account the health care of inebriated, substance-impaired or mentally ill persons and persons who are a danger to themselves. (2014)

Medical examinations must be verifiably documented without any contradictions. (2013)

Medications may only be administered by trained personnel under a doctor's supervision. (2013)

## Personnel

All activities engaged in and measures taken by private security personnel at the Vordernberg detention centre should be documented. (2014)

Individual supervision and counselling from outside should be actively offered to law enforcement officers. Superior officers should promote the acceptance of supervision and counselling by staff and a positive attitude to this. (2015)

## 6.8 Returns and release of detainees

### Forced returns / returns

Separating families during (forced) returns should be avoided. (2014, 2015)

It is helpful to deploy additional female officers when deporting families with children. (2014)

Special consideration should be given to the best interest of children during (forced) returns. Flights should be scheduled for times that enable children to maintain their ordinary sleeping rhythm. (2015)

The interests in carrying out a (forced) return – particularly if coercion is used – and the resulting risks must be in a reasonable relationship to each other. If necessary, the official act should be suspended, interrupted and/or deferred. (2015)

In every stage of the action, it should be determined whether human rights aspects have arisen that make continuation of the procedure seem inappropriate. (2015)

Guidelines for voluntary returns must be prepared to provide guidance to persons who wish to return to their home countries voluntarily. (2015)

In the case of pregnant women, this official act should not take place in the period between eight weeks prior to the expected term and eight weeks after childbirth.

A psychiatric report and/or psychological preparation can prevent difficult situations. (2014)

If a person is fearful of flying, there should be a medical report, including the prescribed medicines. (2014)

A sufficient amount of baby food must be made available. It must be made possible for the mother to breastfeed the baby without disruptions. (2014)

Good conduct of interviews with due regard for the situation should be standardised. (2014)

Professional interpreters should be used during (forced) returns. (2014, 2015)

Requests for voluntary departure should always be given priority so that coercive measures can be avoided.

Release after termination of detention pending forced return and – if intended – placement with a support organisation should be made without delay. (2014)

## **6.9 Acts of direct administrative power and coercive measures**

### **Police operations**

Only timely notification of the NPM regarding upcoming operations enables observation by the commissions and compliance with the NPM's mandate. It is essential to raise awareness of law enforcement officers regarding the tasks and powers of the NPM and the decree issued by the Federal Ministry of the Interior which regulates the notification of the NPM concerning police operations. (2015)

### **Demonstrations**

When the police encircle a crowd, the persons in the crowd must be given clearly audible information. (2014)

Encirclement should be for as short a time as possible. (2014)

Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this. (2014)

The successful "3-D strategy" (Dialogue – De-escalation – Drastic Measures) should be retained and further developed. (2014, 2015)



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### Compensatory measures in border areas

Interpreters must always be available. (2014)

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The initial questioning of traumatised persons, who are often picked up during compensatory measures (asylum seekers, victims of human trafficking) must be done by professionals. (2014)

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Quick clarification regarding the reason for and the sequence of the official act is absolutely necessary to avoid uncertainty. (2014)

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Transportation for refugees must be arranged in a timely manner to avoid stays in the train station's main hall, and thus a "public spectacle". (2015)

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Heated rooms at major train stations should be set up for compensatory monitoring and control activities (2015)

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### Local controls

Female officers should always be part of the operations team during monitoring and control activities with respect to street prostitution and red light districts. (2015)

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The persons in charge of the operations and the employees must be sensitised regarding the identification of victims of human trafficking. (2015)

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## Annex

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Forced returns  
 Demonstrations, police operations  
 Family accommodations  
 Barracks, Police detention centres  
 Police stations

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The unabridged version of this Annual Report is available in German and can be found on the website of the Austrian Ombudsman Board.

