

AUSTRIAN  
OMBUDSMAN BOARD



# Annual Report

## 2017

International Version



Annual Report  
of the Austrian Ombudsman Board  
to the National Council and the Federal Council

2017



## 40 Years Austrian Ombudsman Board

Since 1977, the Austrian Ombudsman Board (AOB) has been there to assist persons who feel that they have been unfairly treated by Austrian authorities. As an institution that protects citizens' rights, the AOB provides all citizens with the opportunity of submitting complaints informally and free of charge, and to defend themselves against arbitrary behaviour on the part of the authorities.

This responsibility was extended considerably in 2012. The AOB was entrusted by the Constitution with the mandate to protect and promote human rights. Since then, it has been monitoring institutions and facilities in which persons are particularly at risk of being abused or treated inhumanely, and observing police operations during forced returns and demonstrations.

In July 2017, the National Council resolved to set up an independent Pension Commission at the AOB. Thus, the AOB additionally deals with matters regarding the compensation for victims of children's homes and supports those affected in making justified claims.

At the time when the AOB was established 40 years ago, the level of importance it would attain and even whether it would be able to effectively carry out the intended functions was not foreseeable. It was therefore initially set up as a temporary institution. It was assumed that no more than 1,500 complaints would be submitted to the AOB per year. The AOB gained the confidence of the people at an unexpected pace and the numbers of complaints continued to increase. More than half a million persons have contacted the AOB in the last 40 years. This figure has now reached some 20,000 per year. The high level of acceptance in the population means that the AOB can effectively perform its monitoring and control activities. The primary goal is, however, not to detect cases of maladministration. The objective of the AOB in the long term is rather to promote a transparent, efficient and citizen-friendly administration and plausible decision-making processes.

The recently added area of responsibility of the preventive monitoring and control of human rights could be built up on a solid base. The confidence that politicians and the general public have in the AOB is vital to its success in dealing with human rights issues. The topic was not entirely new for the AOB in terms of content either. The safeguarding of human rights already had a high priority in the *ex-post* control work of the AOB, and violations of human rights were always considered the most serious cases of maladministration. *Ex-post* control of the administration and the preventive monitoring and control of human rights are thus interlocked regardless of how different the respective orientation and "environments" may be, and result in positive interactions.

The prominence of the AOB and the international contacts and networks built up over the years are used to increase the awareness of the general public for human rights and

to bring about a positive change in attitudes to the care and treatment of persons in need of protection.

As in previous years, 2017 has brought many new observations and findings. This report deals with the conclusions that can be drawn from the monitoring and control of the administration and where there is a need for action. In addition to the international activities and other focal points, the activity of the Pension Commission, which assumed its work in July, is presented in more detail.

The last chapter of this report is dedicated to the preventive monitoring and control of human rights with in-depth reports on observed violations of human rights and threats.

The AOB would like to express its gratitude to the Federal Ministries and the other authorities of the Federal Government, the *Laender* and municipalities for their constructive cooperation in 2017 and the confidence they have shown in us. Thanks also goes to the staff of the AOB who assist citizens in obtaining their lawful rights day by day, showing commitment and dedication.

Handwritten signatures of Günther Kräuter, Gertrude Brinek, and Peter Fichtenbauer.

Günther Kräuter

Gertrude Brinek

Peter Fichtenbauer

Vienna, August 2018

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## Introduction

The AOB took on an additional role in the year under review. The National Council unanimously resolved to entrust the AOB with the compensation for victims of children's homes. Since July 2017, there has thus been an independent Pension Commission at the AOB, which acts as an umbrella organisation according to the Pensions for Victims of Children's Homes Act. The Pensions for Victims of Children's Home Act stipulates that those affected receive a monthly pension as soon as they reach the regular pensionable age or retirement. The condition for this is proof of compensation through victim support centres or a justified recommendation from the members of the AOB. Persons who have not received once-off compensation can contact the AOB directly. Many of those affected availed of this opportunity last year and made applications to the AOB or the Pension Commission or obtained information on their potential claims. The direct contact with those affected showed very quickly that there are shortcomings in the new law, as it *de facto* precludes some victims of violence as entitled persons. The AOB consequently advocates for an appropriate extension of the group of entitled persons. The duties of the Pension Commission, its work and what it has accomplished to date are detailed in a dedicated chapter.

New mandate: pensions for victims of children's homes

The performance record provides a compact summary of the activities of the AOB in 2017. In addition to the key indicators on *ex-post* control, basic information on preventive monitoring and control of human rights is also provided. The figures on the activities of the Pension Commission give an impression of the scope of the new range of tasks: 833 cases have been incurred in the six months since the Pension Commission was set up.

Performance record informs about key indicators

The statistics on the traditional responsibilities of the AOB, that is the monitoring and control of public administration, highlight the importance of the AOB as an institution providing protection under the law. Over 20,000 citizens submitted a complaint to the AOB because they had difficulties with the authorities and they suspected maladministration. The number of complaints has thus increased again compared to the previous year.

More complaints than in previous years

The performance record would be incomplete if it failed to present the international activities undertaken by the AOB and the extent to which it is committed to public relations work. Sharing experience with international experts provides an opportunity to gauge the work based on global standards. Information and inclusion of the general public is a condition for the efficacy of the work of the AOB. The members of the AOB once again personally sum up their activities in the past year as well.

The chapter dedicated to the AOB's *ex-post* control covers the key results and focal points of the investigative work. The conducted investigative proceedings form the basis on which to show shortcomings and undesirable developments

Evidence of shortcomings in the administration

in the administration. The individual reports highlight the problems the population is confronted with in contact with the authorities and the human fates behind the complaints. The need for change is concretised in the last chapter with a list of recommendations directed to the legislators.

This report is designed to help in making the administration even more efficient – in the interest of the citizens. The AOB sees its work as a contribution in a constructive process that is essentially regulated and supported by the members of the National Council and the Federal Council.

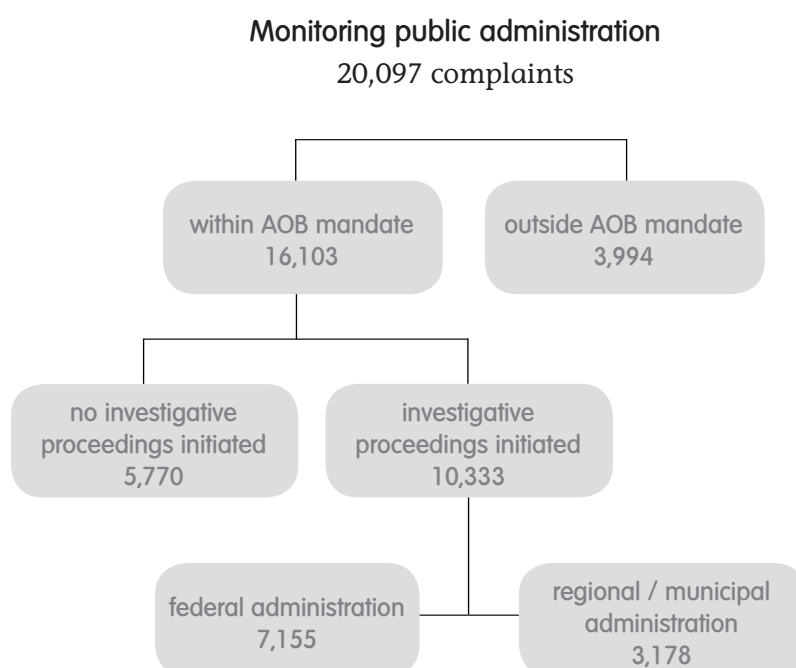
# 1 Performance record

## 1.1 Monitoring public administration

The AOB has been monitoring public administration in Austria as an *ex-post* control institution for 40 years. Every citizen can contact the AOB with alleged cases of maladministration. The AOB pursues every permissible complaint and informs those affected about the result of the investigative proceedings. The AOB can also initiate investigative proceedings if maladministration is suspected. It is furthermore authorised to call upon the Constitutional Court of Austria in order to initiate the revision of the legality of regulations issued by federal authorities.

AOB pursues every complaint

In the year under review, 20,097 persons approached the AOB with their concerns. This means that the AOB received on average 82 complaints each working day. The AOB initiated detailed investigative proceedings in 80.1% of all complaints relating to concrete actions or failure to act on the part of the authorities. A total of 10,333 investigative proceedings were initiated. The processing of an additional 5,770 complaints was within the mandate of the AOB, but there was a lack of evidence of possible maladministration or the proceedings had not yet been completed by the authorities. In these cases, the AOB was able to offer support with information on the legal situation and general information. 3,994 of the complaints requesting advice and assistance were outside of the AOB mandate. The AOB also tries to support those affected in such cases by providing information and details about additional advisory services.



## Investigative proceedings within the federal administration 2017

Every sovereign administrative act for which the Federal Government is competent, as well as its actions as holder of private rights, are subject to the AOB's monitoring and control work. The AOB's investigative activities thus cover all of the authorities and departments whose duty it is to implement federal law. The AOB initiated 7,155 investigative proceedings in matters involving the federal administration. This is equivalent to an increase of 17% compared to the previous year.

Investigative proceedings in federal administration	number	%
Federal Ministry of the Interior	3,026	42.3
Federal Ministry of Labour, Social Affairs and Consumer Protection	1,540	21.5
Federal Ministry of Justice	956	13.4
Federal Ministry for Transport, Innovation and Technology	336	4.7
Federal Ministry of Science, Research and Economy	306	4.3
Federal Ministry of Finances	277	3.9
Federal Ministry of Family and Youth	213	3.0
Federal Ministry of Agriculture, Forestry, Environment and Water Management	178	2.5
Federal Ministry of Health and Women's Affairs	139	1.9
Federal Ministry of Education	77	1.2
Federal Ministry of Defence and Sports	39	0.5
Federal Chancellery	39	0.5
Federal Ministry of Europe, Integration and Foreign Affairs	24	0.3
<b>Total*</b>	<b>7,150</b>	<b>100</b>

\* Additional five 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.

Sharp rise in investigative proceedings in the internal security sector

As in the past years, most of the investigative proceedings dealt with the internal security sector. 42.3% of all proceedings are from this area where there was a strong increase in investigative proceedings compared to the previous year (3,026 cases compared to 2,130 in 2016). 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.



The social affairs sector holds second place. Around a fifth of all complaints that resulted 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 (*Arbeitsmarktservice*), the assessment of entitlement to care and nursing allowances and problems relating to pension insurance law. The number of complaints regarding persons with disabilities continues to be high.

Every fifth complaint deals with social affairs

A total of 956 investigative proceedings were initiated based on complaints concerning the judiciary, which is equivalent to 13% of all of the investigative proceedings initiated. Compared to the previous year, the number of investigative proceedings in this area rose by 3%. The concerns related to the duration of court proceedings and proceedings by public prosecutors' offices and the penal system.

Judiciary: 956 investigative proceedings

### Investigative proceedings within regional and municipal administration 2017

With the exception of Tyrol and Vorarlberg, the AOB is responsible for the area of administration for all of the *Laender*. In addition to the federal administration, the AOB thus monitors and controls the regional and municipal administration of seven *Laender*. The AOB carried out a total of 3,178 investigative proceedings of regional and municipal administration in the year under review. The majority of the investigation cases were in the most populous *Land* of Vienna (41.5 %), followed by Lower Austria with a share of 18.3% as well as Upper Austria with 12.4%.

<i>Land</i>	2017	%
Vienna	1,319	41.5
Lower Austria	580	18.3
Upper Austria	394	12.4
Styria	375	11.8
Carinthia	193	6.1
Salzburg	167	5.3
Burgenland	150	4.7
<b>Total</b>	<b>3,178</b>	<b>100</b>

Most of the complaints on regional and municipal level concerned the social system including the needs-based minimum benefit system, youth welfare and matters regarding persons with disabilities. These topics were the subject matter of 27.9% of all investigation cases. Around every fifth investigation case (21.6%) dealt with the areas of regional planning and building law.

Focus on the *Laender*

Problems regarding citizenship law and traffic police as well as municipal affairs also gave rise to frequent complaints.

	number	%
Needs-based minimum benefit system, youth welfare, persons with disabilities, basic welfare support	886	27.9
Regional planning and housing, building law	685	21.6
Citizenship, electoral register, traffic police	415	13.1
Municipal affairs	395	12.4
Health care system and veterinary sector	202	6.4
Finances of the <i>Laender</i> , regional and municipal taxes	182	5.7
Educational system, sports and cultural matters	119	3.7
Regional and municipal roads	115	3.6
Office of the <i>Land</i> Government, public services and compensation law for regional and municipal employees	46	1.4
Agriculture and forestry, hunting and fishing laws	37	1.2
Trade and industry, energy	34	1.1
Nature conservation and environmental protection, waste management	31	1.0
Transport and traffic on regional and municipal roads (without traffic police)	30	0.9
Science, research and arts	1	0.0
<b>Total</b>	<b>3,178</b>	<b>100</b>

### Resolving complaints in the federal and regional administration 2017

Every fourth complaint is justified

In the year under review, a total of 12,046 investigative proceedings were resolved, of which 9,858 were initiated in the same year and 2,188 in the preceding years. In 3,185 cases, the AOB ascertained maladministration, which is equivalent to a share of 26.4% of all resolved proceedings. This means that around every fourth complaint resulting in an investigative proceeding was justified. In 3,869 complaints, the AOB saw no reason for criticism, and 4,992 cases were outside the AOB's mandate. The AOB informed those affected about the result of the investigation after 48 days on average.

127 *ex-officio* investigative proceedings

Under the Austrian Federal Constitution, the AOB can initiate *ex-officio* investigative proceedings if it has suspicions regarding maladministration. The members of the AOB availed of this right also in 2017 by initiating 127 *ex-officio* investigative proceedings in the year under review.

Resolved investigative proceedings in 2017	case files from previous years	case files from 2017
Maladministration on the part of the authorities	767	2,418
No maladministration found	924	2,945
Complaints outside AOB mandate	497	4,495
<b>Total</b>	<b>2,188</b>	<b>9,858</b>
<b>Total of resolved investigative proceedings in 2017</b>		<b>12,046</b>

### Citizen-friendly communication

The AOB is aware that it can best fulfil its function if it is easily accessible for the citizens. It is therefore particularly important that access to the AOB is as comfortable and informal as possible. Complaints can be submitted in person, by telephone or in writing. An online complaint form, which can be accessed on the AOB website, facilitates particularly quick and uncomplicated contact. A total of 2,311 persons availed of this service. The information service can be reached under a cost-free service number and also accepts complaints. 8,754 persons contacted the information service by telephone.

Complaints can be submitted informally

The consultation days held throughout Austria are also very popular. 1,554 citizens availed of the opportunity to discuss their concerns with the members of the AOB. A total of 234 consultation days took place. Most of these were held in Vienna, in line with the demographic distribution. But consultation days were also held regularly throughout the year in the other *Laender*.

Consultation days	2017
Vienna	80
Lower Austria	35
Styria	27
Upper Austria	24
Burgenland	19
Salzburg	19
Carinthia	15
Tyrol	8
Vorarlberg	7
<b>Total</b>	<b>234</b>

## 1.2 Activities of the Pension Commission

New mandate since 1 July 2017

The Pension Commission set up at the AOB commenced its work in July 2017. It was entrusted with key tasks in relation to the recently enacted Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). The independent Pension Commission deals with applications for pensions for victims of children's homes. It is responsible for those persons who suffered from violence in a home operated by the Federal Government, the *Laender* and the church or a foster family between 1945 and 1999 and have not yet been recognised as victims of the same. The task of the Commission is to present recommendations to the AOB as to whether the conditions for granting a pension are met. The Commission is comprised of twelve experts and is headed by Ombudsman Kräuter.

In order to assess entitlement, clearing meetings are organised between the applicant and experts in advance and comprehensive information collected. The Office of the Pension Commission requests confirmation of placement in the homes or foster families from the youth welfare authority or home owner/operator. The collected information is anonymised and made available to the Pension Commission. The cases are discussed in detail and decisions are taken at regular meetings. Based on the suggestions of the Pension Commission, the AOB then gives the competent decision-maker a founded, written recommendation as to whether the respective applicant should be granted a pension for victims of children's homes.

833 cases in six months

A total of 833 cases were submitted to the Pension Commission between July 2017 and the end of the year. 517 applications for a pension for victims of children's homes were submitted directly to the Pension Commission or were forwarded to the same from other places. An additional 316 cases dealt with queries from persons who obtained information from the AOB on pensions for victims of children's homes and relevant applications.

56 recommendations made by the AOB

A total of 200 persons were invited to a clearing meeting to clarify their entitlement. By the end of 2017, there were clearing reports for 137 cases. The Pension Commission made 56 recommendations to the AOB. It spoke out in favour of a pension for victims of children's homes in 49 cases. On the part of the AOB, there were 56 founded, written recommendations to the decision-maker, of which 49 were positive.

### 1.3 Budget and personnel

In accordance with the cash flow statement, in 2017 the AOB had a budget of EUR 10,758,000 of which EUR 300,000 resulted from the dissolution of reserves. In accordance with the operating statement, EUR 10,783,000 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 the federal budget statement 2017, section 05, AOB).

In the cash flow statement, EUR 6,033,000 was slated for outgoing payments for staff expenditures and EUR 3,731,000 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 927,000. And finally, EUR 41,000 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 2016) was planned for 2017 for payments for the NPM commissions and the Human Rights Advisory Council. Of this amount, around EUR 1,257,000 was budgeted for reimbursements and travel costs for the members of the commissions and around EUR 83,000 for the Human Rights Advisory Council; roughly EUR 110,000 was available for workshops attended by the commissions and by AOB employees working in the OPCAT sector as well as for expert opinions.

The budget of the AOB had to be used within the framework of advance financing for the payments for the Pension Commission set up since 1 July 2017 pursuant to Section 15 of the Pensions for Victims of Children's homes Act and the clearing commissioned by the same.

Budget of  
EUR 10.758 million

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

Cash flow statement 2017/2016

2017	2016
10.758	10.559

Staff expenditures		General administrative expenditures	
2017	2016	2017	2016
6.033	5.857	3.731	3.722

Transfers		Capital expenditures and advances on salaries	
2017	2016	2017	2016
0.927	0.918	0.067	0.062

75/79 permanent  
positions

The AOB had 75 permanent positions and from 1 June 2017, the AOB had a total of 75 permanent positions in the federal personnel budget (2016: 75 permanent positions). This means that the AOB is the smallest supreme body of the Republic of Austria. With part-time staff, persons working with reduced weekly hours, internships and staff posted from other local and regional authorities, an average of 95 persons work at the AOB. The 56 members 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.

## 1.4 Focal points 2017

### Prison guard training

Even before the commissions started their visits, the AOB had already presented its extended investigative mandate at events and seminars. The management of facilities of the penitentiary system and facilities for the detention of mentally ill offenders was thus informed in advance. These first meetings showed that there was a considerable need for information. Upon the invitation of the Federal Ministry of Justice, the AOB has been involved in training and continuing education of the Penitentiary Academy (*Strafvollzugsakademie*) since spring 2017. A total of around 100 participants who are currently undergoing their training as prison guards were informed about the mandate and the responsibilities of the AOB in a first phase.

High level of interest on the part of the participants

The amount of feedback received by the lecturers shows the level of interest on the part of the course participants. The trainers also expressed the wish that the trainees receive a supplementary module around three years after they start working.

### Police training

The AOB has been informing future police officers about its work as part of their police training since 2017. Being informed about the work of the AOB is important because the police is 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.

The implementation of this new training module was agreed upon by the Federal Ministry of the Interior and the AOB and initiated in 2016. Since April 2017, AOB staff and members of the commissions have been presenting the responsibilities and tasks of the AOB in a four-hour training unit in detail. In 2017, 11 classes were instructed in four *Laender* (Salzburg, Tyrol, Vienna, Lower Austria), and a total of around 280 police officers were informed about the work of the AOB. Another 14 classes are already planned for the first six months of 2018.

AOB module included in police training since 2017

### Revised regulation of legal guardianship through Adult Protection Law

The new law regulating adult protection, which will come into force on 1 July 2018, forms a modern legal basis that bears any international comparison and fulfils the conditions of the UN Convention on the Rights of Persons with Disabilities (CRPD). It also includes long-standing, central demands of the AOB.

Central demands of AOB taken into account

The AOB was heavily involved in the revision of the law within the framework of regular meetings, working and discussion groups. The development of the new regulation as well as the key data were presented to the public in an AOB publication in June 2017.

### NGO Forum and study on socially disadvantaged children and adolescents

„Protecting Children and Adolescents - Preventing Violence“

Every year, the AOB invites representatives of human rights NGOs as well as the Federal Ministries and *Laender* to the NGO Forum. The objective of the Forum is an in-depth dialogue with the civil society. The 2017 NGO Forum was run under the motto of “Protecting Children and Adolescents – Preventing Violence“. Experts explained the topic from different perspectives in workshops and lectures.

Study on depiction of child poverty in the media

At the opening of this year’s NGO Forum, the interim result of a study on the depiction and positioning of socio-economically disadvantaged children and adolescents in the media, which was commissioned by the AOB, was presented. The study highlights the topics that are taken up by the media with respect to child poverty and the way in which the media report about the depicted children from the children’s rights point of view.

### Special report on children and their rights in public institutions

Increase awareness for children’s rights in politics

The protection of children and adolescents in public institutions is a matter of great concern to the AOB and was a key focal point of its work in 2017. The results of this work were summarised in the special report entitled „*Kinder und ihre Rechte in öffentlichen Einrichtungen*“ (“Children and their rights in public institutions and facilities”). The objective is to increase awareness for the rights of children and adolescents in politics and to draw attention to existing deficits so that children’s rights can be better complied with in the future. The special report 2017 was presented to Parliament, the Diets and the general public on Human Rights Day.

### „One in five“ - violence against women

Interdisciplinary lecture series

Every fifth woman living in Austria is subjected to physical and/or sexual violence. On the occasion of the international “16 Days of Activism Against Gender-Based Violence Campaign“, the AOB organised the interdisciplinary lecture series “One in five” in collaboration with the Department of Forensic Medicine at the Medical University of Vienna and the Austrian Women’s Shelter Network (*Autonome Österreichische Frauenhäuser*) for the second time. The lecture series highlighted the horrifying extent of violence towards women and countered the taboo status and trivialisation of this topic.



During the lecture series, the AOB publication *“Eine von fünf. Gewaltschutz für Frauen in allen Lebenslagen”* (“One in five. Violence protection for women in all life situations”) was presented. The contextually structured work depicts the content of the lecture series from 2016.

Publication „Violence protection for women in all life situations“

## 1.5 Public relations

Public relations work is a top priority at the AOB and is being continually extended. In addition to active work with the press, the comprehensive AOB website as well as the television programme *“Bürgeranwalt”* (“Advocate for the People”) on the public television channel ORF are the most important communication tools.

Exchange with media representatives

The increase in media work means that the presence of the AOB in the media has continued to rise. In 2017, there were around 3,290 reports about the work of the AOB in Austrian news agencies, print media and online editions such as public TV and radio broadcaster ORF.

Active public relations work includes in particular personal interviews by the AOB with journalists, press releases, press conferences as well as a monthly newsletter. This is where the AOB presents the results of its investigations, provides information on the investigative proceedings and statements on legal drafts, and reports about events and international activities. In this way, the AOB presented its reports to the National Council and the Diets of Carinthia, Vienna, Upper Austria and Burgenland as well as the special report on children and their rights in public institutions and facilities, amongst other things, in press conferences in the year under review.

Media presence

The website is an important information channel for the AOB. A total of 135,876 visits were recorded in the year under review, which is a considerable increase compared to the previous year. In addition to background information, users can find all of the current reports and a large number of services such as the online complaint form there. The website also supports the networking of journalists, members of the Federal Government and other politicians, trade unions, NGOs and associations. Everyone can access central information material on the AOB’s investigative and control proceedings and NPM’s monitoring activities there, e.g. all investigative reports to Parliament and the Diets as well as a list of all the observed cases of maladministration.

The television programme *“Bürgeranwalt”* (“Advocate for the People”) has been running on the Austrian public TV channel ORF since January 2002. Each week, an average of 324,000 households follow the studio discussions. During the programme, the members of the AOB show important complaints and discuss these with representatives of the authorities as well as those affected. Many everyday problems could already be solved in this way. After the broadcast, every episode is available for online viewing on the *TVthek* website

ORF TV show  
„Bürgeranwalt“

of the ORF (<http://tvthek.orf.at/profile/Buergeranwalt/1339>). With a peak value of 460,000 viewers in the year under review 2017, the “*Bürgeranwalt*” continues to be an important platform for the matters of the AOB.

## AOB celebrated two anniversaries in 2017

**Festive event in Parliament** The AOB took up its mandate on 1 July 1977 – exactly 40 years ago. Since then, over 500,000 complaints have been submitted to the AOB, and the ombudspersons have held 9,000 consultation days and have met more than 71,000 persons at personal meetings. Together with the President of the National Council Doris Bures, Ombudswoman Gertrude Brinek and Ombudsmen Günther Kräuter and Peter Fichtenbauer invited guests to a festive event on the occasion of AOB’s 40th anniversary in the chamber of the National Council in Parliament on 30 January 2017.

**5 years NPM** Furthermore, the AOB has held the mandate to protect and promote human rights stipulated in constitutional law since 1 July 2012. During the course of its five years of work, more than 2,300 visits have been carried out in different institutions and facilities.

**Austria-wide exchange of experience** On the fifth anniversary of the NPM, the AOB invited the members of its commissions to an Austria-wide exchange of experience in Vienna in October 2017. In working groups, the experts reflected on the work of the past years and discussed possible further developments.

## 1.6 International activities

### 1.6.1 International Ombudsman Institute (IOI)

The IOI, whose headquarters are located at the AOB, supports around 190 independent ombudsman institutions all over the world. The main duties of this global organisation are the worldwide promotion and development of the ombudsman concept as well as the support and networking of ombudsman institutions in over 90 countries.

**AOB hosts annual IOI Board meeting** The IOI Board of Directors held its annual meeting at the AOB in April 2017 to discuss projects and the objectives of the organisation. Ombudsman Kräuter, who is also Secretary General of the IOI, welcomed the active participation of those involved. At four very productive meetings, new members from Africa, Asia, Australia & Pacific and Europe were introduced and working groups set up to implement the goals of the 4-year Strategy Plan. Besides, the progress of the comparative study on ombudsman institutions in the African Region was presented.

On the last day of the meeting, the IOI Board of Directors resolved a declaration on the support of the National Ombudsman Institution and the Ombudsman for Children and Adolescents in Argentina. The position of the National Ombudsman has been vacant for over eight years, and that of the Ombudsman for Children and Adolescents for 12 years. The IOI observes this development with great concern and demands in the Declaration of Vienna that these positions be filled quickly. “It is not a good sign for democracy and the state under the rule of law if these important institutions for the protection of human rights remain vacant”, said IOI Secretary General Kräuter emphasizing the core statements of the declaration signed in Vienna.

Declaration of Vienna demands filling vacant positions in Argentina

The Catalan Ombudsman also organised a human rights workshop in Barcelona in April 2017. The seminar resumed the discussion on the restriction of rights that was initiated one year earlier. The current human rights situation in Europe was analysed as well as the role that ombudsman institutions assume. The Council of Europe’s Commissioner for Human Rights, Nils Muižnieks, held a programmatic speech on the current political rhetoric and its influence on the protection of human rights. The Director of the EU Agency for Fundamental Rights, Michael O’Flaherty, underlined the important role of ombudsman institutions as a campaigner for the protection of fundamental and human rights. Ombudsman Kräuter emphasised that with regard to the current political developments ombudsman institutions are confronted with great challenges and often work under difficult conditions. The negative impact obstructs not only the existence and function of these institutions, but also means the restriction of human rights in the worst case.

Second IOI workshop on human rights in Barcelona

As part of the festivities celebrating its 20<sup>th</sup> anniversary, the Asian Ombudsman Association (AOA) invited colleagues to a conference in Pyeongchang (South Korea). The participants discussed how synergies can be achieved when classic ombudsman responsibilities are combined with anti-corruption mandates. First Vice-President Diane Welborn and IOI Secretary General Günther Kräuter took part in this meeting for the IOI.

AOA invites to 20 year celebrations

One of the focal points of the IOI every year is to maintain the range of training programmes for members and to offer new training formats. The IOI was successful in supporting various training programmes in the regions again in 2017.

On a European level, the IOI offers workshops for National Preventive Mechanisms (NPM) in a fruitful cooperation with the Association for the Prevention of Torture (APT). In February, a bilingual NPM training for English- and French-speaking members from the African Region was held for the first time. The host of this seminar on the topic of “Ombudsman Institutions and Prevention of Torture“ was the Ombudsman of Ivory Coast in cooperation with the African Ombudsman and Mediators Association (AOMA).

NPM training for African Region

Complaint management training in the Caribbean	In June, the Caribbean Ombudsman Association (CAROA) organised a training programme in Bonaire with the financial and organisational support of the IOI, which was hosted by the renowned Scottish Queen Margaret University. Ombudsman institutions staff were trained in general complaint management. CAROA President, Nilda Arduin, expressed her sincere gratitude. Further training measures such as these enable less financially strong institutions to profit from current expertise and pass on what they have learned inside their respective institutions.
NPM training in Vienna	Another very successful IOI NPM training programme was held in Vienna bringing 29 participants from 21 countries together to learn and reinforce communication techniques and skills. The “Do no harm” principle was the focus of this innovative concept. In the field of preventive human rights monitoring, dealing sensitively with those affected – e.g. persons in retirement homes suffering from dementia – is particularly important. At the same time, however, reliable information has to be collected too.
Innovative approach supports „do-no-harm” principle	Communication techniques and good conversational skills were not tested on real patients but through interaction with trained actors and actresses. Familiar with different illnesses, they took on different roles, reacted accordingly during the interview and reported in the ensuing feedback meetings on how they perceived the interview from the perspective of the affected person. This perspective made a major contribution to analysing and improving communication techniques.  In a second training unit, the visits made by the commissions could be followed on livestream thanks to technical support from the IT companies Cisco and X-tention, and details were discussed with the members of the commissions in ensuing Q&A sessions. This also ensured that the daily routine in the institutions and facilities was not disturbed by the presence of large groups. The technical support ensured that the learning effect and the ability to share experience were still given.
Cooperation agreements	With the aim of intensifying collaboration and exchange with organisations, the IOI signed Memoranda of Understanding with the Forum of Canadian Ombudsmen (FCO), the Caribbean Ombudsman Association (CAROA) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in 2017.

## 1.6.2 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 last chapter of this report on the activities of the Austrian NPM).

### OSCE

The AOB takes an active part in the OSCE dialogue on challenges and further development opportunities of National Human Rights Institutions (NHRIs). Even more so in the year under review 2017 when Austria took over the chairmanship of the Organisation for Security and Co-operation in Europe for one year from 1 January.

As the country holding the chairmanship, Austria subjected itself to a voluntary self-evaluation designed to provide information regarding in how far the obligations of the OSCE are implemented in the area of human rights and democracy. This evaluation was conducted by the European Training and Research Centre for Human Rights and Democracy Graz (ETC Graz).

ETC Graz commissioned with self-evaluation

As NHRI, the AOB was entrusted with the responsible role of integrating civil society in the self-evaluation process. Thanks to the traditionally positive cooperation with civil society – in particular within the framework of the Human Rights Advisory Council and the annual NGO Forum – the AOB was able to support the ETC Graz considerably. A platform was created on which civilian and non-profit organisations were able to get involved in the evaluation process with concrete contributions. In the middle of the year, the AOB also organised a forum at which the written contributions were debated with the ETC Graz.

AOB secures civil society involvement

After presenting the interim results in Warsaw on the occasion of the Human Dimension meeting, the report was officially presented to civil society at the OSCE parallel conference in Vienna on 5 December 2017. As the representative of ETC Graz, Klaus Starl presented the final report and the pertinent results of the same. The topics of hate crime, religious (in)tolerance and extremism were discussed very intensely. Ombudsman Kräuter emphasised the great cooperation with civil society in his speech. In order to give this important aspect more scope in the future, the next countries due to assume chairmanship (Italy and Slovakia) plan to start the self-evaluation in the year prior to the actual presidency. Ombudsman Kräuter appreciated this approach and also recommended further integrating the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in the evaluation process.

Report presented at OSCE parallel conference in Vienna

In June 2017, Ombudswoman Gertrude Brinek took part in the second OSCE conference on gender equality. Furthermore, an expert from the AOB visited an OSCE conference on children's rights held in Warsaw in October 2017.

### United Nations / UN conventions

- Global Alliance of NHRIs (GANHRI) As National Human Rights Institution, the AOB takes part in the annual meeting of NHRIs. The Global Alliance of NHRIs (GANHRI) represents the interests of NHRIs at the UN Human Rights Council and other UN Human Rights Committees. The General Assembly brings over 100 NHRIs to Geneva every year.
- UN High Commissioner for Human Rights visits AOB This year's meeting was dedicated above all to the role of NHRIs in early warning, conflict prevention and the rebuilding of peaceful societies. Representative of NHRIs, OHCHR and UNDP gave talks on indicators for the early detection of crises, factors that result in an atmosphere of violence as well as the experience of NHRIs with early detection mechanisms. The objective of the conference was to present contributions to protect the defenders of human rights and guarantee the autonomy of NHRIs.
- Ombudsman Günther Kräuter availed of the opportunity during his stay in Geneva to exchange views with the current GANHRI Chairwoman Beate Rudolf from the German Institute for Human Rights. He also met the Austrian Ambassador (the Permanent Representative) in Geneva as well as the Secretary General of the Association for the Prevention of Torture (APT) for work meetings.
- Network of European NHRIs (ENNHRI) As NHRI, but also in its function as headquarters of the IOI General Secretariat, the AOB maintains close contact with the European network of NHRIs (ENNHRI).
- General Assembly and conference on long-term care On the fringe of the annual ENNHRI General Assembly that was held in Brussels in November, a stakeholder conference on the topic of "Elderly persons in long-term care" took place. A human rights approach to the long-term care of elderly persons, in particular with regard to self-determined ageing with dignity and the possibilities of monitoring and controlling, this type of care was discussed. An expert from the AOB took part in this conference. Experience was shared with colleagues from European countries in various workshops. A guide on this topic developed by ENNHRI is designed to aid care providers to recognise the human rights relevance of their role and to apply this in all areas of caring for the elderly.

## European Union and European Network of Ombudsmen

Ombudsman Kräuter also took part in the conference of the European Network of Ombudsmen (ENO) again this year. National and regional ombudspersons from all over Europe as well as members of government and EU officials met in Brussels. The core topics this year were Brexit and the open government as well as the role that ombudsman institutions assume in this context.

Meeting of European Network of Ombudsmen

Two experts from the AOB took part in a seminar of the European Network of Ombudsmen dealing with the challenges in processing complaints and the initiation and execution of *ex-officio* investigative proceedings.

The EU Agency for Fundamental Rights (FRA) celebrated its 10<sup>th</sup> anniversary at the beginning of March. After a decade dedicated to the protection of human rights, stock was taken and past successes as well as the future challenges were addressed in a discussion round. In addition to Federal President Alexander Van der Bellen, EU Commissioner for Justice Vra Jourová and FRA Director Michael O’Flaherty, Ombudsman Kräuter also took part in the event. There was general consensus in the conclusion that advocating the fundamental principles on which every society should be based will continue to be a challenge in the future. In the next few years, the FRA is focusing on current central conflict areas for human rights, especially the areas of migration and asylum as well as the challenges in the area of privacy and surveillance.

10<sup>th</sup> anniversary of FRA

Experts from Germany, Luxembourg, Switzerland and Austria met for the 9<sup>th</sup> European Conference on the Promotion of Health in Prisons and Detention. At the opening event at the premises of the AOB, Ombudswoman Brinek discussed the medical challenges associated with living and working in prisons with scientific experts and practitioners. Legal issues relating to dealing with nursing problems, addiction and drug use in prisons were the focus of attention. There was consensus above all with regard to new training requirements and the necessity to deploy more medical experts.

EU conference on promotion of health in prison and detention

## Other events and bilateral contacts

Ombudsman Kräuter congratulated the Polish Ombudsman, Adam Bodnar, in Warsaw on the 30<sup>th</sup> anniversary of his institution. Ombudsman Bodnar made use of the anniversary to host the first National Human Rights Congress and invited ombudspersons, human rights experts as well as representatives from civil society, science and research to share their views and experience.

Ombudsman institution in Poland celebrates 30<sup>th</sup> anniversary

The institution of the Polish Ombudsman is being threatened with budget cuts by state representatives. Some individuals are even demanding the dismissal of this dedicated and successful official. After a successful support campaign on the part of the IOI, Ombudsman and IOI Secretary General Kräuter and the

Catalan Ombudsman and Regional President of the European Region of the IOI did not hesitate to continue support for their colleague.

In their speeches, both of them expressed their concern regarding the human rights situation in Poland and other countries in the European Union and emphasised the importance of the independence of the ombudsman institutions. The essential criteria for this are: adequate funding, sufficient personnel and the opportunity to report to Parliament.

Conference in Georgia As keynote speaker, Ombudsman and IOI Secretary General Kräuter also took part in a conference on the topic of “Evolution and challenges for NHRIs” that was held as part of the 20<sup>th</sup> anniversary of the Public Defender of Georgia. The main topics for discussion were the development of human rights institutions, the challenges they are facing and the benefits of cooperation between different institutions and human rights networks. Ombudsman Kräuter highlighted several examples of international cooperation in his speech.

25 years Croatian People’s Ombudsman Human rights, the fight against terrorism, the freedom of speech and living together – an international conference in Zagreb was dedicated to these topics on the occasion of the 25<sup>th</sup> anniversary of the Croatian People’s Ombudsman institution. Ombudswoman Gertrude Brinek and Ombudsman Günther Kräuter congratulated their Croatian colleague Lora Vidovic who received over 50 representatives of human rights organisations and ombudsman institutions as well as a large number of other guests from all over Europe in Zagreb.

Bilateral talks with Czech Ombudswoman At the invitation of the Ombudswoman of the Czech Republic, Anna Šabatová, staff from the AOB met colleagues from the Czech ombudsman institution for a meeting in Mikulov. The subject matter of this exchange of experience was the problem of implementing EU legal regulations for cross-border family allowances. Using three examples, the key problem areas were highlighted and diverse states of opinion from the EU Commission were discussed. Approaches were debated in order to better coordinate cases of cross-border family allowances between Austria and the Czech Republic in the future.

Bilateral visit and exchange of experience In the period under review, the Ombudswoman and Ombudsmen received international delegations for bilateral talks and to exchange experience in Vienna. This included, for example, a 15-member delegation from the ombudsman institution from the South Korean Gangwon Province and a delegation from the South Korean Ministry of Justice, a group of students from the legal faculty of the Sorbonne University in Paris, the Australian Inspector-General of Taxation or a delegation from the Turkish Ombudsman Institution who came on a two-day working visit to Vienna.



## 1.7 The members of the AOB take stock

### 1.7.1 Ombudswoman Gertrude Brinek

20 years of the Austrian Federal Act on Protection Against Domestic Violence motivated the AOB to take stock and recapitulate its activities. Violence occurs in all situations and areas of life: in the social environment, at work, in public, in nursing homes, schools, prisons and many other places. Most victims of violence are women; one out of every five women experience violence in their lives, very often for a very long time.

Every fifth woman affected by violence

The health care system, the police and the courts provide basic help and act as a break in the spiral of violence. In many cases, the prohibition to enter the common home, restraining orders and injunctions have prevented subsequent violence after it has been reported. From many perspectives, the AOB has also made a considerable contribution to preventing the use of violence, in particular by way of the preventive monitoring and control of human rights.

Regrettably, there is insufficient research on the entire area of violence in Austria. The country only has reasonably useful data material from a joint European study and results from the Fundamental Rights Agency. Apparently, nobody really wants to know about it. 7,000 sentences are served in the area of all criminal offences against life and limb annually. Every year, 60,000 women experience sexual violence in Austria. Many women live in a subculture or in an atmosphere of permanent physical, sexual and emotional violence. All in all, there is a substantial discrepancy between prevalence, criminal charges and sentencing.

Little research in the area of violence against women

Violence and the prevention thereof as an interdisciplinary concern were the starting point of a lecture series at the Medical University of Vienna. In addition to the Austrian Women's Shelter Network (*Autonome Österreichische Frauenhäuser*), the AOB was significantly involved in the lecture series for the second time. The lectures in the Department of Forensic Medicine, which were open to all students and were very well attended, started with an opening event at the AOB's premises – an outline of the problem against the background of the "One of five" debate, which is also being pushed by the Council of Europe – and debated forms of violence in the direct social environment using the perspective of victims and perpetrators. Legal, administrative and political measures were debated in a final discussion.

Interdisciplinary lecture series

Amendments to criminal law including the most recent reforms lag behind the increase in violence. If measures are to be successful, special technological and sociological knowledge and the anchoring of methods that even affect fundamental rights are necessary to efficiently combat violence. Prevention is the most effective and sustainable method of protection against violence as can be seen in exemplary cases during the period under review.

Austria joined the Istanbul Convention on 1 August 2014, a convention of the Council of Europe set up to prevent and combat violence against women and domestic violence. Five “p’s” are of key importance here: Policy – a pertinent policy, Prevention – preventive measures, Provision – adequate help programmes, Protection – protection for persons who are at risk, Prosecution – prosecution of the perpetrators.

AOB publication As an accompaniment to the course, the AOB collected and published the lectures from 2016 (Andrea Berzlanovich, Gertrude Brinek, Maria Rösslhumer (ed.), “*Eine von fünf. Gewaltschutz für Frauen in allen Lebenslagen*” (“One in five. Violence protection for women in all life situations”), *Edition Ausblick*, Vienna – Saarbrücken, 2017).

Pertinent training activities by the AOB with the police and judiciary turned out to be very successful in 2017. Applied human rights education and training – substantiated with relevant teaching materials – is designed to help reinforce knowledge and skills and provide security in handling everyday situations at work.

Investment in prevention and protection measures has to be constantly justified. The demands of the AOB both as *ex-post* control body and preventive human rights monitoring institution are thus being continuously collected in a catalogue of recommendations for the protection of human rights and the securing of conditions commensurate with the rule of law on the whole.

More self-determination through new legal guardianship law One positive development is reflected in the new Adult Protection Law. This new law was passed by the National Council and the Federal Council in April 2017 as a follow-up regulation and improvement of the legal guardianship law, which contains essential principles and regulations demanded by critical experts and the AOB. These include self-determination at the core, thorough clarification of support requirements by adult protection associations, more rights for affected persons and their relatives, a temporary regulation as a matter of principle that is reflected in a hierarchical support structure.

New regulation to improve the quality of support One fundamental reform is the regulation of support quality – in particular by representatives of the legal professions. The number of persons that can be represented or receive legal guardianship per notary public and lawyer is set forth in the law. This may only be exceeded if monitoring of the quality of support through adequate staffing with qualified personnel is guaranteed. The President of the Austrian Bar Association (ÖRAK) promised to establish a check-in system and to examine the lists of registered lawyers.

The courts are one of the pivotal points in this context. The paradigm shift intended by the law requires amongst others an intensive cooperation with the adult protection associations, which require the corresponding staffing and equipment. The examination of the pending cases has been publicly promised and ensures the start of a new era of support.

As has been the case to date, the AOB will continue to articulate the concerns of the people – attentively and dedicatedly – and urge for evaluation of the law in due time.

Promotion of the health care proxy remains a special concern. It is the key to self-determination and represents – drawn up with a notary and noted in the central register – a “document of freedom” for the long term.

## 1.7.2 Ombudsman Peter Fichtenbauer

The AOB celebrated its 40<sup>th</sup> anniversary in 2017. My work as a lawyer spanning many years enabled me to closely follow, above all as a professional representative, the emergence and continued development of this institution in its capacity to help people exercise their rights or inform them about the legal situation in another – yet partially similar – way. I was interested in the political discussions concerning the creation of an ombudsman institution in Austria already in the early 1970s and I still remember them well.

40 years AOB

According to the explanatory information in the parliamentary legal materials, the AOB was not intended to be a new institution providing protection under the law in a technical legal sense, as there was already a functioning legal protection system in Austria in the opinion of the legislators. The AOB was set up to examine complaints, make recommendations where complaints are justified and report to the control bodies (National Council, Diets). The objective was to establish an appeal body that has the confidence of the population and whose objectivity is recognised in order to overcome the feeling of “powerlessness when faced with the administration”.

Overcome the feeling of „powerlessness“ of the individual

It can be safely said today that these objectives have been achieved. People have become more vociferous in dealing with the administration, more critical and more self-confident, which is not only reflected in the continually increasing number of complaints over the years but also in the way they perceive the authorities. They rightly expect more than a mere service – friendliness, the provision of information and the willingness to listen. Not only the administration itself but the AOB too has helped in establishing this matter of course. The record of the legislative proposal, which sounded very ambitious in the early 1970s and was characterised by international examples, is thus positive.

Having said that, it is not only the people who trust the AOB but also its “clients”, that is the National Council and the Diets. The National Council thus entrusted the AOB with an additional mandate in 2012. As a National Preventive Mechanism (NPM), this mandate is to visit places where persons are detained, observe acts of direct administrative power and coercive measures, visit and monitor institutions and facilities as well as programmes for persons

Additional responsibilities prove confidence in AOB

with disabilities. In so doing, international standards had to be implemented which meant that the AOB was observed more intensely from the outside. The National Council was clearly of the opinion that the AOB would not only be able to stand up to this observation from the outside but would be able to direct it in an admirable way. The reaction of the international bodies to the AOB's annual report as National Preventive Mechanism confirm this estimation. The AOB was thus able to book a positive record after five years as National Preventive Mechanism in 2017 as well.

Further evidence of the confidence of the National Council in the work of the AOB is the task it was given in 2017: to act as a point of contact for awarding pensions for victims of children's homes to persons who have experienced abuse and violence in state and church institutions as well as foster families. The AOB learned about this project that was planned by the legislators at short notice and was able – not least thanks to its many years of experience – to take all of the necessary measures to implement this task. The only remaining drawback is that the AOB has been provided neither the legally promised budget nor the necessary permanent positions to date.

Divested legal entities:  
Salzburg Diet takes  
steps

Long-term projects such as the monitoring of divested legal entities, however, are still on the agenda. Even though – despite initial agreement in the parliamentary parties – there is as yet no foreseeable implementation, there is still progress that gives reason to pursue the project. The members of the AOB thus discussed the topic with the members of the Salzburg Diet in January 2016. The members had the opportunity to voice their observations again on the occasion of the presentation of the Report to the Salzburg Diet in January 2018. The Constitutional and Administrative Committee then submitted a unanimous proposal to the Salzburg Diet: the Federal Government is to consider extending the investigative competence of the AOB under the Federal Constitution to public service enterprises and companies in which the Federal Government holds a majority share. On the basis of such an extension of competence, a corresponding regulation is to be examined in the *Land* Constitution.

Chronically ill children -  
first positive steps

But I also closely follow the progress of long-term projects in my area of responsibility. The improvement in the situation of chronically ill children in the school system is – as can be seen from the reports to Parliament in recent years – a matter of great concern to me. That persistence pays off was evident in 2017. The Education Reform Act 2017 enabled certain medical activities carried out by teachers to be finally recognised unequivocally as official duties. If then mistakes are made, the state rather than the teacher is primarily liable by way of public liability as employer. All of those involved are benefitting from this. Injured parties are no longer subjected to the risks of insolvency on the part of the injuring party, and the teachers can now only be prosecuted in cases of qualified fault in the recourse proceedings of employers.

There is still no breakthrough in the demand that is very important to me, namely to introduce a liability insurance for disaster protection designed to cover the actual damage incurred (e.g. flooding). Switzerland and Belgium could serve as examples in this context. Affected parties would no longer have to rely on voluntary benefits from disaster protection funds of the regional authorities, but would be entitled to a legally secured claim. A working group deployed in the former Federal Ministry of Justice met just once. There was no “further political mandate for implementation” according to the Federal Ministry of Justice. This hesitancy in implementing an obvious benefit for the affected population is naturally regrettable and thus remains on my agenda. The next natural disaster is sure to happen and many of those affected will be wondering why the politicians were still unable to present any better solutions than to date.

Liability insurance for natural disasters

### 1.7.3 Ombudsman Günther Kräuter

The past year brought a new mandate with great responsibility for the AOB. The Pensions for Victims of Children’s Homes Act (*Heimopferrentengesetz*) has been in force in Austria since July 2017. It guarantees persons who suffered violence as children and adolescents in homes, boarding schools or foster families up to 1999 a supplementary monthly pension of EUR 300 (12 times per year gross for net). A Pension Commission was set up at the AOB that assesses the applications of those who have not received any compensation to date. However, , the law regrettably has serious loopholes. Out of respect for all of the victims, the AOB is appealing for a reform of the Pensions for Victims of Children’s Homes Act by the summer of 2018 – in the interest of all those who are not entitled to a pension due to the current legal situation such as victims from hospitals, for example. The pension is merely a recognition of the suffering endured. Restitution is not possible in any case.

Pensions for victims of children’s homes: reform urgently necessary

The living conditions in institutions and facilities for children have meanwhile improved considerably as shown in the AOB special report on children and their rights in public institutions and facilities to Parliament and the Diets. And yet our commissions still occasionally document inappropriate, sometimes even degrading penalty systems. Time and again there are assaults in institutions and facilities, often among the minors themselves. Children in institutions and facilities may no longer become victims of violence and abuse – those affected are tomorrow’s victims of children’s homes! The AOB thus demands that violence prevention measures and sex education concepts be stipulated nationwide as a condition to approving institutions and facilities. By the same token, nationwide standards for staffing ratios and the training of qualified personnel in socio-pedagogical institutions and facilities should be established. All children and adolescents have a right to the best possible support regardless of where they come from and in which *Land* they live.

Strengthening the rights of children and adolescents in institutional facilities

Preventive monitoring  
and human right  
control main  
focus in care

There is also a need for action regarding the care and support of older and very elderly persons. The commissions of the AOB monitor and control institutions and facilities in which persons could be deprived of their liberty including nursing homes. Commissions' findings showed in 2017 that half of the visited nursing homes do not have sufficient staff on night shift. In more than 62% of the cases, the commissions were compelled to criticise the documentation of the administration of medication. The staff works with great dedication in most cases, often at the limits of their own capacity. The AOB thus demands structural changes such as more and well trained staff, nationwide regulations and violence prevention concepts.

Those in need of care and their relatives often complain about the 24-hour care in their own homes that goes unmonitored to a great extent. They report of the lack of qualifications, neglect and even assault. However, there are victims on both sides. The predominantly female caregivers are often lured to Austria under the wrong conditions and frequently exploited by agencies. The AOB thus demands binding quality criteria for agencies. Unannounced visits would also be important in order to facilitate the preventive protection of human dignity.

The implementation of these demands is a social necessity. In 2050, a million persons in Austria will be over 80 years of age. Every second new-born will celebrate their 100<sup>th</sup> birthday. That is very positive! It poses, however, great challenges for society and politics. Ultimately, a sustainable solidary solution for financing care has to be found. After all, we will all be old some day – in the best-case scenario.

Platform for NGOs  
and civil society

The AOB also sees itself as a platform for NGOs and civil society and took part in an active process of exchange with them during the period under review. The AOB thus addressed demands together with the Disability Ombudsman, the Monitoring Committee and civil society for persons with disabilities to the new Federal Government and entered into a dialogue with the speakers of the departments in Parliament. The Roma Dialogue Platform of the Federal Chancellery was held at the AOB in November for the first time. Child poverty and the reporting about socially disadvantaged children were the focus of a study conducted by the media analyst, Maria Pernegger, on behalf of the AOB. The results are alarming: the media reported about the potential and talents of the affected children in only 3% of the cases. They rarely had an opportunity to speak for themselves. There is an urgent need for action here. The study is an assignment for those responsible for the media and politics. I would like to thank all NGOs, the Patient Advocacy, the child and youth advocates as well as all cooperation partners for the fruitful collaboration.

IOI celebrates  
40<sup>th</sup> anniversary

Ombudsman institutions such as the AOB have now asserted themselves all over the world. The International Ombudsman Institute (IOI), the General Secretariat of which is located at the AOB in Vienna, is celebrating its 40<sup>th</sup> anniversary this year. The IOI is an independent, unpolitical organisation

and the only globally operating network of currently 188 ombudsman institutions from over 90 countries. As different as these institutions in the individual countries might be, a joint goal still unites them. That is to protect citizens from maladministration, unfair treatment by public offices and violation of their fundamental rights.

In this sense, the AOB has been working in the citizens' interests for more than 40 years. I would like to thank all of the staff for their competent work and their unfailingly appreciative handling of all persons who seek advice and help at the AOB. This report and the increasing number of complaints show that the work of the AOB will remain important in the future.

## 2 Monitoring public administration

### 2.1 Federal Chancellery

#### 2.1.1 Women, family and youth

##### Introduction

Better protection against violence for women and children

The main focus in the area of women's affairs and gender equality in the period under review was protection against violence for women and children. The expansion of quickly accessible therapy services for perpetrators of violence in the entire urban and regional area is as vital to the AOB as the needs-oriented establishment of suitable institutions for protecting women and children affected by violence – regardless of their legal residence status.

Equal treatment commissions and anti-discrimination centres should provide advice and support as low threshold, free points of contact for presumable victims of discrimination. They are frequently activated prior to court proceedings and serve to prepare expert opinions as to whether there has actually been discrimination, and in this case to make recommendations on how to stop the discrimination. The difficult accessibility and lengthy duration of proceedings attributable to the complex legal situation hinder the efficient fulfilment of these tasks, which is why these positions should be better paid.

Family allowances

A total of 213 complaints dealing with family allowances, child care benefits and maternity allowances were submitted to the AOB in the year under review 2017. The complaints relating to the legal amendments to the income-related child care benefits formed the main focus here. The subject of these complaints was predominantly inadequate information management on the part of the authorities. In the year under review, the AOB mainly dealt with reclaimed family allowances and complaints in connection with the increase in family allowance. Long waiting times for family allowances were also the subject of many complaints. This applied to both cross-border and domestic cases.

EU law-related reservations against indexing of family allowances

A much discussed amendment to the Family Allowance Act (*Familienlastenausgleichsgesetz*) stipulates the indexing of family allowances for the children of persons working in Austria who live in other countries. The AOB submitted a statement on this ministerial draft in the evaluation procedure in January 2018 and expressed its reservations relating to the EU law. In the view of the AOB, the indexing is not compatible with the required equal treatment of citizens of the European Union and nationals, and the associated freedom of movement of persons. An Austrian solo effort thus counteracts the law set down by the European Court of Justice to facilitate the practical efficacy of EU law without restrictions.



The AOB was also able to provide assistance in many individual cases in the year under review. For example, in the case of a family with four children. The family allowance for three of the children was mistakenly turned down by the Tax Office. The AOB was able to clarify that the children had a permanent residence permit (“Permanent residence EU”) and the conditions for eligibility for family allowance were unequivocally given. The notice of refusal was officially cancelled and the allowance granted. Another family only received family allowance for their two children for a limited period, presumably because of the German citizenship of the children’s father. As he had already been living and working in Austria for 15 years and has a permanent residence permit, the allowance was granted until the 18<sup>th</sup> birthday of the children after the AOB intervened.

Many solutions in individual cases

### Family allowances in cross-border cases

Just as in the previous year, a relatively large number of cases dealt with problems with the EU coordination of family allowances. In 2017 too, parents living in Austria contacted the AOB because they were waiting for many months, often a year or more, to be granted child care benefits and family allowance. The affected families – often single mothers with small children – can find themselves in a situation where their livelihood is at risk.

EU coordination once again a topic

The obligation to pay the allowance temporarily stipulated in EU law is designed to remedy this situation; however, it is still rarely applied in Austria if at all. The AOB already contacted the Directorate-General of the EU Commission twice in this respect in 2010 and 2016. It confirmed the view held by the AOB: Austria must pay the family allowance temporarily as the state of residence even in the event of second-tier competence, in any case two months after receiving the application for family allowance if the primarily competent state has not paid by then. The additional application abroad that is required in Austria as well as payment of the difference only after the foreign payment has ended is, in the opinion of the EU Commission, also not compliant with EU legislation. A view that is shared by the AOB.

Administrative practice still unsatisfactory

Nevertheless, the former Federal Ministry of Families and Youth maintained its position and derives from the EU coordination regulations that an application by the parents abroad is absolutely essential. According to the Ministry, the reason why the procedures take so long is that the prescribed electronic exchange of data between the member states does not work and information has to be forwarded using paper forms that are constantly changing. In addition to this, there are language barriers and the families are often uncooperative in the procedure.

In addition to providing help in individual cases, the AOB was at least able to achieve that the families were also referred by the authorities to SOLVIT. SOLVIT is an EU-wide network for assistance in problems with the authorities

SOLVIT

in other EU states. The experience of the AOB shows that SOLVIT endeavours to find solutions, however, it has limited possibilities.

Meeting with Czech Ombudswoman

In autumn 2017, there was an exchange of experience with the Ombudswoman of the Czech Republic, Anna Šabatová. This was an opportunity to discuss joint complaint cases but also basic questions concerning the topic of EU coordination of family allowances. It transpired that the Czech Ombudswoman is confronted with similar problems. She reported that the Austrian authorities respond very late or incompletely, which is contested by the same and could not be confirmed in the two concrete investigations brought forward by the AOB. However, the AOB is aware of many cases from its investigative work in which both domestic and foreign authorities respond very late.

EESSI in progress

The AOB considers a sustainable change in administrative practice to be necessary. The objective should be to ensure that parents who avail of the free movement of workers and live and work in different states than their children receive the allowances they are entitled to quicker. The Electronic Exchange of Social Security Information (EESSI) could effect improvements in this context. It was put into operation in July 2017. After a two-year deadline for linking the domestic systems with the IT platform, implementation for all of Europe is planned for some time in July 2019. The EU Commission anticipates a faster and more effective exchange of information between the member states.

## 2.1.2 Women and equal treatment

### Protection against violence for women and children must be expanded comprehensively

Deficits in victim-support-oriented work with perpetrators

A fundamental aspect of protection against domestic violence is the victim-support-oriented work with the perpetrators. Within the framework of preventive monitoring and control of human rights, the commissions of the AOB carry out numerous visits to police stations. In this context, the situation after restraining orders have been served in cases of domestic violence to women and children is often thematised. According to the police officers, in some rural areas there is no specialised point of contact for further advice or support and no alternative residential options for those upon whom the order was served. The existing services such as initial counselling, different psychosocial interventions in individual or group settings and anti-violence training are usually concentrated around the towns and urban centres.

The number of prohibitions to enter the common home is rising continually. These increased from 1,449 in 1997 to 8,637 in 2016 and have thus almost sextupled.

Experts report to the AOB that there are far too few immediate therapy alternatives – bot for victims and perpetrators. It is important to confront the perpetrator with the deed in the first 72 hours after an act of violence or restraining order.

Too few immediate therapy alternatives

The AOB sees a key foundation stone in professional, victim-support-oriented work with the perpetrator. It must be ensured that gender-based violence to women is effectively prosecuted and punished and perpetrators sent to anti-violence programmes where necessary. This requires the efficient implementation of measures including decrees and obligatory awareness-raising for staff, in particular for judges in their basic training. Adequate and continuous (long-term) funding to secure the victim-support-oriented work with perpetrators designed in line with the Istanbul Convention should be provided in all *Laender*. It is absolutely essential that needs-based, adequate services are available nationwide without waiting time in order to prevent further, sometimes even more serious acts of violence against women and children.

Another fundamental aspect of protection against violence are institutions that offer protection. It must be possible for every woman affected by domestic violence and every child to be admitted to a suitable institution that offers protection. This applies pursuant to the Council of Europe Convention on preventing and combating violence against women and domestic violence (so-called Istanbul Convention) for all women and children affected by violence – regardless of their nationality and their legal residence status.

Admission to institutions offering protection

Pertinent studies show that those affected by domestic violence lose faith in their own safety and inviolability in which case the consequences of physical violence can be accompanied by changes in the value system and even grave mental disorders and illnesses. Unfortunately, the moralising assumption prevails that abused women do not want to contribute to changing their situation or that women are mistreated because they are too ambivalent or passive. What is actually true is that the behaviour of the affected women follows the same pattern as those observed in hostages: they adapt to violent conditions in order to survive (Stockholm syndrome). Outside observers then have the unexplainable impression of a type of coalition with the abusers. This apparent adaptation to violent conditions, however, on no account means a reproachable consent to acts of violence.

In the year under review, appalling violent crimes were once again committed against women and children who wanted to protect their right to personal freedom, security and equal treatment. They made use of state protection measures (restraining orders and prohibition orders to enter the common home, crisis centre) and were murdered by their husband, father or brother. Discussions on improved victim support are necessary. Experts thus recommend amongst others the nationwide use of risk assessment for perpetrators of domestic violence in high-risk cases. Based on a questionnaire developed in

the USA, the extent of possessive thinking with regard to his wife, child and other family members displayed by the perpetrator of violence is inquired. In this way, according to experts, potentially dangerous concepts of “family honour” can be detected in time.

Rights to freedom and equality for all

With this in mind, any semblance to an easing of the universal right to freedom and to equality and the equal treatment of women and men should be avoided.

A further aspect of the topic of “protection against violence” is dealt with in another chapter of this report (see “Violence prevention and victim support after serving a prohibition order to enter the common home”, chapter 2.4.2.1)

### Accessibility and available resources of equal treatment institutions

No information about responsible equal treatment department

Mr N.N. felt discriminated against in his application for a position with the municipality of Vienna because of his political views, and contacted the Vienna Equal Treatment Commission. This informed him in writing that it is not responsible as the matter was not a question of the equal treatment of women and men. The letter did not contain any information on the department that is responsible for this type of discrimination.

In the view of the AOB, this is unacceptable, as information about the competent department or forwarding the complaint to the same is required in any case. The European Code of Good Administrative Behaviour also standardises forwarding the letter to the competent department or informing the affected person of the responsible department. An identical obligation is planned for administrative procedures in Article 6 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*).

This is all the more necessary here. The large number of different equal treatment and anti-discrimination commissions has been criticised by the AOB for a long time. It is often difficult for those affected to locate the competent commission within a reasonable amount of time. Even in the evaluation report published by the former Federal Ministry of Labour, Social Affairs and Consumer Protection regarding the mechanisms of the equality law, the fragmentation of the material and resultant unclear competences of the anti-discrimination departments is identified as a problem. It is therefore essential to ensure that information regarding the matter is provided, or that the same is forwarded by the department that is not responsible to the one that is.

Long duration of proceedings at equal treatment commission

The duration of proceedings before the equal treatment commissions is often the subject of complaints to the AOB. In January 2016, Mr N.N. submitted an application to the Federal Equal Treatment Commission for investigation of discrimination. In December 2016, almost a year later, he was informed of the decision by Senate II of the Commission that he would have to wait longer for the copy of the expert opinion. Due to the large number of applications

to be processed, it was not possible to say when the expert opinion would be issued. After a further six months had elapsed, Mr N.N. contacted the AOB. In September 2017, 20 months after submitting the application, Mr N.N. finally received the expert opinion.

Pursuant to the legal regulations, the Federal Equal Treatment Commission responsible for the federal public service has to issue their expert opinions within six months of receiving the application (Section 23a Federal Equal Treatment Act). In practice, the average duration of proceedings is considerably longer taking 20 months, which the Senate attributes to low staffing. According to the evaluation report, the average duration of proceedings in the Equal Treatment Commission responsible for the private sector is 18 months in Senate I and 14 months in Senate II. This is unanimously viewed as problematic by the experts in the report.

The AOB welcomes all efforts that effect acceleration in the duration of proceedings. Furthermore, the AOB recommends equipping the equal treatment institutions with sufficient financial and human resources so that they can efficiently fulfil their important task of providing fast help in cases of discrimination.

AOB recommends adequate provision of resources

### 2.1.3 Unaccompanied minor refugees

#### Legal representation of unaccompanied minor refugees in asylum proceedings

The outcome of asylum proceedings is of critical importance in determining whether unaccompanied minor refugees can stay in Austria, as it is for all asylum seekers. It is thus important that the minors have qualified legal representation that can also cater to the special social and pedagogical needs of the unaccompanied minor refugees. After allocation to a care facility in a *Land*, the *Laender* as competent authorities for child and youth welfare and protection are responsible for the legal representation before the Tax Office and the Federal Administrative Court.

The AOB was increasingly confronted with complaints about the deficits in the legal representation of unaccompanied minor refugees in asylum proceedings last year. In addition to processing individual cases, the AOB initiated *ex-officio* investigative proceedings to verify the criticism expressed and obtain more information about the practice of legal representation in asylum proceedings of the *Laender*.

Examination of *Laender* practice

Individual cases in Lower Austria In an individual case in Lower Austria, the application for asylum of an unaccompanied minor refugee was refused. The Coordination Office for Unaccompanied Minor Refugees of the *Land* Lower Austria which provided legal representation during the asylum proceedings did not appeal the decision. Furthermore, the adolescent was not given a written record of the notice of refusal. The *Land* even refused to give a copy of the notice of refusal to a lawyer whom the minor had contacted, referring to their authorisation for the custody of the child.

The competent department argued that the asylum decision notices contain sensitive data and the “average unaccompanied minor refugee” is not in a position to correctly appraise the consequences of carelessly passing this on to third parties. The competent department maintained that since many unaccompanied minor refugees have reading and/or writing deficits, it would be pointless in giving them the complete notice and on no account should these be given to third parties without legal standing. With regard to not appealing the decision, the authority stated that the unaccompanied minor refugee is no worse off by being granted subsidiary protection than he would be if he had been granted asylum. Besides, it must be considered that questioning before the appellate court can cause stress for the unaccompanied minor refugee and the information he gave originally might not stand up to more detailed questioning.

Determination of maladministration The AOB was not able to follow this argumentation on legal grounds and determined a case of maladministration.

Involvement of minors in the proceedings It is true that the minors require protection with regard to handing out notices that affect them themselves. Nevertheless, disclosure of a notice of refusal to an adolescent cannot be simply refused. Both domestic and international law stipulate that minors have to be reasonably involved in their own affairs. This right of minors to co-determination, which is enshrined in the UNCRC, the Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) and in the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*), was not given sufficient consideration. The documentation prepared by the *Land* did not indicate how the maturity of the unaccompanied minor refugee in the case mentioned was assessed and why the notice was not given to him. It was not evident whether he would have been able to understand the consequences of the notice or the possibility of seeking legal remedies. According to the Core Standards for Guardians of Separated Children in Europe, affected unaccompanied minor refugees must be involved in the decision-making process.

Compared to asylum law, subsidiary protection is without doubt a disadvantage. The refusal of an application for asylum can, however, be contested separately if subsidiary protection is granted at the same time. There was no evidence found in the written documents viewed by the AOB for the arguments brought

forward by the *Land* that an oral hearing would have been very stressful for the adolescent or that he might have contradicted himself.

The child's wellbeing is the critical benchmark that representatives have to consider in all actions and decisions regarding asylum matters. The representatives thus have to take note of the special circumstances that are associated with the escape of unaccompanied minors. In addition to legal knowledge, a heightened level of sensitivity is required in order to be able to cater to the minors who often have to work through traumatic experiences also during the asylum proceedings, and to explain the next steps to them.

Child's wellbeing as critical benchmark

Representation in asylum-related matters is organised and implemented differently throughout Austria – either by the authorities of the *Laender* or by commissioned NGOs. Sometimes the asylum seekers are represented by operators of facilities that provide reception conditions under the Basic Provision Agreement or by law firms, whereby there are sometimes combinations of the above. Where representation remains directly under the auspices of the *Laender*, new dedicated departments (Lower Austria, Tyrol) or regional administrative authorities act as representatives. Some *Laender* regularly allow legal representation to be performed by their authorities, but fall back on organisations with which they concluded agreements during peaks. Representation is designed in a way that underage minors and those who are of age receive the same treatment as a matter of principle. But in some *Laender*, representation depends on the age of the unaccompanied minor. This is the case in Upper Austria where the *Volkshilfe Flüchtlings- und MigrantInnen-Betreuung GmbH* is responsible for underage minors, and basic provision facilities are responsible for minors who are of age.

Different representatives

The condition for any representation in the interest of the child's wellbeing is the greatest possible level of independence. Care must be taken that there are no conflicts of interest. There could be a risk of this happening if the representative of the minor in asylum proceedings is also responsible for their accommodation or support. This applies both to the authorities and the NGOs as well as the operators of the facilities. Precautions must therefore be taken to counter this risk. The AOB thus considers it advisable to install a control mechanism in order to ensure the necessary independence or impartiality.

Independence of representation

The AOB also observed differences in the intensity of representation work during pending asylum proceedings. In light of the special need to protect unaccompanied minor refugees, it must be guaranteed that a confidence base can be built up between the legal representative and the minor and that there is sufficient time for preliminary meetings and counselling. According to information provided by the *Laender*, sufficient preparatory meetings are held, in particular for hearings before the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) and the Federal Administrative Court. The representative is called in to these as a standard. In the event of stressful or emotional questioning or situations during the

hearing, the legal representatives only sometimes give the relevant feedback to the support environment of the minor. The AOB considers this necessary in order to better deal with crisis situations after hearings.

**Disclosure of the notice** A further important point is the disclosure of decisions made during the asylum proceedings or the passing on of the complete decision notices to the unaccompanied minor refugee. After the notices have been delivered to the legal representatives, the unaccompanied minor refugees receive the complete notice in some *Laender*, in others they only receive the first and the last page (verdict and legal remedy information, e.g. in Tyrol), and the complete notice is only forwarded to the minor if he or she expressly wishes the same. From the AOB's point of view, there can be reasons why the written notice is not initially handed over to those affected, in particular to very young clients. In such cases, the ensuing documented personal meeting with the minors in which they are informed about the content and consequences of the asylum decision notices is particularly important.

**Seeking legal remedies** After the notice has been delivered, clarification on whether a legal remedy should be sought is required. Legal remedies are sought in most *Laender* as a routine because this appears to be required in the minors' interests. This is not done in isolated cases. It is important that the respective reasons for the decision are documented in detail in such cases. It must be transparent why not seeking legal remedies is better for the wellbeing of the unaccompanied minor refugee. Legal remedies should not be sought only in completely hopeless cases.

### Assuming custody for minor refugees

The legally enshrined custody system for minor refugees who come to Austria without their parents is only suitable to deal with the challenges caused by the influx of refugees to a limited extent. The problems that arise in the area of legal custody for minor refugees overstrain the executing authorities and courts.

**No transfer of custody by law** Pursuant to the current legal basis set forth in the Austrian Civil Code, there is no automated system for assuming custody for minor refugees. The competent authorities for child and youth welfare and protection are currently the legal guardian for foundling children, which is not applicable to unaccompanied minor refugees. Since transferring custody is precluded by law, custody has to be applied for separately at the competent court, or the custody proceedings are initiated by the court.

International agreements (Brussels IIa regulation and Hague Convention on parental responsibility and protection of children) regulate the competence of the courts and authorities for measures for the protection of minors. Responsibility for a child resident in Austria is domestic provided that the child



is planned to stay in the country in the long term. This is the case when an application for asylum is made.

Pursuant to current Supreme Court rulings, the *Laender* as competent authorities for child and youth welfare and protection only considered as legal guardians at the moment if no living relatives or other suitable close persons resident here can be found who came to Austria with the unaccompanied minor refugees. Only in the absence of such persons is the child and youth welfare service to be entrusted with the guardianship. Before every decision regarding guardianship, there must be an examination of whether and which relatives are close contact persons of the unaccompanied minor refugees and whether these persons are actually capable of fulfilling the obligations attached to assuming guardianship.

Competent authorities for child and youth welfare and protection subsidiary as guardians

In November 2017, an eleven-year-old Afghan boy committed suicide in Baden where he was living in family housing with his brothers and sisters. His 23-year-old brother was granted legal custody for a total of six siblings including a child with Down syndrome at the beginning of 2016 after applying for the same. It is understandable that the young man coming from a country in which there has been war for decades felt responsible for his younger siblings after the death of the parents and successful flight to Austria. The files presented to the AOB from the competent authorities for child and youth welfare and protection contained no evidence of previous indications of suicide on the part of the boy. Neither his family, social nor school environment perceived behavioural problems or even self-harming behaviour by the child at any time. The Baden District Authority and the *Land* Lower Austria as competent authorities for child and youth welfare and protection cannot be held responsible in connection with the suicide.

Tragic suicide of a child

Irrespective of this, the AOB still considered transferring the custody for six minor children to a young man who himself had just arrived in Austria a questionable burden. There were reports of risks in the case of this family, above all with respect to the child with Down syndrome, from the very beginning. These were followed up on; child and youth support measures were also agreed upon with the brother, and non-residential services were installed. On the initiative of the Baden District Authority, an adult sister moved into the basic provision facility with her husband and their baby at the end of 2016 to take care of the daily needs of the younger siblings. In this way, the resources of the sibling family could be activated temporarily. When the additional family assistance was stopped and the older sister also started having mental problems, the conditions for implementing an "imminent danger measure" were fulfilled in the view of the AOB. From the risk reports, the competent authorities for child and youth welfare and protection recognised the need to find alternative accommodation for the children and organised a place for the boy with disabilities in a suitable facility. However, it was decided not

to separate the family against their will after their heated resistance to the measure.

The competent authorities for child and youth welfare and protection are obliged to intervene if the child's wellbeing is at risk, and apply for the required mandates in the area of child custody. If there is an imminent risk, they can temporarily take the necessary measures in the area of support and education themselves effective until the court decision (Section 211 Austrian Civil Code). They then have interim competence until the court decision.

Delays in custody decisions harm child's wellbeing

Practice shows, however, that there are considerable loopholes in the perception of responsibility for minor refugees in other cases too. The Federal Government and the *Laender* provide support for the unaccompanied minor refugees in the initial reception centres, in the facilities that provide reception conditions under the Basic Provision Agreement, and the child and youth welfare facilities. Until the minors are allocated to a *Land* facility, which often takes place only after several months, no application for transferring custody is made by the competent authorities for child and youth welfare and protection. But even after allocation to basic provision of the *Laender*, there are still often considerable delays. This long waiting time is not in the interest of the children and contradicts the legal obligation to take all measures that serve the child's wellbeing.

A child's wellbeing can still be at risk according to established jurisprudence even if the basic needs such as a home, food, clothing etc. and representation in asylum proceedings are covered. Both the EU Reception Conditions Directive and the Federal Constitutional Act on the Rights of Children and the UNCRC regulate the right of the child who has been taken from its family environment to special protection and support from the state. The Federal Government and *Laender* are thus required to act quickly and finally establish equal opportunities for unaccompanied minor refugees. Legal regulations have to be adapted and support standards complied with because a child is a child regardless of where it was born.

Working group on improvement to child protection

In January 2018, in reaction to the special report, "*Kinder und Jugendliche in staatlichen Einrichtungen*" ("Children and adolescents in state institutions"), the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured the AOB in writing that it would endeavour in any case to achieve improvements in child protection for the area of justice. A working group was set up under the leadership of the former Federal Ministry of Families and Youth in which the competent specialised section of the justice department also takes part. The working group reached a consensus with the *Laender* at the beginning of 2017 to create the conditions under which the legal custody of the children and adolescents is triggered immediately after they have been moved from federal to *Laender* support. The final results of the working group were not available at the time of completing this report.

## 2.2 Labour, social affairs, health and consumer protection

### 2.2.1 Labour, social affairs, health and consumer protection

#### 2.2.1.1 Disability matters and support law

##### Introduction

Complaints from persons with disabilities frequently dealt with the areas of unemployment, mobility and the question of the subsidising of the cost of traveling to place of work or training. The problem of insufficient networking of Federal and *Laender* support services remains unsolved.

Many complaints in the area of mobility

Articles 24, 26 and 27 of the UN CRPD oblige Austria to guarantee training opportunities, programmes for imparting skills and rehabilitation as well as employment opportunities for persons with disabilities. The Public Employment Service Austria also has the legal mandate to prevent and eliminate unemployment by ensuring the employment of all persons available to the market in as far as possible. Nevertheless, an increasing number of very young persons with impairments who were certified as incapacitated on the basis of a medical report contact the AOB because of the associated lack of access to the offers and services of the Public Employment Service Austria. An abstract diagnosis-related and moreover deficit-oriented assessment of the incapacity of young adults with disabilities to work is not compatible with the UN CRPD. The existing division of competences between the Federal Government and the *Laender* and the lack of support opportunities for this group of persons mean that the wishes and skills of those affected in terms of employment in the primary or secondary labour market are currently neither taken into consideration nor do they have to be supported and sponsored by the Public Employment Service Austria. Quoting day-structuring services offered by the *Laender* in occupational therapy workshops, however, should not lose sight of the fact that only a tiny minority manage to leave these special working conditions, conclude a contract of employment, earn money and secure an independent income covered by social insurance legislation. Using the example of a girl from Salzburg, the AOB brought this problem area to the attention of the public in the “*Bürgeranwalt*” TV programme in autumn 2017.

Determination of incapacity to work violates human rights

The range of problems that persons with disabilities are faced with is immense. This was also shown at the most recent public meeting of the Monitoring Committee by means of reports by affected persons. Equal opportunities, the removal of barriers, self-determination and inclusion are far from reality for persons with disabilities. Instead, those affected are often forced into the role of supplicants.

For this reason, the AOB contacted the new Federal Government through the media together with the Federal Disability Ombudsman, the Monitoring Committee and civil society, and formulated five central demands for persons with disabilities.

(1) Fair opportunities in the labour market

Persons with disabilities as target group at Employment Service

In order to reduce unemployment by at least 20% by 2020, “persons with disabilities” should be recognised at the Public Employment Service Austria as a separate target group of specific support programmes. Furthermore, the AOB demands reforms in order to rectify problems in connection with the premature determination of incapacity to work.

(2) Pay instead of pocket money

Regular working conditions demanded for daily structure

Around 23,000 persons in Austria whose ability to work is less than 50% than that of a person without disabilities are occupied in a daily structure or workshop. These facilities have their costs reimbursed with public funds whilst persons with disabilities often only receive pocket money of an average of approx. EUR 65 per month all their life, regardless of the scope and complexity of the work they perform. The medium-term goal must be that persons with disabilities can live from paid gainful employment and that there is a shift from the current sparse pocket money for the work in occupational therapy workshops to the general labour market.

(3) Massive expansion of personal assistance

Personal assistance necessary for inclusion

Personal assistance enables persons with disabilities to take part in society in a self-determined way. To master everyday life and leisure, personal assistance is currently granted by the *Laender* under different conditions, for different time periods and with diverging deductibles. These services are not offered nationwide and are not needs-oriented. The services should be regulated by nationwide standardisation. Persons with learning difficulties who are currently still often precluded from such services may not be put at a disadvantage vis-à-vis persons with physical impairments regarding access to personal assistance.

(4) Inclusion on all levels

Special facilities should be gradually reduced

Leading a life in the middle of the community is a human right. The fact that persons with disabilities have to learn, work or live in special institutions and facilities is diametrically opposed to this right. Special institutions and facilities should therefore be gradually reduced and those affected enabled to live a self-determined life close to the community. The lack of inclusion is manifested in the image that the general public has of persons with disabilities as welfare recipients worthy of protection who are better off in special institutions and facilities.

## (5) Shaping the National Action Plan on Disability for the coming decade

The National Action Plan on Disability (NAP) is the strategy of the Federal Government for implementing the UN CRPD and is valid until 2020. A continuation of the NAP 2020-2030 with clear indicators and the necessary funds provided could be an ideal opportunity for the Federal Government and *Laender* to develop a joint position on disability policy. Regrettably, this has not happened to date. Most of the *Laender* have not defined their own NAP. It would also be crucial to better involve civil society in the development of a new NAP.

NAP should be continued and funded

### Discriminating restrictions in residential health care facilities through bans on assistance dogs

Ms N.N. is a wheelchair user and has an assistance dog that is registered in her disability pass. Her applications for a sanatorium were approved by the Austrian Pension Fund (*Pensionsversicherungsanstalt*) but finding a wheelchair-accessible facility in which she could take her assistance dog proved difficult. Either the facility was not suitable for wheelchairs or she was not allowed to take her assistance dog with her.

Difficulty in finding a suitable sanatorium

Creating barrier-free accessibility is a fundamental component of the obligations that Austria entered into with ratification of the UN CRPD. Pursuant to the Federal Act on the Equal Treatment of People with Disabilities (*Bundes-Behindertengleichstellungsgesetz*), access to and use of all public facilities must be barrier-free.

Taking an assistance dog into medical facilities is also anchored in the law. Since February 2016, the Hospitals and Sanatorium Act (*Krankenanstalten- und Kuranstaltengesetz*) contains a regulation in which the areas where assistance and therapy dogs may not be taken for hygienic reasons have to be defined in the rules of the facility (Section 6 (1) (i) in combination with Section 65a). It is, however, not allowed to forbid assistance dogs from being taken into the facilities in general.

Refusal of admission for assistance dogs no longer allowed

The *Land* legislators were given a six-month deadline to enact pertinent implementation regulations. This deadline has long since elapsed. At the time of completing this report, there were still no implementation regulations in three *Laender* (Carinthia, Vorarlberg, Vienna). With expiry of the deadline, the legislative competence was transferred to the Federal Government which has yet to deliver.

Legislative delay

On the positive side, the Austrian Pension Fund as operator of rehabilitation facilities has since defined the areas in its own facilities into which assistance dogs can be taken or not for hygienic reasons. The relevant information was improved after intervention by the AOB.

Austrian Pension Fund enacts necessary regulations and improves information

The AOB hopes that the necessary regulations are enacted quickly so that barrier-free access including the possibility to take assistance dogs into all Austrian hospitals and sanatoriums is ensured.

### **2.2.1.2 Human rights violations through premature sex assignment operations**

Third generation ignored It is estimated that in Austria every year approx. 30 children are born whose sexual characteristics are different to the prevailing norms for “male” and “female”. These variations of sexual characteristics can take very different forms. Not enough consideration is given to this “third gender” either in medical practice including nursing or in the legal system. The gender determined by the doctor is entered in the birth certificate directly after the birth. The children grow up according to this “allocation” even if their development can vary during puberty, (see also section “Civil register – entry for inter-gender persons”, chapter 2.4.3).

Doctors still tend to surgically remove the “incongruous” sexual characteristics early on. However, the affected persons perceive such premature operations without their consent as irreversible mutilation.

Human rights violations through operations These premature sex assignment operations are moreover a massive infringement of human rights as they violate the right to respect for private life and family life expressly guaranteed in Article 8 of the ECHR by being carried out without a medical necessity. Furthermore, Article 24 (3) of the UNCRC obliges the member states to implement suitable actions for abolishing measures that are harmful to health. On the national side, it should be noted that aesthetic operations pursuant to Section 7 of the Federal Act on Performing Aesthetic Treatment and Surgery (*Bundesgesetz über die Durchführung ästhetischer Behandlungen und Operationen*) are forbidden for persons under 16 without medical indication.

The AOB therefore holds the view that the medical standards processes and decision processes on which this kind of medical intervention is based must be urgently revised. A different kind of awareness regarding the medical treatment and nursing of the affected persons needs to evolve. The prevailing practice of “operating away” one of the two sexual characteristics from children is not compatible with children’s rights requirements. On the contrary, the affected persons should be able to decide in the course of their adult lives themselves whether they wish to undergo an operation.

According to the relevant human rights regulations as well as consideration of the experience of the affected persons and an expert opinion from the German Ethics Council, the consent of the parents as representatives to a sex assignment operation for an inter-gender child should therefore only be possible if the operation is unequivocally or urgently indicated as “vital”. This

would be the case if the child's life were in danger or in the event of a serious health risk.

The former Federal Ministry of Health and Women's Affairs reacted to these recommendations from the AOB by promising to draft guidelines for gender-adjustment operations. A working group was set up to this end which started working in September 2017.

These guidelines are ultimately designed to guarantee the physical integrity, autonomy and self-determination for the health care of children with variations of sexual characteristics in a way that is compatible with human rights. As a supplementary measure, independent, qualified support facilities and peer counselling by affected persons for parents, minors and health care professionals should be set up.

### Transgender - therapy cost coverage

Transgender is the term used to describe persons whose gender identity or gender role deviate from the gender that was assigned to them when they were born based on apparent sexual characteristics.

Born in the „wrong“  
body

The journey “between the genders” is usually a long process. It often starts with unease not only relating to the social gender role but also the physical sexual characteristics.

The psychological strain for those affected is enormous. A 15-year-old girl thus suffered from such severe depression that suicide appeared to be only escape for her. Her environment helped her find the courage to confide in her parents. The family immediately consulted a psychologist who diagnosed that the young girl had been born “in the wrong body“. After a comprehensive medical examination in Vienna General Hospital, a hormone therapy was to be started without delay in addition to a change of name.

To the complete incomprehension of the family, the Lower Austria Public Regional Health Insurance Office, however, refused the hormonal compound required for suppressing puberty several times in spite of being presented all of the psychiatric, psychological and gynaecological results. Intervention by the attending doctors and the hospital which not only confirmed the diagnosis, but also spoke out in favour of the rapid initiation of the hormone therapy was to no avail.

Lower Austrian Public  
Regional Health  
Insurance Office refused  
hormone therapy

In the initiated investigative proceeding, the AOB pointed out that not only had a secure diagnosis been made referring to the expert opinions and results already obtained from medical experts, but also that the immediate continuation of the treatment using hormone therapy is required.

Medication was  
approved in the end

The Lower Austria Public Regional Health Insurance Office informed that after taking up contact with the family and another medical examination

the medication could finally be approved. The Lower Austria Public Regional Health Insurance Office also guaranteed the AOB that it has saved an advance approval so that the continued treatment or course of the therapy can function smoothly.

## **2.3 Europe, integration and foreign affairs**

### **2.3.1 Visa application centre Erbil - no information in German**

The Federal Ministry for Europe, Integration and Foreign Affairs enables persons in northern Iraq to apply for a visa through the visa application centre in Erbil. The centre is under the control of the Austrian embassy in Amman, which conducts the procedures. Mr N.N. planned to undergo important medical treatment in Austria which he was unable to receive in Iraq. A friend invited him to Austria for this purpose and considered submitting a formal obligation for liability of any costs that might be incurred. As she wanted to obtain information about this from the visa application centre, she contacted the same and learned that communication can only be in English or Arabic. She received no information that communication in German with the responsible Austrian embassy in Amman was possible. The AOB consequently recommended the Federal Ministry for Europe, Integration and Foreign Affairs to point out this possibility both in email correspondence and on the website of the Erbil visa centre. On the website at least, there is still no pertinent information to date.

At the same time, Mr N.N. also complained to the AOB that information concerning required documents was only sent to him little by little. Even though he applied for the visa and indicated that he intended to undergo hospital treatment in September 2016, he was only informed in February 2017 that he had to present a guarantee from the hospital. The AOB determined maladministration in this case. Seeing as visa applications for medical treatment are often made to the Austrian embassy in Amman, this information could be provided to the applicants routinely and quickly.

### **2.3.2 Problems with maintenance payments from the USA**

Minors have to wait  
for payments

Around 30 minor recipients of maintenance who have to receive maintenance payments from the USA are confronted with a seemingly grotesque problem for the 21<sup>st</sup> century. Due to practical problems in payment transactions, the minor children in Austria have been waiting for the urgently needed maintenance for more than a year.



The default of payment is attributable to the US dollar cheques issued by the authorities in the USA which can no longer be cashed at Austrian banks.

The AOB addressed the problem by taking on an individual case in which two minor children were entitled to maintenance from their father who was resident in Rhode Island. The maintenance payments were not settled directly between the father and the mother as representative of the two children, but are processed through the competent authorities in which case the Federal Ministry of Justice (now Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice) acts as “central authority” within the framework of international maintenance conventions in Austria. The competent authority in Rhode Island in this case issues US dollar cheques after receiving payment from the father. Most of the states in the USA prefer this procedure as do Canada, New Zealand and Australia.

The Austrian banks refuse to cash these cheques. The BAWAG P.S.K. communicated that no more checks would be accepted from 1 June 2016. The reason was that the US banks have stopped accepting cheques from foreign countries, and the cheque service with BAWAG P.S.K. had thus been cancelled. Attempts to find a solution have failed at other banks too.

US cheques cannot be cashed in Austria

Both the (former) Federal Ministry of Justice and the Federal Ministry of Finance as well as the AOB went to great efforts to find a solution to this problem. The Federal Ministry of Finance tried on an international level in particular to convince the foreign authorities to change the terms of payment. This appears to work in part – in some states of the USA. However, until there is actually a change in the procedure used by the authorities in all of the states in the USA and also in Canada, Australia and New Zealand, fast and un-bureaucratic support from the Federal Ministry for Europe, Integration and Foreign Affairs is required.

An advance by the Federal Government within the framework of the Advance Maintenance Payments Act (*Unterhaltsvorschussgesetz*) can be ruled out. The condition for an advance is that no maintenance is paid. But the obligor makes his payments which, however, are rendered useless for the minor maintenance recipients by the issuing of the checks.

One possible solution is the cooperation of the Austrian embassies in the USA (e.g. Washington). It is possible both from a technical and staffing point of view to cash the US dollar cheques through accounts in the USA and then transfer the payments to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice in Austria. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice would then distribute the money to the maintenance recipients resident in Austria. The AOB already recommended this solution to the Federal Ministry for Europe, Integration and Foreign Affairs several times.

Solution would be possible with Federal Ministry

## 2.4 Interior

### 2.4.1 Asylum and immigration law

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

2,175 complaints about length of proceedings

In 2013, 58 persons complained about the length of asylum proceedings before the Federal Office of Immigration and Asylum (*Bundesamt für Fremdwesen und Asyl*). After a successive rise, the number of complaints reached a record peak in 2017: a total of 2,175 asylum seekers complained about the length of their asylum proceeding before the Federal Office for Immigration and Asylum. The AOB had to process this substantial number of complaints without additional personnel – 730 complaints more than in 2016.

In 2017, 372 complaints related to proceedings that were pending since 2016. 1,635 complaints related to proceedings from 2015, and 79 complaints to proceedings from 2014. In 501 cases, the affected persons or the Federal Ministry of the Interior informed the AOB of the completion of proceedings the length of which had been investigated by the AOB.

The Federal Ministry of the Interior has been regularly informing the AOB for quite some time about the completion of asylum proceedings the length of which was the subject of complaints. The following completion figures were announced: 2017: 2,175 complaints, 996 proceedings concluded; 2016: 1,445 complaints, 927 proceedings concluded. In 2015, 745 complaints were filed with the AOB; in 2014, 228 complaints and in 2013, 58 complaints. The AOB only received feedback on the closure of proceedings of complaints from these past periods from the asylum seekers themselves.

„Oldest“ proceeding pending since 2010

The longest lasting proceeding in the period under review related to a Turkish asylum seeker and began in 2010. The Federal Ministry of the Interior stated that the proceeding is “very complex”, but conceded that there had been failings on the part of the authorities. Two proceedings that were open since 2011 related to a woman from Russia – the Federal Ministry of the Interior stated that the reason was a “medically complex situation” – and a man from Iran. In the case of the man from Iran, the Federal Ministry of the Interior promised that the proceeding would be “closed soon”. In a proceeding pending since 2012 relating to a Chechen family, the Federal Office for Immigration and Asylum progressed with a few steps, but only closed it in the course of the investigation by the AOB in 2017.

Asylum seekers from Afghanistan filed the most complaints (621). The second largest group of complaints came from Iran (419) and the third largest from Iraq (413). Many complainants came from Syria (181) and Somalia (163); others came from Russia, Pakistan, Turkey and other countries.

Most of the complaints filed with the AOB were against the Regional Directorates of Vienna (949) and Upper Austria (535). The number of complaints filed against the Regional Directorates of other *Laender* were distributed as follows: Tyrol – 256; Lower Austria – 234; Styria – 73; Carinthia – 17; Salzburg – 10; Burgenland – 10 and Vorarlberg – 4.

Citizens of Iran complained that the Federal Office for Immigration and Asylum prioritises certain nationalities and discriminates against other countries of origin. The AOB addressed this topic in an *ex-officio* investigative proceeding.

Preferential treatment of certain groups?

The Federal Ministry of the Interior informed that there is no prioritisation by nationality as a matter of principle. However, the law allows for exceptions in which the Federal Office for Immigration and Asylum is compelled to process asylum applications in a sequence (persons in detention pending forced return and from safe countries of origin; in the event of danger to the public order; in proceedings for admission). As citizens of Afghanistan represented the largest group of asylum seekers, the Federal Office for Immigration and Asylum set a priority in 2017, accompanied by measures in the area of training and qualification, the goal of which was to reduce the number of pending proceedings for Afghan citizens by 30 to 40%. According to the Federal Ministry of the Interior, this does not mean, however, that other groups are discriminated against. With regard to Iran, the Federal Ministry of the Interior stated that proceedings from this country of origin required more intense investigation because of the movement away from Islam or in favour of Christianity.

The Alien Law Amendment Act (*Fremdenrechtsänderungsgesetz*) 2016 resulted in changes to Section 22 (1) of the 2005 Asylum Act (*Asylgesetz*). As of 1 June 2016, the hitherto six-month decision-making period in effect was extended to 15 months until 31 May 2018. In addition to changes in the law, the personnel ratio in the Federal Office for Immigration and Asylum was increased considerably to 1,400 persons. A meeting between the AOB and the Directorate of the Federal Office for Immigration and Asylum indicated that the Federal Office for Immigration and Asylum plans to be able to conclude all proceedings on average within the legal six-month period – provided there is no change in the law. Of the approximate 150,000 applications for asylum that have been filed since the beginning of 2015, the Federal Office for Immigration and Asylum had already completed three quarters by the end of September 2017. According to the Federal Ministry of the Interior, some 40,000 proceedings were pending at the Federal Office for Immigration and Asylum in November 2017.

Clearance of backlog by mid-2018

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

Noticeable increase in complaints compared to previous year

The number of complaints by asylum seekers about the length of their appeal proceedings decreased in recent years: from 974 in 2014 to 152 in 2016. In 2017, the number of complaints rose to 265. The AOB found that in 78% of these cases (207), 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. The deadline for issuing a decision was six months for the Federal Administrative Court until 31 October 2017. This has been extended to twelve months since 1 November 2017 (Section 21 (2b) BFA Procedure Act). According to the current legal situation, a six-month decision deadline should apply again as of 31 May 2018.

Most of the complaints were made by asylum seekers from Afghanistan (106) and Somalia (67). Others came from Iraq, Iran, Syria, Bangladesh, Nigeria and other countries.

„Oldest“ proceeding dates back to 2012

42 complaints related to proceedings pending since 2017, and 162 complaints related to proceedings pending since 2016. 35 persons complained about proceedings pending since 2014 and six persons complained about proceedings pending since 2014. Four complaints were related to proceedings pending since 2012. These complaints were made by citizens of Albania, Somalia, Mali and Afghanistan. The Federal Administrative Court concluded the proceedings of the asylum seekers from Albania and Mali in 2017.

The Federal Administrative Court has been regularly informing the AOB of the closure of proceedings that were the subject matter of AOB complaints (previously, this was done by the Asylum Court). The following completion figures were announced: 2017: 265 complaints, 69 proceedings concluded; 2016: 152 complaints, 92 proceedings concluded; 2015: 238 complaints, 115 proceedings concluded; 2014: 974 complaints, 447 proceedings concluded; 2013: 683 complaints, 368 proceedings concluded.

### 2.4.1.3 Federal support for asylum seekers

An application for asylum is usually filed with the police (public security officers). After initial questioning, the police ask the Federal Office for Immigration and Asylum 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. After admission to asylum proceedings in Austria, the asylum seeker is transferred to a facility that provides reception conditions under the Basic Provision Agreement in one of the *Laender*.

In 2017, a commission visited the Federal Support Facility East in Traiskirchen which serves as an initial reception centre. Even though the investigation was not fully complete at the time of finishing this report, the AOB criticised the lack of hygiene in the residential and sanitary areas of House 4 in which persons with serious physical and health impairments are accommodated. Fortunately, the Federal Ministry of the Interior promised not only a general refurbishment of House 4 but also repair work in the other houses. The dilapidated furniture and fittings are to be replaced successively. The Federal Ministry of the Interior also promised stricter inspection of the cleaning.

Support Facility East in  
Traiskirchen

The AOB criticised that the social support staff in the Support Facility East were called in to help in translating at appointments with the local psychologists. The confidentiality of the appointment with the expert is compromised in such cases. The AOB thus recommended the Federal Ministry of the Interior to call in professional interpreters at psychological defusing meetings.

An inspection of the medical care showed that asylum seekers were quickly administered addictive medication without a diagnosis and sufficient justification. The operator assured that it would quickly take measures to heighten the awareness of the medical staff and initiate additional training.

On the positive side, the AOB observed that in the Federal Support Facility East unaccompanied minor refugees – other than in previous years – no longer have to wait months for allocation to a suitable federal or *Laender* facility, but just 21 days on average.

The inadequate accommodation and support of unaccompanied minor refugees is a matter of great concern to the AOB. For this reason, a commission visited the Steinhaus am Semmering Special Care Facility. The AOB criticised using other residents with pertinent language skills as interpreters in medical examinations and calling in social support staff as translation aids in medical examinations and psychological defusing meetings. The AOB also voiced criticism of the lack of a support concept, missing qualified caregivers for administering medication, scarcity of native-speaking caregivers as well as the lack of room keys and lockers to prevent theft.

Steinhaus am  
Semmering Special Care  
Facility

Directly after the investigative proceeding was initiated, no more residents were called upon to act as interpreters in the special support facility and it was promised that the deficits would be removed. The Federal Ministry of the Interior only refused the recommended deployment of professional interpreters in psychological defusing meetings and medical examinations. In conclusion, the Ministry mentioned in its statement that the support facility has not been used for unaccompanied minor refugees since the summer of 2017.

The Finkenstein Special Care Facility is an example of how the support of unaccompanied minor refugees can be well organised. The well-structured daily plans were exemplary as were the individual support by the caregivers

Finkenstein Special Care  
Facility

with a high staffing ratio, the existing activity pass model, integration of volunteers, access to information, deployment of interpreters and good medical care.

#### 2.4.1.4 Delays in family reunification

Pursuant to the Asylum Act, spouses, unmarried minor children and the parents of an unmarried minor child are considered “family members”. These family members of persons who are eligible for asylum and beneficiaries of subsidiary protection can file applications for entry with an Austrian representation abroad. If the Federal Office for Immigration and Asylum informs the embassy that the family members will likely be granted the same protection status as the reference person, the embassy has to issue them visa(s) to enter the country.

30 complaints about  
Federal Office for  
Immigration and Asylum

For years, the AOB has been objecting that the Federal Office for Immigration and Asylum prevents or delays the entrance of family members (see Annual Report 2016, p. 64). However, Article 8 of the UN ECHR requires the state to effectively respect family life. In 2017, 30 persons complained about the amount of time taken to reunite families in accordance with the Asylum Act. Eleven of these were justified.

Tardy proceedings

The AOB considers meticulous clarification of whether those filing applications are actually family members to be important. Experience shows that time-consuming investigations are necessary in some family proceedings. However, the Federal Office for Immigration and Asylum should avoid unnecessary delays in order not to impermissibly interfere with the legally guaranteed right to family life.

Very long time for  
predictive decision

In the case of a Somali applicant, there was still no predictive decision from the Federal Office for Immigration and Asylum for the applied entry visa after 15 months of processing. In the course of the initiated investigative proceeding, the Federal Office for Immigration and Asylum maintained that the long period of time was due to the work-intensive processing required. In the end, the embassy in Addis Ababa was only able to issue the visa 22 months after the application was filed.

The AOB also determined a substantial delay in another investigative proceeding. Directly after receiving the applications for an entry visa in the embassy in Teheran, the Federal Office for Immigration and Asylum questioned the family member resident in Austria. However, the Federal Office for Immigration and Asylum only requested the Federal Ministry of the Interior twelve months later to provide information on whether public interests would oppose the entry of the foreign applicant. Despite the speedy response by the Federal Ministry of the Interior, the requested entry visa was finally issued, 21 months after the application.

In one family proceeding, the Federal Office for Immigration and Asylum was not able to present any progress in the investigation nine months after the application had been made. After initiation of the investigative proceeding, the Federal Office for Immigration and Asylum promised to forward the probability analysis required for concluding the proceeding to the embassy in Ankara within three months.

In a family reunification proceeding that has been pending for over ten months, the Federal Office for Immigration and Asylum remained inactive for four months after receiving the entry applications and then only hesitantly processed the steps. Additional delays were incurred by a change of the contact person, for which the authority could not be held responsible. Fortunately, the Federal Ministry of the Interior promised that the probability analysis would be submitted soon.

#### **2.4.1.5 Delays in issuing residence permits on humanitarian grounds**

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 factors worthy of consideration.

In 2017, the AOB observed substantial delays in several residence permit proceedings relating to granting permits for reasons set forth in Article 8 ECHR. The Federal Office for Immigration and Asylum rightly suspended the proceeding of a father due to legal criminal proceedings. The AOB criticised, however, that the application for a residence permit by the wife and the children were not processed for over a year. In another case, the Federal Office for Immigration and Asylum made no progress in the proceeding for 13 months. The Federal Office for Immigration and Asylum also clearly missed the legal decision deadline in a residence permit proceeding on humanitarian grounds that has been pending since June 2016. The Federal Ministry of the Interior justified the time taken by stating that extensive investigation was required to solve complex legal issues.

Federal Office for Immigration and Asylum delays proceedings

In two residence permit proceedings for grounds worthy of consideration, the AOB objected that these had still not been concluded after two years and five months. The AOB determined that the Office for Immigration and Asylum had remained inactive for months. The Federal Ministry of the Interior explained that the reason for the delay was the high workload at the Federal Office for Immigration and Asylum and promised that the proceedings would be concluded soon.

Federal Office for Immigration and Asylum takes two and a half years for decision

In another residence permit for grounds worthy of consideration lasting 21 months, the Federal Ministry of the Interior conceded that the authority had first mistakenly assumed that the affected person had a right of residence pursuant to the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*). Fortunately, the Federal Office for Immigration and Asylum initiated steps to the still ongoing investigative proceeding in order for the private and family life to be subsequently taken into consideration.

#### 2.4.1.6 Delays in proceedings for obtaining residence permit

In general, the residence authorities are responsible for proceedings for obtaining a residence permit. Examination of many proceedings shows that the competent authorities do not always perform these expediently. Delays, however, are often caused when the Federal Office for Immigration and Asylum has to make statements or conduct investigations under the Aliens Police Authority.

Federal Office for Immigration and Asylum only replies after months

In one residence permit proceeding, the municipal department MA 35 obtained an Aliens Police Authority statement for legally binding convictions from the Federal Office for Immigration and Asylum shortly after the application had been filed. The AOB determined that Federal Office for Immigration and Asylum needed more than seven months before answering the authority responsible for residence permits. MA 35 also took no steps during this period, thus contributing to the delay in the proceeding. The Federal Ministry of the Interior regretted the non-timely processing of the query and explained the same with the high workload in the Federal Office for Immigration and Asylum. The AOB criticised the inactivity of both authorities.

In yet another proceeding, MA 35 suspected a marriage of convenience and forwarded the file to the Vienna Police Department for inspection. The Aliens Police Authority has three months for its investigation as a general rule. If the Authority needs more time for the investigation, it has to notify of this in time, and the deadline is extended by two months. In the case in question, there was no extension of the deadline because MA 35 received no notification from the Vienna Police Department. The AOB objected to the delay in the proceeding.

Inadequate cooperation between the authorities

Investigation of one complaint showed that there was a different understanding of the scope of cooperation with the respective other authority between the Federal Ministry of the Interior and MA 35.

Mr N.N. applied for an extension of his residence permit at the end of April 2015. MA 35 immediately consulted the Schengen Information System (SIS) which is used to maintain information for the police in most European countries on wanted persons and missing property. There was an exclusion order for Italy against the applicant in the SIS. MA 35 thus requested the Federal Ministry of the Interior on the same day to inform it of the reasons for the SIS entry.



The AOB determined that MA 35 waited over ten months before it followed up on its request to the Federal Ministry of the Interior. The Ministry of the Interior reacted to this prompting at the end of March and informed MA 35 about the deletion (which had taken place months previously) of the SIS entry by the Italian authorities. The AOB thus requested the Federal Ministry of the Interior to name the reasons for the delayed response to MA 35.

The Federal Ministry of the Interior replied that it had requested information in relation to the SIS entry from the Italian authorities one day after receiving the query from MA 35. The Italian authorities did not reply to the query by the Federal Ministry of the Interior. However, after viewing the SIS in July 2015 – a few weeks after the query by MA 35 – it was evident that the entry had already been deleted.

In the opinion of the Federal Ministry of the Interior, MA 35 could have seen the deletion at any time by checking the SIS. For this reason and on the grounds of procedural economy, no special notification was sent to MA 35.

Uncoordinated procedure

The tardy, uncoordinated procedure on the part of both authorities caused a considerable delay in the proceeding. The AOB therefore recommended improving the reciprocal exchange of information between the Federal Ministry of the Interior and MA 35.

#### **2.4.1.7 Failure to notify the forced return of a family**

During a visit to a facility, one commission criticised not having been notified of the forced return of a Syrian family to Slovenia. The AOB initiated an *ex-officio* investigative proceeding to find out the reason why it had not been notified and the circumstances surrounding the forced return.

An escort team is formed if the risk analysis conducted by the Federal Office for Immigration and Asylum shows that resistance can be expected in connection with a forced return. The team is made up of specially trained law enforcement officers who carry out so called problematic forced returns. The AOB must be notified of escorted forced returns so that it can observe and monitor the same.

The AOB did not criticise returning the family to the country responsible for their asylum proceeding. However, the investigative proceeding showed that the first attempt to transfer the family on 4 October 2016 failed and that handcuffs had to be put on the father when he was arrested on 9 October 2016. From the police report it was evident that one of the three children attempted to jump out the window during the arrest. The Federal Ministry of the Interior stated that there had been no mention of specific problems for the Federal Office for Immigration and Asylum during the forced return of the family.

Problems with forced return foreseeable

Incorrect decision by the Office for Immigration and Asylum

The AOB objected to the decision of the Federal Office for Immigration and Asylum to carry out an unaccompanied forced return after the initial failed attempt. The forced return was not carried out by a specially trained escort team, there was thus no notification of the AOB and the forced return could not be monitored.

#### **2.4.1.8 Problems with issuing an alien's passport**

Lengthy proceeding

A beneficiary of subsidiary protection contacted the AOB at the beginning of 2017. He complained about the length of the proceeding for his application for an aliens' passport which had been pending at the Federal Office for Immigration and Asylum, Upper Austria Regional Directorate, for two years. The applicant also complained that the authority had not returned his original identity card. He claimed to have repeatedly pointed out that he needed the document in proceedings with other authorities.

The AOB determined that the applicant had requested to have his date of birth, which had been incorrectly recorded during the preceding asylum proceeding, corrected in the passport procedure. The Federal Office for Immigration and Asylum then requested that he present his original birth certificate. The applicant only presented the identity card after five months. However, the Federal Ministry of the Interior conceded that the Upper Austria Regional Directorate only forwarded the document to the Police Department of Upper Austria three months later for what was ultimately a negative authenticity check.

Document was temporarily lost

The AOB also determined that the Police Department of Upper Austria mistakenly returned the examined document to the wrong organisational unit of the Federal Office for Immigration and Asylum. The Federal Ministry of the Interior regretted that the document was thus temporarily in breach and the passport only issued in spring 2017.

#### **2.4.1.9 Convention travel document - length of proceedings before the Federal Administrative Court**

In December 2016, a person eligible for asylum contacted the AOB requesting help, as the Federal Administrative Court had not taken a decision yet on his complaint of March 2015. The Federal Office for Immigration and Asylum had turned down his application for a Convention travel document (passport issued based on the Geneva Refugee Convention) per official notice.

Federal Administrative Court remained inactive for two years

A legal six-month decision deadline applies for the Federal Administrative Court. The AOB criticised that the Federal Administrative Court had made no progress in the proceeding in almost two years. The statement of the Court also did not indicate when the proceeding would be concluded.

## 2.4.2 Police

### 2.4.2.1 Violence prevention and victim support after serving a prohibition to enter the common home

In December 2016, the AOB learned from reports in the media that a man had murdered his wife in Vienna. In January 2017, a man seriously injured his 26-year-old ex-partner with a knife. In both cases, a prohibition to enter the common home had been previously served on the subsequent perpetrators. The security authorities at least were aware of a potential risk to the victims. The AOB therefore took these two tragic incidents in Vienna and Graz as a reason for initiating an *ex-officio* investigative proceeding.

The guarantee of effective violence protection for women is urgently needed. Every fifth woman from the age of 15 becomes a victim of physical or sexual violence in Austria. On average, up to 25 women in Austria are murdered by their partner every year. A prohibition to enter the common home has often been served by the police on the perpetrator before the violence act. The subsequent perpetrators in these cases had been forbidden by the police to enter the common home (see also chapter 2.1.2 on “Protection against violence for women and children must be expanded extensively”)

Violence despite prohibition to enter the common home

The Federal Ministry of the Interior gave a detailed statement on the case in Vienna. After a thorough investigation, the AOB found no wrongdoing on the part of the police, but identified the need for improvement in the way they handle victim support in cases of domestic violence.

The risk assessments made by victim support facilities and intervention centres should be given very high priority in police work in the opinion of the AOB. Cooperation between the police and victim support facilities and intervention centres such as the MARAC Alliance (Multi-Agency Risk Assessment Conference) in Vienna should also be expanded.

Assessments from victim supports facilities important

The MARAC Alliance for the prevention of serious and repeated violence has existed in Vienna since 2011 under the coordination of the Vienna intervention centre against violence in the family. These multi-agency case conferences for high-risk situations – including representatives from the police amongst others – undoubtedly represent an important mechanism for the protection against violence for women. In these conferences, it is imperative that the police maintain a way of handling information from the intervention centres that has to be taken seriously. This is vital for avoiding further acts of violence. The case in Vienna was also the subject matter of a MARAC meeting. The AOB could not conclusively ascertain whether the security authorities had undertaken everything to prevent more violence and the death of the woman in this case.

As is evident in the statement made by the Federal Ministry of the Interior, the collaboration between the security authorities and the local competent victim support facilities was very close and cooperative. In many cases, there was a relationship of trust between the representatives of the victim support facilities and the endangered persons. Endangered persons are often more likely to inform the representatives of the facilities about the behaviour of attackers than law enforcement officers.

The AOB shared the view of the Federal Ministry of the Interior according to which victim support facilities receive important information from the endangered persons which is often not accessible for the law enforcement officers. Victim support facilities also have considerable and vital expertise on assessing the danger potential of suspected perpetrators.

Professional cooperation  
with courts and public  
prosecutor's office

Good, professional cooperation between the police and other state institutions such as the courts and the public prosecutors' office is essential for the effective prevention of violence in the opinion of the AOB. The public prosecutors' office and the courts are dependent on profound investigations by the police and the complete disclosure of the relevant results when assessing the danger potential of suspected perpetrators.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, in short Istanbul Convention, has been in force in Austria since 1 August 2014. The convention contains far-reaching obligations for prevention, for the protection of victims and effective prosecution. Austria was one of the first countries to be inspected by the Council of Europe body of experts, the Group of Experts on Action against Violence against Women (GREVIO), on its implementation of the Convention.

The GREVIO Report in which the situation regarding the combating of violence against women was analysed and improvements demanded was published in September 2017. It criticised the often inadequate and poor cooperation between the police, public prosecutors' office and the courts. Above all, an improvement in the investigative procedures is demanded, in particular with regard to gathering and securing evidence which is a necessary condition for assessing the danger potential.

Comprehensive  
forwarding of  
information by police

The AOB considers it imperative that the police forward all of the information for assessing the danger potential to the public prosecutors' office and the courts with a view to imposing custody or a restraining order.

### 2.4.2.2 Handling allegations of abuse

An NGO informed the AOB about allegations against the police in dealing with a potential abuse victim. The AOB initiated an *ex-officio* investigative proceeding.

The affected person reported the alleged abuse accompanied by a trusted person at Spratzern police station. He was allegedly abused by police officers at Spratzern police station during questioning as the suspect of a theft. Officers had allegedly threatened and beaten him. He was also forced to clean his own blood off the floor. A police officer then questioned the man on the allegation of abuse and also on the suspicion of theft.

The Federal Ministry of the Interior stated that the police had already forwarded the allegation of abuse to the public prosecutors' office before the investigative proceeding of the AOB. The question as to whether or not there actually had been abuse would have to be clarified by the public prosecutors' office.

The allocation of the public prosecutors' office to the justice department under constitutional law prevents the AOB from investigating its work. However, the AOB criticised the fact that the police questioned the potential abuse victim about the theft while registering the abuse complaint. During police questioning, the role in which the person is being questioned must always be made clear to him/her. In connection with the respectively guaranteed rights, it makes a difference whether someone is questioned as a witness, a victim or a suspect.

Different rights for victims and suspects

The AOB also emphasised to the Federal Ministry of the Interior that the police should inform potential victims of abuse about the possibility of receiving confirmation of the complaint pursuant to Section 66 (1) (1a) of the Code of Criminal Procedure (*Strafprozessordnung*). As potential victims of police abuse might have inhibitions about filing a complaint with the police themselves, the police should draw their attention to this possibility voluntarily.

Confirmation of complaint for victims

### 2.4.3 Individual cases

#### Civil register - entry for inter-gender persons

The increase in reports in the media about persons who from birth can be assigned to neither the female nor male gender, but have both sexual characteristics prompted the AOB to initiate *ex-officio* investigative proceedings. The level of suffering of these persons is immense and is exacerbated by the legal situation regarding the civil register and the way in which they are handled from a medical perspective (see also section "Human rights violations through premature sex assignment operations" in chapter 2.2.1.2).

The Federal Ministry of the Interior contacted by the AOB in this context stated that it shares the legal view of the Regional Administrative Court of Upper Austria according to which there is no legal basis for entering an additional gender category. The Ministry added that an amendment of civil status law could not pre-empt but rather only complement potential legal political developments relating to the introduction of an additional gender. The Federal Ministry of the Interior is open to a discourse on the situation in society as a whole and on the rights of inter-gender persons.

Civil status law does not regulate designation

From the point of view of the AOB, civil status law contains no provision that stipulates the (exclusive) entry categories “male” and “female”. It must, however, be conceded that the Austrian legal system is based on these gender categories in a wide range of areas. Nevertheless, the legal opinion iterated by the Regional Administrative Court of Upper Austria (LVwG OÖ 5.10.2016, LVwG-750369/5/MZ/MR) and shared by the Federal Ministry of the Interior is not compulsory, as civil status law does not preclude the entry of another gender category.

Historically speaking, the importance attached to the self-determination of the affected persons has varied considerably in the course of time. There have always been inter-gender persons and their status was sometimes given more consideration in legal history than it is today. There were provisions for hermaphrodites for example in the Digesta of Ulpian dating from 533, through the Civil Code of the Duchy of Bavaria from 1756 to the Saxon Civil Code from 1865 (see in detail the statement of the German Ethics Council from 2011). Contemporary civil status law does not accommodate the term “hermaphrodite” or “multi-gender person”; however, it does not define the gender as “male” and “female” either.

German Federal Constitutional Court pioneering

The legal system of the Federal Republic of Germany took a first step in 2013 and allowed inter-gender persons to dispense with an entry in the civil status register (entry of civil status case without “male” or “female” categorisation) if the gender assignment is not clear. In a resolution of 10 October 2017, No. 1 file 2019/16, the German Federal Constitutional Court, however, considered not only this regulation which had been stipulated in German civil status law since 2013 to be discriminating, but also demanded the possibility of entering an additional gender category.

Austrian Constitutional Court to decide in 2018

An affected person lodged a complaint against the decision of the Regional Administrative Court of Upper Austria with the Constitutional Court of Austria. The President of the Constitutional Court of Austria confirmed the pending proceeding to the AOB and advised of a decision in 2018. In light of the existing resolution of the German Federal Constitutional Court and the media coverage of the difficult circumstances under which those affected have to live, the AOB recommended that the Federal Ministry of the Interior should now start dealing with this topic and not wait for the decision of the Constitutional Court of Austria.

The AOB also informed the Federal Ministry of the Interior about a working group in the (former) Federal Ministry of Health including the participation of affected persons that deals with the medical aspects in particular. From the AOB's point of view, it is advisable that the Federal Ministry of the Interior participates in order to contribute considerations from the legal civil status context.

## 2.5 Constitutional affairs, reforms, deregulation and justice

### 2.5.1 Legal guardianship

In the period under review, 218 complaints relating to legal guardianship were submitted to the AOB either in person on consulting days, in writing or by telephone.

As an *ex-post* control body for the public administration, the AOB cannot provide the desired assistance, as legal guardians are appointed, replaced or removed by court orders.

A large number of queries dealt with the 2<sup>nd</sup> Adult Protection Law (*Erwachsenenschutzgesetz*) with which legal guardianship law was completely reformed and which will come into effect as of 1 July 2018. The Adult Protection Law focuses on the autonomy, self-determination and help in making decisions for the affected persons. The objective is to maintain the autonomy of every person for as long as possible, to support them occasionally with their affairs and to refrain from making decisions without first consulting them. To this end, four hierarchical forms of representation are planned depending on the level of support the person needs. Close relatives are included in an appointment procedure. In the future, lawyers and notaries can only take on more than 15 representations if they are registered in the "List of specially qualified lawyers and notaries". This list is managed and monitored by the professional chambers. The continued necessity of adult representation for the affected persons must be examined every three years.

Adult Protection Law

The AOB hopes that with the coming into force of the Adult Protection Law many of the cases mentioned in the following will no longer occur.

As in previous years, in most cases the affected persons or their close relatives contacted the AOB. The reasons for complaint were comparable to those in recent years. Predominantly, criticisms were aimed at the legal guardianship itself, expert opinions obtained to this end as well as too little influence of family members when professional legal guardians are appointed. Many persons complained that not enough money was provided, even when high

Points of criticism regarding decision for legal guardianship similar to previous years

income, pensions and savings were available. There were complaints that legal guardians made arbitrary decisions regarding the property of the affected persons. Restrictions to the way those affected were accustomed to living their lives resulting from the legal guardianship were also the subject matter of complaints.

Lawyers as legal guardians

Many complainants criticised the derogatory treatment they felt they received from the law firms of the professional legal guardians. It was perceived as humiliating to have to “chase” pocket money because these firms had paid no money for weeks or could not be reached during holiday periods. Complaints were also filed because of the failure to comply with the prescribed monthly contact. The reason for this neglect was suspected amongst others to be the large number of legal guardianships taken on, in particular by law firms specialised in this field. This year too, the criticism affected lawyers who are well known to the AOB. According to information from the Federal Ministry, there is, in spite of the Federal Electronic File Management System, regrettably still no central register of the legal guardianships taken on.

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. 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.

Contact refused

A mother complained that the father had been appointed legal guardian of her now adult son, the custody for whom had been given to the father against her will. She complained about what she perceived as the neglect of her son and refusal of any contact.

A Viennese doctor who lives in the same house as her elderly parents albeit in separate apartments criticised the orders issued by the legal guardian of her mother. He forbade her from maintaining regular contact with her parents. She may only enter her parents’ apartment on birthdays and at Christmas if the caregiver is present. She is powerless against the court and the legal guardian. She was even threatened with an eviction proceeding if she failed to comply with the instructions of the legal guardian.

Financial conduct

An Upper Austrian had inherited a house and several properties from his father many years ago. He was subsequently placed under legal guardianship. He complained that his legal guardian wanted to sell the house against his will as she was of the opinion that her ward needed money. However, there is a pending re-zoning proceeding for several of his properties. It can thus be assumed that a higher price could be achieved if they were sold at a later point



in time. His complaint was also against the fact that the court consented to the sale of the house.

A medical officer of health who had gone into retirement for health reasons and his partner criticised both being placed under legal guardianship on the initiative of their own children and, in particular, that the preceding legal guardian had since his release performed no accounting, had not forwarded the post for almost a year and prior to that had not paid the leasing instalments for the car. Furthermore, he had blocked the couple's telephone for international calls.

The daughter of a 72-year-old pensioner from Lower Austria had applied for legal guardianship for her mother as she was suffering from advanced dementia. She feared that the lawyer who had been appointed legal guardian for her mother wanted to sell her mother's apartment and place her in a retirement home despite the woman having made the apartment accessible for persons with disabilities as a precautionary measure.

A lady who was granted ownership of her grandmother's apartment against usufruct years ago complained about the former legal guardian of her relative. The grandmother had been living in a nursing home before she died. Shortly before her death, the legal guardian had rented out the apartment indefinitely in order to guarantee the cost of additional therapies in the nursing home. The lady criticised that this was equivalent to expropriation and that the rental income from a fixed-term contract would have been sufficient to cover the therapy cost. Furthermore, as owner of the apartment she had received neither the lease nor the deposit and outstanding monthly rent from the legal guardian of her dead grandmother.

A very elderly lady from Vienna, who had taken care of herself all her life, complained to the AOB about having been placed under legal guardianship and housed in a sheltered residential facility. Most of the other residents there suffered from dementia or similar illnesses and were thus unsuitable company for her. She wants to spend the end of her life self-determined and under her own roof. However, her apartment had since been sold.

Inadequate  
safeguarding of  
interests

An office-based doctor contacted the AOB because an almost 90-year-old patient had been living in a home for about three years. She claimed that the legal guardianship for the lady had been initiated by her sister who, according to the patient, was trying to gain ownership of her house. The patient was still well able to orientate herself, which made the placement in a home and legal guardianship questionable. The current results of an examination by a psychiatrist confirmed this. After querying the case in court, she was informed that the home would have to provide a statement indicating that the legal guardianship is not necessary. The home is, however, not prepared to do this because the sprightly old lady would then move out immediately.

The wife of an academic who was temporarily placed under legal guardianship after having a stroke and after subsequent stay in hospital criticised that the former legal guardian still opened post addressed to her husband even after the legal guardianship had ended. An income tax assessment issued after an application for an employee assessment was not forwarded to her husband either.

An academic from Vienna criticised that the interests of her mother who owned several properties were not adequately taken into account by the legal guardian. For example, no legal steps were initiated against rental nomads.

## 2.5.2 Changes to return proceeding for children

Due to the increase in cross-border marriages and relationships, there is also a regrettable rise in the number of kidnappings. These return proceedings must be processed with urgency and without delay in accordance with the relevant regulations. And still practice shows that these proceedings often take too long.

Working group in the  
Ministry of Justice

The Federal Ministry set up a working group in which the AOB participated in order to achieve improvements, in particular expediency in the proceeding for the child's wellbeing. The amendments stipulated in the Non-Contentious Proceedings Act (*Ausserstreitgesetz*) came into effect on 1 September 2017.

Changes in the law

It is also stipulated that the order to return the child and execute the same are included in one and the same court order. Conditional obligation and enforceability are linked with this decision. However, the court can preclude this if the child's wellbeing would be otherwise at risk depending on the circumstances of the individual case.

Furthermore, simplification of the proceeding for those affected such as *ex-officio* translations of documents or the provision of legal aid are prescribed. The courts should also undertake measures to prevent the estrangement of the child from the parent left behind at every phase of the proceeding and determine visitation terms.

It remains to be seen how these changes in the law prove their worth in practice.

## 2.5.3 Penitentiary system and detention for mentally ill offenders

### 2.5.3.1 State of repair and infrastructure

#### Outdated building - Vienna-Favoriten correctional institution

During an excursion to the Vienna-Favoriten correctional institution as part of an international symposium on the topic of health care in detention, the AOB found confirmation of the structural deficits that were already known to it from the preventive work as NPM.

The building cannot be reached in a barrier-free manner. The ground and the way to the detention rooms are not level. The inner yard is completely paved; there is no green area and no plants.

No barrier-free accessibility

The sports and fitness room is not up to date. It consists of an ante-room and a room in which there is some fitness equipment. It is also used as a multi-purpose room (for Christmas parties, for example). In these cases, the heavy fitness equipment has to be moved aside. The room can only be aired after it has been used. The windows can only be opened if the bars on the inside are unscrewed.

Cramped conditions

The visiting area is also very cramped. There are window visits only, in which case there are five places directly beside each other.

The construction of a department for entry diagnostics or a type of clearing centre is planned in a currently unused area of the correctional institution. This assessment department is designed to make treatment recommendations for detainees who are suffering from a narcotics-related addictive illness and to facilitate allocation to a suitable facility.

It appears to be questionable in how far this part of the building can be used for the purpose of assessment in the future, as the detention rooms are very small. Two bunk beds are positioned transversely under a porthole into which the window is inserted. There is a tiny table attached to the wall with a chair. There is a second chair on the only box that cannot be locked.

Tiny detention rooms

There is only a small sink with running water in the detention rooms. WC and shower are located at the end of the corridor. There are two WCs and one shower for 18 detainees whereby two shower heads are attached beside each another. There is no partition or screen. The kitchen is adapted to fit in a corner of the corridor area. The department was used as open detention to date meaning that the detainees were able to cook for themselves. There is no social room.

Corridor as common area

Placement of detainees awaiting diagnostic examination in this tract appears to be unsuitable.

### 2.5.3.2 Living conditions

#### Hygiene standards - Stein correctional institution

**Unhygienic hairdressing utensils** At an AOB consultation day in the Stein correctional institution, several detainees complained that the hairdresser's utensils (combs, razors, scissors, shavers) are not disinfected regularly. They claimed that this was worrying in light of the fact that some detainees suffer from contagious diseases.

The management of the institution replied that currently two inmates are working as hairdressers in the building. It was ensured that they were instructed about hygiene and utensils by the manager when being prepared for the job. They were provided a spray bottle and disinfectant by the operations department. Additional disinfectant is provided if required and this is also documented.

**Regular disinfection** Both the condition and disinfection of the hairdressers' utensils must be monitored regularly. The affected prison guards reporting to the head of the work and operations department were reminded of this.

#### Excessive waiting time in a transfer detention room - Vienna-Josefstadt correctional institution

At a consultation day in the Vienna-Josefstadt correctional institution, an inmate complained that prisoners had to wait for up to two hours in a transfer room before they were collected before or after a visit and brought back to the department.

She described how she had to spend up to an hour with up to five other prisoners in this confined room. There is only a bench in the room on which there was space for a maximum of three (very slim) persons. More people either have to stand or sit on the floor.

**Stressful situation** As AOB staff ascertained on a visual inspection, the room has neither a window nor sanitary facilities and is exceedingly cramped. The situation is extremely stressful for persons suffering from claustrophobia.

**Up to eight people in extremely confined space** Inmates reported that eight of them had to spend a long time in the waiting room. Allegedly, it has also happened that one person was "forgotten" and not collected. The affected persons would like to be brought back to the department quicker after visits.

The management of the Vienna-Josefstadt correctional institution answered that inmates brought forward for visits only remain in the transfer detention room until a booth becomes available. Waiting time of two hours cannot be explained, as the visiting time is limited to 30 minutes per inmate. Therefore, even if the inmate is placed in the transfer room at the beginning of the visiting

time of one of the other inmates, the length of time spent in this room can be no more than 30 minutes.

What is mistaken here is that the period of time that has to be spent in the room after the visits is being primarily criticised. Due to staff shortages, the inmates have to wait until several of them can be brought back to the department. The waiting time described by the affected persons thus appears to be plausible. Waiting for escorts

Even if no improvement can be brought about with regard to the structural conditions in the foreseeable future, the AOB was able to effect a promise from the management of the institution that the amount of time spent in a room with no daylight and no fresh air will be as short as possible in future. Better organisation promised

### 2.5.3.3 Contact with the outside and access to information

#### Personal delivery of letters and parcels - Vienna-Mittersteig correctional institution

Several years ago, the AOB dealt with the fact that parcels for inmates could not be delivered personally to the Garsten correctional institution but had to be sent. The AOB pointed out then that the Post does not have a monopoly on parcel delivery. The obligation to use a parcel delivery service is not appropriate.

Last year, someone complained again that – this time in the Vienna-Mittersteig correctional institution – letters from private persons may not be delivered personally.

In principle, the Federal Ministry argued in the same way as in the investigative proceeding carried out in 2015. There is no information in the prison regulations stipulating that post has to be accepted by prison staff in the guard room. As the guard room is also often the location of the head of operations, it is not suitable for accepting letters or other deliveries directly. Furthermore, due to staff shortages it is not possible to accept post delivered by private persons. No new arguments

The obligation to avail of a delivery service is still unacceptable for the AOB. It should make no difference whether someone engages a delivery service or not. It is thus difficult to understand why private parcels cannot be delivered personally. The unequal treatment represents a case of maladministration. Maladministration in the prison administration

### Access to legal texts - St. Pölten correctional institution

No current legal texts An inmate of the St. Pölten correctional institution criticised that he has no access to the current version of the Penitentiary System Act (*Strafvollzugsgesetz*) and the Austrian Code of Criminal Procedure (*Strafprozessordnung*).

The AOB holds the view that the current version of the pertinent laws must be made available to the inmates. This can be in the form of books that can be borrowed from the library of the institution but also the cheaper printing of the text from the RIS, the Federal Government's legal information system.

This recommendation was implemented by the Federal Ministry. The management of the institutions will ensure in future that current editions are purchased or, if required, printouts from the RIS will be made and handed out.

### Surveillance of telephone calls - St. Pölten correctional institution

Generic announcement In the St. Pölten correctional institution, an announcement was made before all phone calls, that the telephone calls can be monitored or recorded due to technical reasons.

The Federal Ministry assured the AOB that conversations with persons mentioned in Section 90b of the Penitentiary System Act including legal aids and support centres are not monitored under any circumstances.

Clarification necessary The AOB recommended informing all prisoners which conversations are not subject to surveillance.

### Visitor information - Innsbruck correctional institution

Link cannot be invoked Due to a complaint about the visiting time regulation from an inmate of the Innsbruck correctional institution, it was determined that the "Visitor information" link under the "Visiting times" item on the homepage of the Federal Ministry cannot be invoked.

Upon recommendation of the AOB, the homepage was updated such that the detailed visitor information including the visiting times can be viewed again.

### 2.5.3.4 Privacy

#### Body search - Vienna-Josefstadt correctional institution

An inmate of the Vienna-Josefstadt correctional institution complained that he was subjected to a body search after completely undressing himself in the presence of a second inmate (see also chapter 6.5.6.2).

In its statement, the Federal Ministry explained that due to personnel and logistical reasons, the body search took place in such a way that two inmates standing with their back to each other in a corner of a transfer detention room respectively had to undress one after the other, and their belongings as well as their body were searched “as quickly as possible and without unnecessarily delaying the nakedness”.

Naked in front of other inmates

This type of procedure is in breach of the law according to which a body search combined with exposure has to take place in the presence of two officers of the same gender as the prison inmate and without any other prisoners and persons of the opposite sex being present. Furthermore, body searches must be carried out respecting the sense of honour and human dignity of the inmate.

Carrying out a body search in the presence of a second inmate in the same room even if each person was standing with their back to the respective other inmate in a separate corner violates the dignity of the affected person in the view of the AOB. One feels indirectly exposed to the looks of the other inmate whether he is actually looking or not. Neither personal nor logistical reasons can justify the chosen procedure in the case in question.

Disregard for human dignity

It was also criticised that the searched persons had to fully undress without being given the possibility to do so in two steps. That they had to fully undress contradicts human rights standards. A body search can also be carried out in two parts.

Less invasive method recommended

On the occasion of this complaint, the AOB recommended that body searches in which those being searched have to remove their clothes be documented in writing due to their invasive nature. The purpose and accompanying circumstances of the search should be recorded in order to ensure the facilitation of subsequent investigations. The reason why fully undressing was considered necessary should also be documented.

Written documentation demanded

### 2.5.3.5 Security measures

#### Improper use of the specially secured cells - Innsbruck correctional institution

Punishment or protection? Due to an anonymous letter, an *ex-officio* investigative proceeding was initiated on the use of specially secured cells in the Innsbruck correctional institution. In the letter, concern was expressed that placement in specially secured cells (pursuant to Section 103 (2) (4) Penitentiary System Act) in the Innsbruck correctional institution is used excessively as a “pedagogical measure”. There was strong criticism of the fact that inmates were moved to specially secured cells even if the specialist services ruled out the possibility of self-harm and/or harm to third parties.

After examination of the documents provided by the Federal Ministry on this matter, the AOB determined that both the frequency and the duration of the placement in specially secured cells is noticeably high at the Innsbruck correctional institution. It is true that the institution is a regional court prison with a capacity of 495 detention places. Nevertheless, the use of specially secured cells in some 50 cases during a four-month period appears to be higher than average.

Long period of time It was also noticeable that the placement in these cells did not only frequently last several days but in some cases a particularly long time (up to seven days).

Supervisory authority should provide clarity From the documents presented to the AOB, it was subsequently not possible to view the concrete circumstances surrounding all of the placements in detail. It thus remained open whether all of the placements in specially secured cells and the duration thereof were justified.

Due to the large number and long duration of placements, the AOB recommended the Federal Ministry to have the matter inspected by the supervisory authority and to ensure that there is no excessive use of security measures for disciplinary purposes in the future.

Standards promised This recommendation was implemented by the Federal Ministry. In addition, the definition of standards for detention pursuant to Section 103 (2) (4) Penitentiary System Act was promised.



### 2.5.3.6 Health care

#### Bottleneck in the forensic acute psychiatric ward in Vienna

With concern, the AOB took note that the forensic acute psychiatric ward in pavilion 23/2 of the Otto Wagner Hospital is to be closed in 2018. This is the only facility that is specialised in the treatment of detainees awaiting trial and prison inmates with acute psychiatric diseases. These persons would have to be admitted to general psychiatric wards in Viennese general hospitals which themselves are regularly overloaded and are not prepared for such patients.

Pavilion to be closed down

The closure of the pavilion was postponed until the end of 2018. What is still unclear, however, is where these difficult persons, some of whom are very quick to use violence, will stay.

Two medical specialists, an assistant doctor for psychiatry, a doctor on his clinical-practical year, two psychologists, a social worker, an occupational therapist and fifteen nurses currently work in pavilion 23/2. The ward has twelve beds. The service area covers the Viennese correctional institutions Josefstadt, Simmering, Floridsdorf, Mittersteig and Favoriten.

The Federal Ministry stated that Mauer Regional Hospital (around 120 km from Vienna) is being considered as an alternative to continue covering the existing care structure. A concept is currently being developed there on how acute psychiatric care can be guaranteed for convicts and detainees awaiting trial after the closure of pavilion 23/2.

Search for alternatives

In addition, talks are being held with operators of other medical facilities on possible complementary solutions.

The care concept mentioned was not available at the time of reporting. The AOB pointed out that in view of the long distance when the patient has to be transported to Mauer-Öhling, the possibility of being admitted to a facility in the Vienna area should be given priority. Hietzing Hospital would be a suitable option. It is part of the Vienna Association of Hospitals and would thus enable the medical and nursing staff from pavilion 23/2 to continue working there. Insofar as the Federal Ministry pointed out that Göllersdorf correctional institution is available for acute support care, it must be added that this correctional institution is almost 50 km away.

Long distance

#### Equipment of isolation rooms - Krems Regional Hospital

The AOB is notified about all suicides and attempted suicides in correctional institutions in a standardised manner. In this way, it learned that in September 2017 a detainee awaiting trial had attempted to take his own life in the isolation room of Krems Regional Hospital by cutting his forearms and throat with the

Cuts from a broken glass bottle

broken glass from a mineral water bottle. For the AOB, it was questionable why the inmate in the isolation room was given a breakable bottle.

The Federal Ministry stated in this connection that the detainee had been admitted to the closed ward of Krems Regional Hospital for inpatient wound flushing and pain therapy adjustment. He was placed in the so called isolation room there. This is a twin-bed hospital room that can be converted to a specially secured room if a special security measure is ordered. The behaviour of the detainee awaiting trial did not show any suicidal tendencies. He was therefore given mineral water in a glass bottle accordingly.

Plastic bottles in future In light of this incident, Krems Regional Hospital ordered that in future only plastic bottles will be available in the closed ward. A recommendation from the AOB was thus not necessary.

### **Treatment and care of terminally ill prisoners - Wilhelmshöhe correctional institution**

Terminally ill prisoners After the death of a critically ill inmate in the Wilhelmshöhe satellite facility of Vienna-Josefstadt correctional institution, the question arose for the AOB of how to appropriately deal with terminally ill prisoners whose life is close to an end.

No central register According to the statement of the Federal Ministry, the office of the medical superintendent refuses to maintain a list of persons in prison who are terminally ill for ethical reasons.

The AOB cannot follow this argument. From the AOB's point of view, such a list would be helpful in gaining an overview of the affected persons and thus being able to ensure close monitoring of their ability to remain in prison.

The Federal Ministry assured that the medical superintendent questions the senior doctors at the correctional institutions about the inmates at least once a quarter. In this way, it is determined if inmates have serious illnesses.

Reporting obligation The management and doctors of the institutions are required to inform the competent enforcement court if it can be assumed that inmates might not be fully capable of remaining in prison for health reasons. This information is also forwarded to the medical superintendent at the Federal Ministry.

Transfer to special hospital If the enforcement court does not consent to releasing the inmate or does not order alternative detention, the inmate is allocated to a special hospital.

Dying in freedom The release of inmates who are incapable of remaining in prison sometimes poses a challenge. The prison administration makes efforts to find individually adapted solutions for the affected persons. The management of the institutions has to rely on taking up contact with relevant care facilities in time in order to guarantee continuous care.

The office of the medical superintendent is also trying to intensify the networking of the judiciary in order to ensure an orderly release from prison.

The AOB recommended training for the staff in this context. The Federal Ministry stated that further training events in the area of palliative care are planned for the staff of Vienna-Josefstadt correctional institution and the Wilhelmshöhe satellite facility in autumn 2017. There is a cooperation with Caritas Socialis Rennweg hospice for this purpose.

### **Late bone density measurement - Vienna-Mittersteig correctional institution, Floridsdorf satellite facility**

A man who was in detention for mentally ill offenders complained to the AOB that he had been administered the medication Androcur for chemical castration since February 2013. Even though one of the typical side effects of this medication is osteoporosis, a bone density measurement had only been performed for the first time in June 2017 since the treatment was started. The initial symptoms of osteoporosis were actually diagnosed.

The Federal Ministry did not contest that the number of side effects associated with Androcur is considerable and can also include a reduction in bone density. As a change such as this – even with a low dosage – does not occur immediately or directly after the beginning of the therapy, a bone density measurement was only indicated after the vitamin D deficiency was diagnosed in June 2017.

Side effect on the medication

Vitamin D deficiency is very prevalent in the general population and can also cause osteoporosis. The medicament was discontinued for the affected man in August 2017 and vitamin D substituted. A correlation between a pending osteoporosis and taking Androcur cannot be ruled out with certainty, however, the medical superintendent considers a direct correlation between the diagnosis and a pending osteoporosis to be “unlikely”.

Nevertheless, the AOB recommended that even for a low dosage of Androcur in future a bone density measurement be performed after three years of prescribing and taking the medication regularly.

More frequent examination

The Federal Ministry fulfilled this recommendation. The search for a suitable testing institute was already underway at the time of reporting.

### **Local anaesthetics for dental treatment - Stein correctional institution**

An inmate of Stein correctional institution complained at a consultation day that he had not received a local anaesthetic prior to root canal treatment. The AOB consulted the competent dentist in the correctional institution. The topic of reimbursement of the cost for local anaesthetics was also discussed in this context.

- Injection not always free** A local anaesthetic is administered exclusively according to the criteria of the service catalogue of the Federal budget statement (*Bundesvoranschlag*). This states that an anaesthetic is only administered for root canal treatment. The patient has to bear the cost of EUR 7.50 for a local anaesthetic for any other treatment.
- Procedure complicated and inexpedient** The dentist complained about the inexpedient procedure for when patients want a local anaesthetic and declares that they are prepared to bear the cost. In these cases, the patient has to be returned to the department after having already been in the surgery. There, it is checked whether the inmate has sufficient money for the short anaesthetic. If there is sufficient financial cover, the money is debited. Only then can a new visit to the dentist be organised.
- This procedure means that in many cases the dentist has to have a discussion with the patient prior to the treatment in which he explains the procedure. This causes delays in treatment, increases waiting times for other patients and costs the dentist time unnecessarily.
- Prompt reaction** The management of the institution conceded that there was room for improvement. They ensured immediately that patients are informed about bearing the cost of a local anaesthetic by the office for hospital affairs before the treatment. If the patients want to avail of such a service, they are given a compensation form to sign before the medical examination, by which they consent to the money being debited from their account.
- Procedural improvement** The changed procedure now means that patients who are in pain are not forced to wait, the doctor is not held up by administrative measures and other patients do not have to wait during this time.

### **Protection under the law for the coercive treatment of prisoners and inmates**

An inmate of Göllersdorf correctional institution contacted the AOB and complained that he was being treated with depot neuroleptics against his will. The AOB took this as an opportunity to address the question of the coercive medical treatment of inmates in general.

- Multiple barriers** Medical actions may only be performed with the consent of the patient as a matter of principle. In certain isolated situations, the only way to avoid considerable damage is to use coercive treatment. This applies in particular to emergency situations with a high risk of self-harm and harm to others. Coercive treatment represents a serious infringement of the right to self-determination and the right to personal freedom of the affected person. It may therefore only be performed if there is sufficient public interest, the intervention itself is commensurate and, at the same time, the core content of the basic right is not infringed.

Section 69 of the Penitentiary System Act (*Strafvollzugsgesetz*) thus stipulates for prisoners and inmates that medical treatment may be carried out coercively if the affected person refuses to cooperate despite having been instructed to do so and the medical treatment is absolutely necessary based on the circumstances surrounding the case. Insofar as there is no imminent danger, authorisation has to be obtained from the Federal Ministry before every coercive examination or treatment is prescribed.

In the case in question, the Federal Ministry expounded that a psychopharmacological therapy, part of which had to be carried out coercively, was absolutely necessary from a psychiatric point of view. It was assured that the coercive treatment had only been resorted to after all other milder measures had been exhausted and when there was acute risk for the patient himself and others. It was the only suitable measure to counter this risk. The necessary authorisation had been obtained.

Coercion only as last resort

In this particular case, the AOB could not determine any illegal action.

However, the individual case highlighted the problem that the consent to coercive treatment by the Federal Ministry is not currently given formally. In contrast, a “special treatment” for example requires the approval of the court pursuant to the provisions of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*).

Not an opposable act

Affected persons currently only have the possibility to lodge a complaint for administrative review (*Aufsichtsbeschwerde*) against coercive medical treatment. However, they have neither a subjective right to resolution of this complaint nor to inspection of the legitimacy of the coercive medical treatment by the enforcement courts.

The AOB thus considers the current legal situation inadequate. The affected persons should be granted a subjective right to the resolution of their complaints or be given the opportunity to have the legitimacy of the coercive treatment examined by the (enforcement) courts.

In summer 2017, the Federal Minister of Justice presented the proposal for a Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) (see volume chapter 6.5.2). This grants inmates the right to object to coercive treatment.

New regulation for inmates

Regrettably, there are no considerations to revise the informal administrative authorisation for coercive treatment for prisoners and to stipulate legal protection for such infringements. In line with equality before the law, a discrimination of the prisoners compared to inmates does not appear justifiable.

Imminent unequal treatment

Statements as to whether and in how far the legislative proposal on the Detention of Mentally Ill Offenders Act will be the subject of parliamentary

debate and whether the current legal situation for prisoners will remain the same could not be made by the Federal Ministry at the end of 2017.

## 2.6 Transport, innovation and technology

### 2.6.1 Driving experience as condition for taxi licence

The operator of a travel agency contacted the AOB because he was refused a licence for a car taxi business. The reason was because he had no driving experience in taxis.

Section 5 (5a) of the Occasional Transportation Act (*Gelegenheitsverkehrsgesetz*) stipulates the following in this context:

Driving experience with taxis mandatory

“For the taxi business with cars and the car rental business, additional proof of at least three years practical experience in the respective desired profession or in an operation in which this profession is exercised together with other professions, or in a sector that is technically close to the profession shall be confirmed by the public social insurance carrier”.

As part of the condition of “at least three years practical experience”, several years of driving taxis or rental cars must be evidenced pursuant to the jurisdiction of the Administrative Court of Austria as well. Driving experience in a private car is not sufficient.

No driving experience necessary for buses

The complainant pointed out that this driving experience is only required of applicants for the car taxi and car rental business. On the contrary, licences for bus rental were issued without evidence of bus driving experience. And this even though substantially larger numbers of persons were regularly transported by bus than by car. This constitutes objectively unjustified discrimination.

The competent Federal Minister for Transport, Innovation and Technology explained that originally the licence requirement of at least three years of practical experience had to be evidenced for all professions pursuant to the Occasional Transportation Act.

The Federal Ministry refers to EU law

With Federal Law Gazette No. 129/1993 however, the Occasional Transportation Act was adapted to Community law in the course of the partial assumption of European Community legislation. The three-year practical experience requirement (and with that the driving experience) was limited to the car taxi business and car rentals as part of this adaptation. Upholding this requirement for the truck rental business would have contradicted Community law.

The Federal Ministry for Transport, Innovation and Technology also pointed out that there were, however, also “strict requirements for access to the

profession” – as the equivalent of driving experience so to speak – for the bus rental business.

The AOB noted that with regard to the licence requirements for different passenger transport professions unequal treatment on the part of the legislature can indeed be objectively justified and can therefore be conformant with the Constitution subject to the principle of equality.

Having said that, the AOB was unable to determine any requirements for access to the bus rental profession that are equivalent to the requirement of several years driving experience for a car taxi licence or car rental licence. It appears thus objectively implausible to place higher requirements in connection with a car taxi or car rental licence than for bus rental.

Unequal treatment  
implausible

Dispensing with driving experience for the bus rental business is attributable to the assumption of the “more reasonable” European Community legislation. However, this does not show why from an equality perspective the more stringent regulation in the area of car taxi and car rentals should be strictly upheld in national legislation.

The AOB therefore recommended aligning the legal situation for providing proof of driving experience in the car taxi and car rental profession with the relevant requirements for bus rentals.

AOB recommends  
alignment

### 2.6.2 Noise and pollution from the A2 motorway

The AOB reported in the Annual Report 2016 about the intolerable noise and pollution on the motorway A2 that passes through the town of Feldkirchen near Graz. This problem was also dealt with several times on the television programme “*Bürgeranwalt*” (“Advocate for the People”).

A2 motorway passes  
through town

Quoting a noise test obtained by *ASFINAG* (a cooperation responsible for planning, building, financing and maintaining Austrian motorways), the Federal Ministry for Transport, Innovation and Technology took the view that there was “sufficient noise protection on the motorway side in accordance with the regulations and guidelines valid throughout Austria”.

The Federal Ministry also pointed out there was very little benefit compared to the high construction and maintenance cost of covering the motorway or constructing an underpass as demanded by the residents. According to the Ministry, increasing the height of the existing noise barrier would only be possible if those affected made a substantial contribution towards financing the cost of construction.

Cameras were taken into operation in the Feldkirchen area near Graz (one camera in each direction respectively) to increase surveillance of the decreed

Increased radar controls

maximum speed limit. However, for some inexplicable reason, the Federal Ministry did not obtain the expert opinions required to decree further possible speed limits on the grounds of noise control.

**Speed limit decreed** To reduce pollution, the Governor of Styria, however, decreed a permanent speed limit of 100 km/h for the section of motorway between Graz-Ost junction and Graz-West junction in the municipal district of Feldkirchen in 2016 on the basis of the Ambient Air Quality Protection Act – Air (*Immissionsschutzgesetz-Luft*).

**Road resurfaced** *ASFINAG* completed resurfacing the motorway in the direction of Villach in 2017. The AOB will continue to monitor the resurfacing of the motorway in the direction of Vienna planned by the Federal Ministry for Transport, Innovation and Technology for 2018.



### 3 Pensions for victims of children's homes

#### 3.1 Pensions for Victims of Children's Homes Act

On 17 May 2017, the National Council unanimously resolved the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). Since 1 July 2017, victims of abuse in homes and in boarding schools operated by the Federal Government, the *Laender* and the churches as well as foster families receive a monthly pension of EUR 300 (12 times per year gross for net). The pension was increased to EUR 306.60 as of January 2018.

EUR 300 gross for net

Persons who have received lump-sum compensation as a victim of violence and draw a pension or have reached pensionable age are eligible. Persons who receive minimum subsistence and whose incapacity for work has been permanently established are treated equally with those who draw a pension.

Affected persons whose request for compensation was turned down or who were unable to apply on time for a particular reason receive a pension for victims of children's homes if they can plausibly demonstrate that they suffered deliberate violence in a home (or boarding school) of the Federal Government, the *Laender*, the churches or in a foster family. The independent Pension Commission at the AOB deals with such applications.

Deliberate act of violence according to Austrian Criminal Code

The AOB invites the applicants to an external clearing meeting, during which a report is created. The then anonymised report serves the Pension Commission as the basis for their professional expertise. Twelve experts from a wide range of professions led by Ombudsman Günther Kräuter discuss and assess each case.

Anonymised clearing report

Based on a proposal from the Pension Commission, the AOB makes a recommendation for the decision-makers.

AOB recommendation

The pensions are paid to pensioners of the respective pension insurance and to all other entitled persons by the Ministry of Social Affairs Service (*Sozialministeriumservice*). These decision-makers issue the notice.

Applicants can file a complaint before the Labour and Social Court (*Arbeits- und Sozialgericht*) within four weeks of notification if they do not agree with the decision taken.

The coming into force of the Pensions for Victims of Children's Homes Act was preceded by many years of the affected persons fighting for recognition of their plight. They had been reporting of severe maltreatment and sexual abuse during their time in children's and adolescents' homes since around 2010. A process of scientific analysis was initiated. There are now over 30 publications available on the subject. In most of the cases, the perpetrators could not be prosecuted due to the amount of time that has elapsed or because they have

Evolution of the Pensions for Victims of Children's Homes Act

since died. The affected persons also had no success in claiming compensation for damages, as these were time-barred under a statute of limitations.

**Loss of income** Many former institutionalised children were unable to make a career. They are still suffering from the health implications of the violence and the abuse. As scientific studies show, these persons were and still are low-paid workers. They often only receive a minimum pension. Many home operators decided to pay lump-sum compensation of between EUR 5,000 and EUR 25,000 as recognition of what the affected persons had suffered.

Notwithstanding the above, many former institutionalised children attempted to make claims in accordance with the Act on Crime Victims (*Verbrechensopfergesetz*) to compensate the financial losses incurred in their working life. The assessment of causality of events that happened over 30 years ago turned out to be extremely difficult, and only a fraction of the victims of violence and abuse were successful with their applications. The result was the demand for an un-bureaucratic settlement of lost income caused by the state turning a blind eye.

**Gesture of responsibility in November 2016** With a state ceremony in Parliament in November 2016, politics and the church made a symbolic sign of recognising the suffering of former institutionalised children. This gave the critical impetus for recognition in the law.

**New mandate for AOB** In April 2017, the Social Committee in Parliament presented the proposal for a Pensions for Victims of Children's Homes Act. The initial draft only considered persons from homes. The draft was then enhanced to include those affected by violence and abuse in foster families and the AOB entrusted with setting up a Pension Commission. The Pensions for Victims of Children's Homes Act was unanimously resolved by the National Council in May.

### 3.2 Proceedings at the AOB

Most of those affected are very elderly persons. Many need support and are afraid to talk about what they have suffered. The meetings thus require a great degree of sensitivity and empathy for the life story of these persons.

Former institutionalised children also use the opportunity to personally outline their problems at the AOB consultation days. The Pension Commission also invites interested parties, affected persons or their relatives to meetings at the AOB.

**Information in easy-to-read format** The available information can be invoked in an easy-to-read version on the AOB homepage. The Pension Commission also works with the Network for Legal Guardianship (*VertretungsNetz-Sachwalterschaft*) in order to facilitate informing persons with disabilities as well as possible. Besides this, the Pension Commission is in constant contact with the victim support facilities.

The procedure at the Pension Commission is initiated by a letter from the pension insurance or the Ministry of Social Affairs Service (*Sozialministeriumservice*). The office of the Pension Commission then calls all of the applicants, their persons of trust or legal representatives and explains the next procedural steps. Then the office of the Pension Commission communicates all of the other procedural steps again in a letter. The written information is also formulated in an easy-to-read way.

Initial contact and information

A clinical psychologist or a psychotherapist with special expertise creates a report (clearing report) together with the affected persons about the violence they remember. The meetings take place in close proximity to the place of residence of the affected persons, and they can choose whether they would prefer to talk to a female or male expert. The clearing experts take special needs into consideration. Some applicants can only reach barrier-free offices. There is also a clearing expert who has knowledge of sign language for affected persons who have poor hearing.

Creation of report about the violence suffered

In the meantime, the office of the Pension Commission requests confirmation of the placement in the homes and foster families from the youth welfare organisation or home operator. Thankfully, there are contact persons available to assist in all of the *Laender* and the churches. They carry out the research in the archives and pass on the information.

Locating youth welfare office files

The files of the Vienna youth welfare are stored at the municipal department MA 11, the records relating to the placements in Kaiserebersdorf are stored in the Austrian state archive, and the Tyrolean files in the *Land* archive. The Protestant Church still has most of the records relating to placements in homes. Locating records is far more difficult with the Catholic Church – due to the many different religious orders. Research work is also time-consuming in some *Laender*. The *Land* Carinthia is still struggling with the consequences of water damage in the *Land* archive, which apparently makes the research more difficult. If there are still files in the *Laender*, they have to be elicited from the youth welfare authorities which were competent at the time. This can prove complicated insofar as the affected persons do not know which authority was responsible. Many were placed in homes as small children and have no memory of the time before then. Visits from social workers were – if at all – very seldom. The *Land* Upper Austria reports that erroneous entries were made during the digitalisation of the files from 1970 onwards, which made research for files impossible.

All of the collected documents are anonymised by the office of the Pension Commission and forwarded to the Commission. The Pension Commission consists of twelve experts from a wide range of professions led by Ombudsman Günther Kräuter. The members of the Pension Commission are appointed by the AOB for three years. In accordance with the statutory mandate, the AOB also appointed representatives of victim support organisations. In addition to three judges, two psychologists, a child psychiatrist, a sociologist and a social

Collected information submitted to Pension Commission

historian, a representative of those affected, a representative for persons with disabilities and representatives of victim support facilities contribute their experience and expertise.

The members of the Pension Commission analyse and discuss the cases at regular meetings. The submissions are examined from a social-historic perspective, are subjected to a clinical-psychiatric assessment and evaluated from a legal point of view. The scientific publications and the special expertise of the individual members of the Commission play a key role here.

The head and at least half of the other members must be present in order for the Commission to make a decision. In cases where impartiality might be an issue, the member shall refrain from participating in the discussion and the decision-making. The decision of the Pension Commission is documented in minutes and submitted to the AOB as a recommendation.

AOB recommendation The members of the AOB discuss the cases, examine the recommendations of the Pension Commission and finally submit a well-founded written recommendation to the decision-makers.

### 3.3 Facts and figures

Lump-sum  
compensation paid to  
7,000 beneficiaries

In the past seven years – since the beginning of the investigation process in 2010 – some 7,000 persons have received lump-sum compensation from the home operator. According to estimates from the beginning of 2017, around 2,000 of them should fulfil the eligibility criteria for a pension for victims of children’s homes in 2017.

The media coverage of the new Pensions for Victims of Children’s Homes Act aroused considerable interest. Since the initial proposal was introduced in Parliament in April 2017 up to the coming into force of the Pensions for Victims of Children’s Homes Act on 1 July 2017, over 130 persons contacted the AOB with questions on the new pension for victims of children’s homes.

The office of the Pension Commission assumed its work in the AOB on 1 July, and on 3 July the Pension Commission met for its inaugural meeting.

In the period under review, a total of 3,093 persons submitted an application for the awarding of a pension for victims of children’s homes to the pension insurance or the Ministry of Social Affairs Service (*Sozialministeriumservice*). 65 applications were submitted directly to the AOB and forwarded to the decision-makers. In total, 1,814 cases were decided positively and 222 negatively by the pension insurance or the Ministry of Social Affairs Service; 297 proceedings were concluded in other ways (e.g. withdrawal of the application), and 760 proceedings were still pending with the decision-makers at the end of the year.

## The work of the Pension Commission in figures

The Pension Commission processed 517 applications in the period from 1 July to 31 December 2017. Compared to some 7,000 reports from persons who had already received lump-sum compensation in the period from 2010 to 2017, the over 500 new reports in the first six months since the Pensions for Victims of Children's Homes Act was enacted alone make this a shockingly high number.

Over 500 new cases

In addition, more than 300 further general questions were answered by the office of the Pension Commission. A total of 833 cases were processed by the Pension Commission.

With regard to these 833 cases, 254 affected persons, who claimed to have suffered violence in a Viennese home or a Viennese foster family, followed by Lower Austria with 250 cases. Upper Austria was mentioned in 67 incidences and Styria in 53. Institutions and/or foster families in Tyrol were mentioned 44 times; those in Carinthia 39 times. Institutions and foster families were mentioned least frequently in Salzburg (11), Burgenland (9) and Vorarlberg (7).

In total, the formerly institutionalised and foster children reported in the 833 cases in the period under review of 734 locations where they experienced violence. In some cases, there was no information reported on the relevant institution and some other persons suffered violence in several *Laender*.

In the period under review, 200 invitations to a clearing meeting were sent; the clearing experts completed some 140 reports by the end of 2017. The Pension Commission referred 260 persons to another victim support centre for clearing.

Clearing

Almost 90% of the formerly institutionalised children who were invited to a clearing meeting experienced both physical (e.g. beating) and emotional violence (e.g. verbal abuse, humiliation). A third were victims of sexual violence.

Physical and emotional violence in 90% of the cases

On the basis of a proposal by the Pension Commission, the AOB issued 49 positive and seven negative recommendations between July and December 2017.

AOB recommendation

### 3.4 Forms of experienced violence

It can be seen from the clearing meetings, which were scheduled by the Pension Commission and which have already taken place that the applicants were subjected to many different types of violence. What all of them have in common is that the after-effects of the injuries were covered up. A visiting ban was imposed on those who had bruises. Children who told their parents what was happening on visiting weekends were not believed. They were subsequently beaten in the home. After that, no one had the courage to confide in anyone.

Systems of turning a blind eye

A former institutionalised child reported: "We ran away with a group of children and went to the police. We told them about the beatings. They did not listen to us and sent us back again".

The reported abuse can be divided into three types: emotional violence, physical violence and sexual violence.

**Emotional violence** Emotional violence in the form of threats, verbal abuse and humiliation was commonplace. Children were forced to eat vomit. The educators threatened the children with food deprivation, being locked up, curfews and visiting bans. Former institutionalised children reported that they sometimes did not see their parents for years. When they were later returned to their families, they felt out of place there.

**Threats and verbal abuse, isolation, humiliation** The children were also threatened with being transferred to another institution. Names such as Eggenburg and Kaiserebersdorf were common among boys from Vienna. These institutions, which were run like prisons, were feared. Children and adolescents were locked in small, dark rooms as punishment there. Affected persons reported of being locked away for hours or days without any contact or having anything to do. A bucket served as a toilet and food was brought once a day. Those affected described this isolation and the loss of any sense of time as extremely distressing.

As a so called "disciplinary measure", children and adolescents were even shipped to *Laender* that were far away. Girls from Vienna were thus transferred to a particularly feared institution in Kramsach in Tyrol.

Children and adolescents were frequently told that they were worthless. Humiliation was the order of the day. In addition to coarse insults, former institutionalised children reported of assertions such as "no one else looks after you anyway" or "you are worthless, otherwise you wouldn't be here". Former foster children also reported of the same treatment: "You were given away; nobody wanted you, so be satisfied that you are here now".

Mr H. explained: "The beatings weren't so bad, but the lack of love and affection, that was tough. Never a pleasant word. Never being given a hug. No one ever stroked my head".

Being ridiculed in front of the group for assumed transgressions was also customary. "I was never a bed-wetter", explained Mr S. "but I became one in the home. When the bed linen was wet, I had to hold it over my head and stand in front of the door for hours". Ms K. had a similar experience: "The wet underpants were pulled over my head in front of the other children and I had to stand in the corridor like that for the entire morning".

**Physical violence** The educators beat the children with their bare hands or objects such as sticks, wet towels or everyday items that happened to be available. "And the bunch of keys took flight and hit me unexpectedly on the head", reported Mr F.

"The director slapped me right at the entrance. I must have been grinning too much for his liking. I gave it up very quickly after that", explained a former institutionalised child. "I was so intimidated by the many beatings and slaps. They were completely unexpected. There were slaps for everything really. I did my best not to stand out and to conform", reported another affected man.

Slaps, beatings with objects, collective punishment

There was collective punishment. After the punishment of the whole group, the causer had to expect further punishment by the other children or adolescents. All of the children thus had to stand in a line with their hands behind their back. The educator walked along the line and slapped each child on the left and on the right.

Or the punishment was left to the group. A widely used instrument was the so called "blanket". A blanket was thrown over the head of the child destined for punishment. All of the other children then had to beat and kick the blanket.

Boys and girls were equally affected by sexual violence.

Sexual violence

"The educator's bed was in a separate corner of the dormitory cordoned off by big windows. When educator K. was working, she took a girl with her every night. I was terrified of that", said a formerly institutionalised child. "She stroked me all over my body and wanted me to do the same to her".

Sexual coercion, rape, abuse by other pupils

The sexual abuse, which mostly happened at night, was terrifying for those affected. Formerly institutionalised children reported of sleep disorders and bed-wetting. In their later lives, the affected persons had difficulty entering into relationships. Many said that they now lead a very withdrawn life.

Mr M. was also subjected to sexual violence: "I was locked in a room. In the night, two men came and threw a blanket over my head. Then they raped me. I did not know whether they were other pupils or educators. The feeling of not knowing who the perpetrator was followed me during the entire duration of my stay".

Violence among the children and adolescents was also widespread. Formerly institutionalised children reported that this violence was not prevented by the educators, but was promoted. In the so called capo system, the educators left the supervision and issuing of sanctions for the group to the mostly older pupils. The principle of survival of the fittest prevailed.

"Two of us always had to use one shower cubicle together. The older boys were allowed to choose someone. R. always chose me. Then he raped me. For years", described an affected man his years of suffering.

### 3.5 Lump-sum compensation

„Financial gesture“ To date, around a dozen contact centres for formerly institutionalised and foster children have been set up in Austria. Those affected receive counselling there and can apply for reimbursement of the cost for psychotherapy in addition to lump-sum compensation. If the other eligibility criteria are fulfilled, such lump-sum compensation, which was paid due to placement in a home or a foster family, entitles the recipient to draw a pension for victims of children's homes. Victim support centres were created in all of the *Laender*, the churches and in some municipal and private operators that process the requests for lump-sum compensation.

Affected persons from a children's home belonging to the city of Innsbruck can contact the office of the head of the municipal authority, and former residents of SOS Children's Villages can approach a dedicated contact point at the SOS Children's Village Austria. Those affected by church violence can contact the ombudsman offices in the dioceses.

Children and youth advocacy organisation helps affected persons

The victim support centres in the *Laender* Upper Austria, Vorarlberg, Tyrol and Burgenland are located with children and youth advocacy organisations; in Salzburg, in the office of the regional government in the Child and Youth Welfare Department. In Lower Austria, a dedicated office was set up in the regional government, and the violence prevention centre is responsible in Styria.

However, the lump-sum compensation system is not harmonised. The time frames that the victim support centres take into consideration differ. In Vienna, affected persons who experienced violence up to 1999 can apply. The Upper Austrian victim support centre only compensates incidents up to 1995, and in Tyrol, only incidents up to the end of the 1980s are considered.

The city of Vienna, the Federal Ministry of Justice, the Federal Ministry of Education and the Protestant Church have regrettably discontinued their compensation projects which were run by the NGO *Weisser Ring*, a support organization for the victims of crime. With the exception of the Protestant Church, these organisations do not cover the cost for psychotherapy any more.

Former children from Viennese institutions are referred by the municipality of Vienna to the general psychosocial service (*Psychosozialer Dienst*). Affected persons report of long waiting times and criticise that they cannot choose their therapist on this programme.

No lump-sum compensation from Vienna and Carinthia

The *Land* Carinthia no longer pays lump-sum compensation, but affected persons from Carinthian institutions can still contact the children and youth advocacy organisations with their request for reimbursement of the cost for psychotherapy.



The *Land* Upper Austria only pays compensation to persons who experienced violence in institutions run by the *Land*. In exceptional cases, the *Land* Upper Austria also grants affected persons from foster families financial compensation. Private institutions – even if the children were committed by the Upper Austrian youth welfare authority – are not considered.

The *Land* Vorarlberg, on the other hand, makes no distinction between whether someone suffered violence in a regional institution run by a private operator or not. All of those affected in Salzburg and in Burgenland can also apply if they were committed by the respective youth welfare authority of the *Land*.

The *Land* Styria makes no distinction at all. All persons who suffered violence in an institution or in a foster family in Styria can apply for lump-sum compensation or reimbursement of the cost for psychotherapy.

Styria exemplary

Children and adolescents who were placed in an institution or a foster family had no choice. The youth welfare authority chose the type of placement.

The AOB criticises that not all affected persons have the option of contacting a victim support centre. All victim support centres in the *Laender* should also assume responsibility when children are forced to endure violence in private homes or a foster family.

AOB demands harmonised compensation for all affected persons

### 3.6 Need for reform

After the first six months since the coming into force of the Pensions for the Victims for Children's Homes Act, the Pension Commission and the AOB are calling for the necessary reforms.

#### Medical facilities

More than 40 persons affected by violence in medical facilities have since contacted the AOB. The followed facilities were named: Child Observation Ward Dr. Novak-Vogl (Tyrol), Child Psychiatry Klagenfurt/Dr. Wurst (Carinthia), Children's Hospital Lilienfeld-Frankenstiftung (Lower Austria), Hoff Clinic (Vienna), Spiegelgrund (Am Steinhof/Pavillon 15, Vienna), Bellevue Children's Sanatorium (Vienna), Pulmonary Sanatorium Baumgartner Höhe (Vienna).

Inclusion of medical facilities

Medical facilities are not covered by the Pensions for Victims of Children's Homes Act even though the children were sometimes placed there for years. As scientific studies prove, children and adolescents were victims of structural violence in the same way (cf. "*Kinder und Jugendliche mit Behinderungen in der Wiener Psychiatrie von 1945 bis 1989*" – "Children and adolescents with disabilities in Viennese psychiatry from 1945 to 1989", Mayrhofer et al., Vienna 2017).

Children were committed in the same way to medical facilities by welfare authorities. Medical facilities in which children and adolescents experienced violence for years must therefore also be included in the scope of the Pensions for Victims of Children's Homes Act.

### **Inclusion of „private“ facilities**

Inclusion of „private“  
children's homes

The wording of the law stipulates that only persons affected by violence in institutions of the Federal Government, the *Laender*, a church or a foster family are eligible for a pension for victims of children's homes. According to the legal annotation, boarding schools are also covered. However, children's homes were also operated by private operators, cities or municipal associations. Examples include the SOS Children's Village, the Children's Village Vorarlberg, the municipal children's homes of the city of Innsbruck or the *Volkshilfe* children's home in Pitten.

Clarification is urgently required that private institutions which operated functionally for a youth welfare organisation are included in the Pensions for Victims of Children's Homes Act.

### **Consideration of the special situation of persons with disabilities**

Early eligibility option for  
persons with disabilities

Persons who are in early retirement due to health restrictions are currently entitled to a pension for victims of children's homes if they fulfil all of the eligibility criteria. Persons who receive permanent minimum benefit due to incapacity for work are equal to recipients of an own pension.

Persons who due to a disability are unable to work in the primary employment market have no right to their own pension (e.g. an invalidity pension). They often also have no right to minimum benefit as they live in a family group, receive an orphan's pension including compensatory allowance or are fully cared for within the framework of services for persons with disabilities. This group of persons therefore has to reach the legal pensionable age (women 60 and men 65 years) in order to receive a pension for victims of children's homes.

It should thus be ensured that persons with disabilities can assert an early claim to the pension for victims of children's homes in the same way as persons without disabilities.

## Elimination of the „special reason“ in Section 1(2) of the Pensions for Victims of Children's Homes Act

Affected persons who have not (yet) received lump-sum compensation from the home operator can only draw the pension for victims of children's homes if they were unable to make a permissible and timely application for such compensation due to a special reason. The Pension Commission has thus to examine whether there is a special reason.

Elimination of obstacles to asserting claims

The reasons why those affected did not apply for lump-sum compensation are manifold. The authorities left formerly institutionalised children and foster children with what they had experienced on their own for years. The affected persons often suppressed the awful memories and with that the possibility of receiving lump-sum compensation. Some had no confidence in the authorities, feared the proceedings or their own memories. Some compensation centres were only open for a very short time, some affected persons lived abroad meaning that they were unable to submit an application on time.

The AOB thus demands that the requirement of a “special reason” be removed from the Pensions for Victims of Children's Homes Act. The affected persons must have the unrestricted opportunity to have their case examined by the Pension Commission.

## Possibility of assessments

The *Land* Carinthia, the municipality of Vienna, the Federal Government and the Protestant Church have discontinued their funding projects. Affected persons in relation to these organisations currently have no opportunity – outside of an application for a pension for victims of children's homes – to tell their story. Only when they make their application for a pension for victims of children's homes are they given the opportunity in the clearing meeting at the AOB to report about what they have suffered.

Possibility of assessments

Formerly institutionalised children and foster children who have not received lump-sum compensation have to wait until they start receiving a pension to be able to talk about their experience for the first time. The AOB demands the possibility of an earlier assessment for this group of persons. All of the necessary investigations should be conducted at the time when the formerly institutionalised child or foster child is ready to speak about what they have experienced.

## Exclusion from Act on Crime Victims

Persons who suffered violence in connection with placement in homes of the Federal Government, the *Laender* and the churches or in foster families between 1945 and 1999 can no longer apply for compensation for loss of

Assertion of claims pursuant to Crime Victims Act

income as crime victims after 30 June 2017. Applications for compensation for loss of income submitted from 1 July 2017 are considered applications pursuant to the Pensions for Victims of Children's Homes Act.

A specific group of crime victims is thus excluded from the scope of the Act on Crime Victims (*Verbrechensopfergesetz*). Even if the application pursuant to the Pensions for Victims of Children's Homes Act is turned down or the formerly institutionalised child has not yet reached pensionable age, it is not possible to apply pursuant to the Act on Crime Victims.

An adolescent who experienced violence in connection with being placed in a home in 1999 in such way that their career development is impaired has to wait 40 years for the pension for victims of children's homes in accordance with the current legal situation.

The AOB considers it unacceptable that affected persons have to wait years for compensation for their loss of income or are unable to assert claims for a higher loss of income. The exclusion of the Act on Crime Victims also requires reform.

An awarded pension can never be compensation for the injustice suffered, the humiliation, the violence and abuse. However, most of those affected recognise that a gesture of responsibility was made albeit late. In many cases, the pension means a slightly better quality of life in old age.

Permanent contact  
with critics

It is important to the AOB, however, whom Parliament entrusted with a closely defined mandate, that those affected who criticise the type, scope and gesture in itself are heard and can express their concern. The head of the Pension Commission invites affected persons to discussion rounds in the AOB from time to time.

Implement reforms  
quickly

An "Evaluation of the Pensions for Victims of Children's Homes Act" is announced in the "Social Affairs and Consumer Protection" chapter of the Governmental Programme. Due to the generally advanced age of the severely abused persons, who according to the current legal situation are not eligible for the pension, the AOB is appealing for implementation of the reform by the summer of 2018.

Promote prevention

Reference is made here to the still existing deficits in the out-of-home care of children and adolescents stated in the chapter "Child and youth welfare facilities" (see chapter 6.3). The AOB urgently demands the introduction of a legal obligation to implement sex education and violence prevention concepts in facilities (e.g. residential groups) that care for children. The tragic biographies of institutionalised children may not be repeated.

## 4 National Preventive Mechanism (NPM)

### Introduction

This report documents the activities of the Austrian Ombudsman Board (AOB) and its six commissions in 2017. A total of 495 inspections were conducted in the year under review, of which most took place in public and private institutions and facilities where persons are deprived of their liberty. The human rights of persons staying in such facilities are at a great risk of being violated, as they are living in a specifically dependent relationship and cannot be sufficiently heard. The purpose of the visits conducted by the commissions of the Austrian National Preventive Mechanism (NPM) is to protect persons from abuse and degrading treatment.

The observations made during these visits emphasise the importance of preventive human rights protection. They are addressed in detail on over 160 pages in this report. Not all of the findings of the monitoring activities were included, as this would go far beyond the scope of an annual report. On the one hand, the selection for this report put a focus on those human rights risk areas that were observed most frequently and are thus considered attributable to structural deficits. On the other hand, cases are reported in which human rights were violated. Possible reasons and the reactions of the responsible authorities are also covered. These statements demonstrate that the work of the NPM is not limited to monitoring and control. Every visit, every monitoring of a police operation entails extensive correspondence, often over a long period of time, and meetings with the affected facilities and the competent supervisory authorities.

Detailed reports on the results of the visits

Concrete recommendations derived from the findings show how the situation can be improved and which reforms are necessary. All of the recommendations formulated by the NPM since taking up its work are listed in the last chapter of this report. This list is continued and updated on a yearly basis. A compendium of human rights standards to be complied with should thus materialise over time.

Many recommendations by the NPM

The systematic, continued development of the work of the NPM is guaranteed not least through international cooperation. It has been possible to not only establish but also expand the exchange of information between experts on an international level in recent years. Membership in networks, such as the South-East Europe NPM Network, as well as regular meetings with other NPMs ensure that experience and expertise on international human rights standards and monitoring are shared. The objective here is also to agree on a uniform approach and the interpretation of the OPCAT.

Exchanging experiences through international cooperation

This report provides a concentrated summary of the entire work of the NPM before the detailed reports. It contains the most important information on the content and scope of the preventive mandate, and describes the organisational framework and the available resources. Statistics on the monitoring work are also included. These provide information on how many visits took place in which institutions and facilities, and the areas in which deficiencies were frequently observed. The statistical data underline the importance of the visits: the commissions criticised the human rights situation in some 74% of all visits carried out in 2017.

## 5 Overview of the National Preventive Mechanism

### 5.1 Mandate

The Austrian NPM is based on authorisation granted under the Constitution and in a general legal context. The AOB and its six multidisciplinary commissions regularly and extensively monitor public and private institutions 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 to detect structural deficits that can lead to cases of maladministration. Additional preventive competencies of the NPM pursuant to Article 148a (3) of the Federal Constitutional Law are the inspection of institutions and programmes for persons with disabilities (Article 16 (3) of the UN CRPD) as well as monitoring and concomitant control of the authorities empowered to exercise direct administrative power and coercive measures. These preventive competences can overlap with the OPCAT mandate and/or complement it.

The commissions conducted 495 visits in 2017. Most initial visits were to psychiatric institutions, medical facilities, retirement and nursing homes, child and youth welfare facilities. Many classic places of detention, such as correctional institutions, police stations and police detention centres, were also visited on a number of occasions. All visits are conducted pursuant to a monitoring methodology developed by the NPM and according to uniform standards. The specifications for the monitoring framework and methodology can be accessed on the AOB homepage (<http://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>).

495 visits by the commissions

The efficacy of the NPM also depends on its acceptance by the institutions and facilities and their responsible operators or owners. As a rule, the competent authorities and administrative departments, but also the management of private institutions and facilities, have willingly complied with their obligation to engage in constructive dialogue with the NPM (under Article 22 of the OPCAT). The implementation called for by the NPM was considered in greater detail in different working groups. In addition to the monitoring work, the commissions held 21 round-table meetings with institutions or their senior administrative departments.

Working groups and round-table meetings

The NPM worked with educational institutions in 2017. As already announced in the 2016 report, a training module on the work of the Austrian NPM was implemented in the two-year police training programme. Members of the commissions and AOB staff members held eleven classes in 2017; additional courses are already set for 2018. Prison guards have also been receiving instructions on the preventive and *ex-post* control work of the AOB as part of their training since 2017 (2017: four classes).

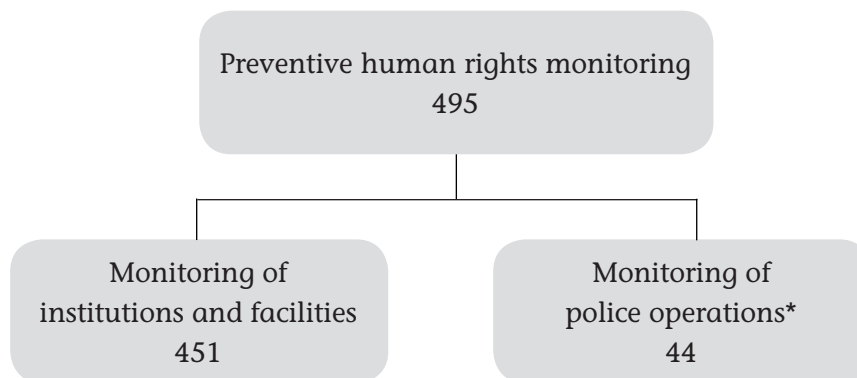
Police training and prison guard training

The NPM is also obliged to inform the public about its responsibilities and the results of its work, thus fulfilling its obligation to inform at events, lectures and training programmes.

## 5.2 Monitoring and control visits in numbers

The six commissions carried out 495 visits Austria-wide in the year under review 2017. This total figure includes both monitoring visits and observation of police operations. At 91%, the majority of these visits were to institutions and facilities. The average duration of the visits was about five hours. The visits were unannounced in most cases. They were announced in only 5% of the cases.

Monitoring and control activities of the commissions in 2017  
(absolute figures)



\*these include: forced returns, demonstrations, assemblies

A total of 451 visits to institutions and facilities

Expressed in absolute numbers, 451 visits were made to institutions and facilities throughout Austria. It must be considered that the number of visits is not equivalent to the number of visited institutions, as many of them were visited several times during the year under review. This applies to correctional institutions and police detention centres in particular.

Observations of 44 police operations

Police operations were monitored by the commissions 44 times in total. The predominant areas for observation were major police operations, raids, football matches where trouble was expected, forced returns and demonstrations.

21 round-table meetings

In addition to the monitoring and control activities, the commissions held 21 round-table meetings with institutions and senior administrative departments.

The following table breaks down the visits in detail, indicating how many visits were made to which type of facility. Depending on the institutions to be visited, differentiation is made between police stations, retirement and



nursing homes, youth welfare facilities, institutions and facilities for persons with disabilities, psychiatric wards in medical facilities and hospitals, as well as correctional facilities. The observed police operations are shown in the last column. The different *Laender* are listed in relation to these categories, thus visualising the number of times a type of institution was visited in the respective *Land*.

**Number of visits in 2017 in individual *Laender*  
according to type of institution**

	police	ret.+ nur.h.	youth	inst.f. disabl.	psych. wards	corr. inst.	others	pol.op.
Vienna	21	24	42	20	8	8	3	23
Burgenland	2	8	10	8	0	1	1	0
Lower Austria	10	17	16	15	6	11	8	1
Upper Austria	18	8	3	11	2	3	3	3
Salzburg	3	5	2	7	0	1	1	3
Carinthia	2	3	2	10	5	0	0	2
Styria	12	16	5	4	8	6	0	7
Vorarlberg	4	5	0	4	4	2	0	1
Tyrol	10	14	13	10	3	3	0	4
<b>Total</b>	<b>82</b>	<b>100</b>	<b>93</b>	<b>89</b>	<b>36</b>	<b>35</b>	<b>16</b>	<b>44</b>
unannounced	82	100	91	89	36	35	15	21

Legend:

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

Three things are noticeable from these statistics. Most of the visits took place in retirement and nursing homes, youth welfare facilities and institutions for persons with disabilities. This is attributable to the fact that these institutions constitute the majority of all institutions to be visited by the NPM commissions. Marked differences in the distribution of the visits over the individual *Laender* are also evident. Most of the visits were in Vienna and Lower Austria, as the density of facilities is very high in these *Laender*. The following table shows the overall number of visits per *Land*.

Number of visits in 2017 in the individual *Laender*

Vienna	149
Lower Austria	84
Styria	58
Tyrol	57
Upper Austria	51
Burgenland	30
Carinthia	24
Salzburg	22
Vorarlberg	20
<b>Total</b>	<b>495</b>

Around 74% of visits uncovered deficiencies

The observations made by the commissions are recorded comprehensively in standardised reports and stored anonymously in a database. This facilitates the evaluation of the results of the visits made in 2017 such as the number of observed deficiencies: the commissions felt compelled to criticise the human rights situations on 346 visits of institutions and 18 police operations. There were no grounds for criticism on 131 visits (105 institutions and 26 police operations). This means that deficiencies were identified in 73.5% of the visits. The observation of police operations resulted in criticism less frequently by the commissions on a pro rata basis than the visits carried out in facilities (40.9% compared to 76.7%).

The AOB examines these cases based on the findings of the commissions and contacts the competent ministries, supervisory authorities and also the institutions and facilities themselves in order to draw their attention to improvements.

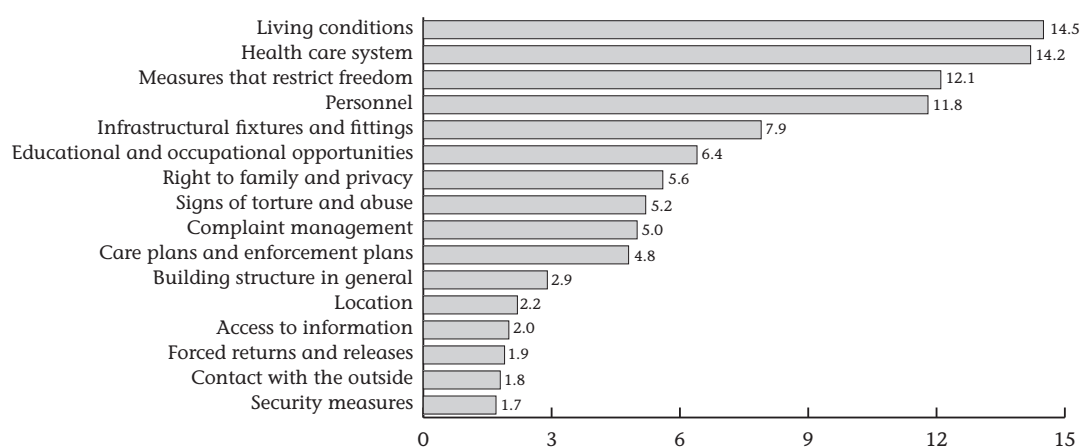
## Proportion of visits in 2017 with or without criticism

	with criticism	without criticism
Monitoring of institutions and facilities	76,7 %	23,3 %
Monitoring of police operations	40,9 %	59,1 %
<b>Visits in total</b>	<b>73,5 %</b>	<b>26,5 %</b>

The following graph provides a breakdown of criticisms according to individual issues and the percentage share of all criticisms. It must be taken into account here that the number of deficiencies observed is not equivalent to the number of visits made, as multiple areas were inspected on each visit and therefore the criticisms relate to multiple topics. The most frequent reasons 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. Measures that restrict freedom as well as insufficient human resources were also grounds for criticism.

### Topics of criticism voiced by the commissions

(share in %)



## 5.3 Budget

In 2017, 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 1,257,000 (2016: EUR 1,163,000) was budgeted for reimbursements and travel expenses for the commission members alone and around EUR 83,000 (2016: EUR 87,000) for the Human Rights Advisory Council. Around EUR 110,000 was available for workshops for the commissions and the AOB staff members 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 NPM.

## 5.4 Human resources

### 5.4.1 Personnel

In order to implement the OPCAT mandate, the AOB received 15 additional permanent positions in 2012 to fulfil its responsibilities. One permanent position has since been eliminated due to budgetary restrictions. The organisational unit “OPCAT Secretariat” is responsible for coordinating the collaboration with the commissions. It also examines international reports and documents in order to support the NPM with information from similar institutions. The AOB staff members 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.

### 5.4.2 The commissions

Six regional 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 (see Annex) with the tasks they have to perform. If required, the regional commissions may involve experts from other specialist areas provided that members of any other commissions are not available for this purpose. In this way, persons with physical impairments as well as persons with migration or refugee experiences took part in visits to facilities in 2017 in order to contribute their special expertise. The commissions are organised according to regional criteria. They usually consist of eight members and one head of commission.

### 5.4.3 Human Rights Advisory Council

The Human Rights Advisory Council was established as an advisory body. It is constituted 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 and go beyond the problems inherent in an individual case.

## 5.5 International collaboration and cooperation

European NPM Forum

The European NPM Forum was initiated on a joint project between the EU and the Council of Europe. The goal of this regular meeting is the exchange of opinions and experience. NPMs from the Member States were invited to a kick-off event in April 2017 to identify important questions and key topics, and to create the work programme for future network meetings. The kick-off

event already concentrated on focal questions regarding the tasks of the NPM such as generating reports and issuing recommendations.

Experts from the NPM took part in different NPM Forum meetings. Observations and findings by the NPM in relation to arrests and the detention of immigrants and the comparability of applicable monitoring standards were discussed. Two meetings are planned with the close involvement of the Austrian NPM in 2018 to address the topics of geriatric care and the setting up of a database for detention conditions.

The Austrian NPM has been a member of the South-East Europe NPM Network (SEE NPM Network) since October 2013 and actively supports the exchange of experience with NPM institutions from South-Eastern Europe.

Experts took part in an SEE NPM Network meeting in Belgrade in May. The main objective of the meeting was to identify deficiencies in dealing with particularly vulnerable groups of persons and to develop good practice recommendations. Observers from the APT (Association for the Prevention of Torture), CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and SPT (Subcommittee on Prevention of Torture) took an active part in discussions with the participants. There was agreement on the importance of considering the care needs of these vulnerable groups of persons. A second SEE NPM Network meeting in Podgorica in the middle of the year addressed the issues of health care in prisons and psychiatric facilities.

SEE Network meetings in Belgrade and Podgorica

At a further meeting in Belgrade in December 2017, the methodology used by NPMs in its monitoring and control activities was the focus. The NPM Montenegro will take over the chair of the SEE NPM Network in 2018. The Austrian NPM will head the working group for legal matters.

In autumn 2017, a very successful training programme was organised in Vienna in which 29 staff members from ombudsman institutions from 21 countries took part – predominantly from Europe but also from Africa and the Pacific region – in order to learn communication techniques and to improve interviewing skills. Observers from the SPT and APT contributed to the learning curve and the success of the programme with their expertise. The innovative approach is orientated on the principle of “do no harm”. The practical exercises were not performed on real patients but by interacting with trained actors who portrayed the symptoms of illnesses in their roles and reacted accordingly in the interview situation. They were then able to explain how they experienced the interview from the perspective of the affected person in ensuing feedback meetings. This helped the participants to practise, analyse and improve their communication techniques. The participants were able to follow the visit of two members of the commissions per livestream in

Training for improving interviewing techniques

a second training unit. Thanks to the technical support of the IT companies Cisco and X-tention, the meetings were followed in the training room, and the observations shared with the members of the commissions in the ensuing questions and answers discussions.

D-A-CH (Germany-  
Austria-Switzerland)  
Network meeting

The NPMs from the German-speaking countries (Germany, Austria and Switzerland) have been meeting to share their experience and ideas every year since 2014. The 2017 meeting was held in Berlin (Germany) and focused on the topic of the police. The work of the NPM in connection with forced returns and detention pending forced return, police detention, police complaints and investigations offices, as well as major police operations were presented and discussed. The details showed that in spite of a similar starting situation the resulting problems can often be very different. Having said that, many similarities between the NPMs were observed during the discussions as well.

Bulgarian delegation  
inform themselves  
about return processes

A Bulgarian delegation consisting of representatives of the NGO Centre for the Study of Democracy und Cooperation for Voluntary Service and of the Bulgarian Federal Ministry of the Interior visited the Austrian Federal Ministry of the Interior, the Federal Office for Immigration and Asylum, the Association of Human Rights Austria (*Verein Menschenrechte Österreich*) and the AOB on the topic of "Monitoring Returns". The AOB presented its work as NPM and reported on its experience in monitoring the complete return process from the initial contact to the return to the country of origin. Work is currently being carried out in Bulgaria on standards for monitoring forced returns.

Visit by the Hungarian  
Ombudsman institution

The bilateral cooperation with the Hungarian ombudsman institution was further strengthened by a visit by the Fundamental Rights Commissioner László Székely. He informed himself about the experience of the AOB in implementing the OPCAT and the preparation and execution of visits to places where persons are deprived of their liberty within the framework of the OPCAT mandate. The visits created incentives for further collaboration as well as broadening the cooperation. On a follow-up visit, the experts from the AOB were able to accompany their Hungarian colleagues on a visit to a correctional institution in Sopron (Hungary) and see how the Hungarian NPM works on-site.

Armenian delegation  
study trip

The AOB also welcomed a large delegation consisting of representatives of the Armenian NPM, the judiciary and different NGOs to a meeting for the purpose of exchanging experience that lasted several days. Armenia ratified the OPCAT in 2006; here too the ombudsman institution was entrusted with the NPM mandate. The Armenian Parliament is currently examining a constitutional amendment for improving the NPM mandate. This is aimed at securing adequate financial resources and strengthening the work of the NPM. The delegation showed great interest, in particular in the cooperation between the members of the commissions, the AOB and Human Rights Advisory Council.

A delegation of the Ombudsperson Institution of Kosovo came to Vienna for a three-day meeting. The Kosovan ombudsman institution was entrusted with the NPM mandate in 2015. The main focus was on the monitoring methodology, the treatment and processing of individual complaints from detained persons and the involvement of external experts when visiting institutions and facilities. Members of the commissions and the Human Rights Advisory Council provided insight into the work of the NPM.

Study visit from Kosovo

The Anti-Torture Committee of the Lebanese national armed forces visited Vienna in November. The stay was organised by the Geneva Centre for the Democratic Control of Armed Forces. The focus was on the working methods and the organisation of the Austrian NPM. The delegation was accompanied by the former Serbian ombudsman, Saša Jankovic, who presented the torture prevention structures in the Republic of Serbia. This facilitated the exchange of experience between Austria, Serbia and the Lebanon concerning police detention and the penal system. The delegation gained an insight into everyday practice on ensuing tours of the Korneuburg correctional institution and the Roßauer Lände police detention centre. Experts from the Federal Ministry of the Interior and the Federal Ministry of Justice answered the many questions posed by the guests.

Lebanese Anti-Torture Committee

At the end of the year, experts from the AOB welcomed a delegation of human rights officers from the Ukrainian Parliament to an exchange of information, and presented both the preventive and *ex-post* working methods in Austria. The focus of the meeting was on questions surrounding the protection of privacy in view of the close cooperation with the media, notably the weekly TV programme “*Bürgeranwalt*” (“Advocate for the People”). The study visit was organised by the Ludwig Boltzmann Institute of Human Rights as part of a twinning project. The goal of the project is to strengthen the Ukrainian ombudsman institution. The AOB contributes content to this project by providing experts.

Ukraine twinning project

Furthermore, an expert from the AOB took part in a conference of the Council of Europe dealing with the issue of “Children in detention pending forced return”. The same expert also participated in a United Nations expert seminar on the topic of “The use of force: police work at assemblies and accountability”.

## 5.6 Report to the Human Rights Advisory Council

The Human Rights Advisory Council met five times at plenary meetings in 2017. In addition to these plenary meetings, the Human Rights Advisory Council also met at meetings of the working groups and prepared statements on the preventive protection of human rights and draft recommendations of the NPM. The Human Rights Advisory Council also evaluated NPM visit

Constructive cooperation

reports and analysed the resulting monitoring priorities.

The considerations regarding issues elaborated in the year under review dealt amongst other things with the following topics:

- Factors determining inhuman and degrading treatment in institutions and facilities for persons with disabilities
- Detention cells in the basement of police stations
- Intimacy in medical examinations carried out by police or public health officers in police stations (a NPM recommendation to the Federal Ministry of Justice followed)
- Protection of victims of conduct that violates boundaries by residents of facilities for persons with disabilities

Furthermore, the Human Rights Advisory Council dealt with AOB recommendations on the following structural human rights issues:

- Recommendation to the Federal Ministry of the Interior on “Light switches in detention rooms in police stations” (Human Rights Advisory Council meeting from 28 February 2017)
- Recommendation to the regional government of Carinthia on “Centres for psychosocial rehabilitation in Carinthia” (Human Rights Advisory Council meeting from 20 June 2017)
- Recommendation to the Federal Ministry of Justice on “Quality criteria for residential facilities providing social therapy” (Human Rights Advisory Council from 19 September 2017)
- Recommendation to the Federal Ministry of the Interior on “Human rights standards in police detention centres” (Human Rights Advisory Council meeting from 21 November 2017)

The Human Rights Advisory Council statements are an important contribution for the NPM, as the multidisciplinary composition of the Council enables it to not only provide additional expertise but also to offer a value-adding perspective.



## 6 Findings and recommendations

### 6.1 Retirement and nursing homes

#### 6.1.1 Introduction

During the year under review 2017, a total of 100 retirement and nursing homes were visited by the NPM commissions. On the positive side, in many cases the facilities welcomed and accepted the recommendations made by the commissions as positive feedback and promised to make improvements. So-called follow-up visits were carried out 24 times in order to monitor whether the promises made had been kept. In the year under review, the commissions made the most critical findings in the area of “measures that restrict freedom” (56), immediately followed by those related to living conditions in the facilities (53). There were also major findings on the issues of “health care” (45) and “personnel” (39).

The activity of the NPM in the highly sensitive area of long-term inpatient care from a human rights perspective attracted considerable interest in 2017. This is substantiated by the huge response to the reporting about this section of last year’s report in the media (see Annual Report 2016 p. 99 - 118). The fact that structural violence is the subject matter of a report from a control body to the legislative breaks taboos and touches the self-perception of all those involved and the affected institutions. The report brought long-term care in homes to the focus of current media coverage. Any attempt to attribute the problem to isolated “cases of maladministration” or “black sheep” in the industry would be tantamount to trivialising the dramatic nature of the situation.

Great media response to NPM report 2016

The former Minister of Social Affairs used the report on retirement and nursing homes in July 2017 as an opportunity to invite the competent regional ministers to a care summit. He informed the NPM in a written statement that the following topics were discussed at the summit: the existence, drafting and implementation of strategy concepts, systematic quality assurance and improved quality indicators, measures for determining personnel requirements to improve staffing levels and increase attractiveness of the caring profession as well as training and further training of staff in the prevention of violence, pain management, dealing with dementia and hospice and palliative care.

Care summit as reaction

The NPM then contacted all of the *Laender* to obtain concrete information. The *Laender* referred to the monitoring and control activity of the competent supervisory authorities as a quality assurance tool in their statements. The following initiatives are worth mentioning:

New guidelines for all contractual partners in Vienna	The NPM considers the compendium of evidence-based “Care and nursing” guidelines (“ <i>Pflege und Betreuung</i> ”) published and updated in July 2017 by the Association for Viennese Social Institutions in Vienna as good practice in the quality assurance field. These are now mandatory in all of the institutions and facilities recognised by the Vienna Social Fund ( <i>Fond Soziales Wien</i> ). Another set of guidelines for aggression, violence and de-escalation management will be completed soon.
Package of measures in Tyrol	The expert commission deployed by the <i>Land</i> Tyrol after publication of the NPM Report 2016 has presented their “Recommendations for action” including a “Package of measures for the further development of care” which has been resolved by the regional government. The measures include amongst others an amendment of the Tyrolean Nursing Homes Act ( <i>Tiroler Heimgesetz</i> ), the requested replacement of the minute (time) ratio by binding standards for a staffing ratio, night duty and social care, the binding qualification for management in all homes, and the re-organisation of supervision. The wages for all caregivers working in care facilities, hospitals and the health service should also be standardised.
Improved staffing in Styria and Carinthia	In Styria, a four-step plan is in place to increase staffing in homes, in which case an additional total of 700 positions for full-time employees are to be created. Mandatory minimum night duty staffing was agreed in this context and is due to be implemented in 2018. The regional government of Carinthia has – as promised to the NPM – since then unanimously agreed a new regulation for the Carinthian Nursing Homes Act ( <i>Kärntner Heimgesetz</i> ). The ratio of nursing staff to those in care will thus be improved from 1:2.5 to 1:2.4 in 2018. From 1 January 2018, every nursing home in Carinthia must have a dedicated member of staff for animation/entertainment.
Dementia project of the <i>Land</i> Upper Austria with Public Regional Health Insurance Office	The Upper Austrian regional government made reference to the concept of “Integrated Care Dementia” ( <i>Integrierte Versorgung Demenz</i> ) developed with the Upper Austrian Public Regional Health Insurance Office. The concept started in 2013 and was also tested in selected nursing homes in the second pilot phase in 2017. Far more facilities had expressed interest in participating in this project. The declared objective is the strengthening of existing resources and specifically fostering the skills and abilities of residents with dementia, a diagnostic clarification by medical specialists (neurology, psychology) as well as (neuro) psychological testing by psychologists. The efficacy of different measures is currently being tested. An extensive, consistently structured network of dementia counselling centres and relevant offers which will also benefit nursing relatives are planned for Upper Austria in the future.
Expansion of gerontopsychiatric competence in Vorarlberg	In Vorarlberg, a project on the further development of gerontopsychiatric competence in Vorarlberg nursing homes („ <i>Weiterentwicklung der gerontopsychiatrischen Kompetenz in den Vorarlberger Pflegeheimen</i> “) was established for protection against violence and duty of care. By the beginning of 2017, 32 out of 51 nursing homes had taken part. The goal of the project

is to ensure the professional care of those suffering from gerontopsychiatric illnesses and mostly very elderly residents and to increase the professional competence of the nursing staff. A group of experts is drawing up guidelines for institutions on the issue of violence.

The *Land Salzburg*, which primarily refers to the controls of the supervisory authorities for quality assurance, has added several of the risk areas also mentioned frequently by the NPM to the questionnaire they have been using to date. These include dealing with pain and disoriented residents.

Expansion of competence of supervisory authority mechanism

In April 2017, following the model used by other *Laender*, the extended team of the Lower Austrian Patients and Care Advocates took up their work as a point of contact for complaints from staff, residents, their relatives and representatives. Regular feedback from the outside should act as an early warning to all nursing homes about deficits and risks and the need for improvement.

Early warning system in Lower Austria

Further positive developments were observed during the commissions' monitoring visits in the year under review. These are dealt with in chapter 2.1.7 "Positive observations". In spite of these improvements in individual areas, several fundamental requirements of the NPM relating to structural deficits have not yet been addressed.

The NPM appeals once again to the overall state responsibility of the Federal Government and the *Laender* to establish nationwide, uniform quality and care and financing standards. It also calls on to push for an occupational- and healthcare-science-based assessment of current qualitative and quantitative requirements in inpatient long-term care. There is unanimous agreement on the fact that the demand for nursing services is due to grow considerably in the future because of demographic developments and increasing employment levels. Under the slogan "ageing in place" or "mobile rather than inpatient" locally available and affordable types of care for older persons should be supported that enable senior citizens to remain living under their own roof for as long as possible. These would include care offers that structure their day, mobile services, 24-hour support and/or the support of relatives at a time when the care needs of older persons are on the increase. According to surveys, this actually reflects the wishes of the vast majority of older persons in Austria and other European countries (European Commission 2007, IFES 2010, WIFO 2014). In the opinion of the NPM, the care fund should be permanently safeguarded and amongst others used to pursue the harmonisation of the resident long-term care conditions in the *Laender*.

Safeguarding the future of care provision is responsibility of State

An "age of longevity and care" is imminent in Austria due to demographic change. In less than ten years, Austria will be one of the countries with the oldest population in the world. New ways of looking at age and models for the inclusion of the elderly in all areas of politics are thus needed – and not

Longevity and care is challenges all areas of politics

only significant changes in the health and social area. Increasingly complex care processes and a changed morbidity spectrum for geriatric patients require a more intensive interlinking of primary medical and nursing care in the facilities too. Psychiatric disorders are very prevalent among the residents of homes. Dementia, depression and anxiety disorders are very widespread. Scientific studies in the area of long-term care showed that multidisciplinary intervention in the care of these persons is the most effective solution. Collaboration between doctors, care specialists and other therapeutic professionals is thus critical. From the NPM's point of view, inadequately coordinated therapy strategies and care planning equally endanger treatment and achieving care (quality) objectives.

In addition to awareness for the necessity of interdisciplinary cooperation, retirement and nursing homes require the appropriate structures and resources to ensure that this can actually be implemented and supported. These structures can be joint interdisciplinary case reviews, for example, joint meetings with the relatives, or common electronic documentation. Training nursing teams in the field of mental health is crucial to understanding the illness and supporting the residents.

High demand for  
qualified nursing staff

The health care sector, homes and service providers have to prepare for growing complexity and increasingly specialised demands for nursing and care in any case. Care providers will also have to assume more of the routine medical tasks. According to current estimates from the Austrian Healthcare and Nursing Association (*Österreichischer Gesundheits- und Krankenpflegeverband*), in 2030 there will not only be an insufficient number of doctors but some 30,000 vacant positions for qualified nursing staff.

The disparity between increasing demands and the actual human resources available in institutions was observed by all of the commissions. The new health care profession register will be set up from the middle of 2018. 120,000 employees working in the health care and nursing professions as well as in higher technical medical services and 10,000 graduates every year will be entered in this register with their respective advanced and further training. Entry in the register is the condition for working in the profession. Registration will not only support administration in the future, it should also help the regional health care planners to detect gaps. This is very much appreciated by the NPM.

Findings from staff  
interviews

In meetings with the commissions, nursing staff often claim to suffer under tight time constraints, extreme workloads, mental and physical stress, unfavourable work atmosphere, rigid hierarchies or constantly changing work rosters. They also concede that, due to stress, certain actions or the failure to act are accepted, which is not compatible with their professional ethics. Some even consider leaving the profession earlier than planned. Clearly, there is a relation between the qualification and the quality of nursing intervention. Some but not all of the structural deficits and incidences of structural violence

highlighted by the NPM in previous years are linked to outdated “minimum staffing ratios” that represent *de facto* maximum staffing limits. They reinforce a perception of nursing that does not do justice to the UN Convention on the Rights of Persons with Disabilities (CRPD) which must be fully observed in this area. The CRPD sets forth the right to support of autonomy and self-determination, rehabilitation, participation and sharing. Not enough attention is given to individual resources, the habits and the mental needs of persons with cognitive and dementia-related impairments. Findings made by Commission 5 can be mentioned as an example of structural violence. In the summer of 2017, they made several unannounced visits to institutions and facilities. There were no residents to be seen in the gardens, on the terraces or in the recreation rooms already at around 6 p.m.

Staffing is kept to a minimum in many facilities, particularly during the night. What is more, the operators do not consider permanently installed occupational support, regular teambuilding or availing of supervision as being essential and indispensable for efficient organisational development. The NPM sees a need for action in the alignment of remuneration systems and the further development of age-appropriate jobs in the areas of retirement, nursing and residential homes in particular.

The NPM took on the discussion on the future of nursing and violence in institutionalised care at many meetings with different stakeholders in 2017. It also published a brochure entitled “Preventive recommendations for the protection and promotion of human rights in retirement and nursing homes” (*“Präventive Empfehlungen zum Schutz und zur Förderung der Menschenrechte in Alten- und Pflegeheimen und in Einrichtungen für Menschen mit Behinderung”*). This brochure will be further developed in the coming years. It is designed to provide orientation to supervisory authorities, but also to nursing and care organisations on the assessment standards laid down and required by the NPM. At the same time, the publication should be a source of information for residents, their relatives and volunteers.

NPM brochure on preventive standards

### 6.1.2 (Human) Rights of residents in retirement and nursing homes

The violation of human and residents’ rights is often observed in retirement and nursing homes. It is probably attributable to the fact that these rights are not enshrined at all or to different degrees in the laws of the respective *Laender*. This gap explains to a certain extent why there is still little awareness of the issue. This conclusion is the result of observations by the commissions which repeatedly confirm that little is known about the human rights guarantees of residents and how they should be protected.

Human rights are the rights of every individual to be granted respect, protection and freedom from the respective state. It is the responsibility of the Federal Government and the *Laender* to respect the human rights of those in need of care, protect them from injury and violence by third parties or structures and safeguard the conditions necessary for humane care.

In order for elderly persons in retirement and nursing facilities to be able to fully exercise their rights, the state has first to take certain precautions and set up structures that define human rights as a criterion when assessing the quality of nursing and care (cf. Aronson, P. / Mahler, C. [2016]: “*Menschenrechte in Pflegeheimen: Wie Menschenrechte der Altenpflege verankert werden können*”, German Institute for Human Rights, p. 1). It must be borne in mind that a care situation can always present temporary or permanent conditions that prevent someone from exercising their rights themselves.

Respect for human dignity would become essential

Article 1 of the Universal Declaration of Human Rights (UDHR) affirms that all people are born free and equal in dignity and rights. Elderly persons in residential care must therefore also be perceived as human beings with individual rights – regardless of their care and help needs.

Human rights in the area of long-term care of elderly persons

The following rights also apply to the field of geriatric care: the right to life and physical integrity (Article 2 ECHR, Article 6 ICCPR), prohibition against being subjected to torture or cruel, inhuman or degrading treatment (Article 3 ECHR, Article 7 ICCPR), right to liberty and security in person (Article 5 ECHR, Article 1 Federal Constitutional Law on the Protection of Personal Freedom, Article 9 ICCPR) and the right to respect for private and family life (Article 8 ECHR, Article 17 ICCPR). Furthermore, the ICESCR documents the right of everyone to the enjoyment of the “highest attainable standard of physical and mental health” (Article 12) and the right to an “adequate standard of living for himself and his family, including adequate food, clothing and housing” (Article 11). The Convention on the Rights of Persons with Disabilities (CRPD) also contains provisions for the protection of elderly persons in long-term care, e.g. guidelines on removing barriers (Article 9), for self-determination (Article 14, 15, 25) and for the right to independent living and inclusion into the community (Article 19). Furthermore, the principle of freedom from discrimination included in various human rights conventions applies, in particular with regard to access to health care and nursing services and rehabilitation. It is thus clear that, from a human rights perspective, long-term care cannot be reduced to merely providing help with accommodation, eating, hygiene or mobility (“warm, full, clean”).

Rights for the protection of and respect for human dignity

Even though the principle of respecting and protecting human dignity is explicitly articulated as an objective in most of the *Laender* laws (with the exception of Upper Austria and Lower Austria), the details in the said laws provide no concrete orientation for those in need of care and their relatives. What is also incompatible with the concept of the universality of human rights is the varying degree of implementation in the *Laender* laws, covering

just a mere part of the legal positions which Austria guaranteed to realise on an international level, be it in UN conventions or recommendations of the Council of Europe. This is explained in extracts as follows:

At the moment, an explicit right to respectful, professional nursing or care based on current standards is only stipulated in the *Laender* laws of Vienna and Tyrol. The right to medical care (including adequate treatment of pain) is only stipulated in Vienna, Tyrol and Styria. The situation is similar with regard to the right to die with dignity, which is anchored solely in the laws of Vienna and Lower Austria. The right to end-of-life care by relatives or other trusted persons is only found in the laws of Lower Austria and Burgenland.

Currently, only the pertinent laws of Vienna, Styria and Burgenland contain the right to an appropriate diet (in accordance with medical knowledge). The right to sufficient fluid intake in long-term care is only documented in Vienna. And it is only in Vienna that the home operators are obliged to honour the right to measures that preserve and support functional integrity and reintegrate the residents through the help of therapists.

A right to the support and nurturing of one's own abilities, independence, self-determination and personal responsibility is currently only stipulated in the laws of Lower Austria, Tyrol and Vorarlberg. In Vienna on the other hand, a right to function-preserving, function-supporting and reintegrating measures as well as a right to go or be taken outside (in fresh air) have been incorporated into law.

None of the *Laender* laws contain considerations relating to the – regardless of age and the extent of care and help needed – vested right to sexuality and respect for gender identities. Neither is there reference to the rights that might enable residents to influence their quality of life as well as the content and the forming of care relationships (right to primary nursing, right to same-sex care, right to validation, hospice or palliative care etc.). There is also no mention of guarantees from the UN Convention on the Rights of Persons with Disabilities (CRPD) such as the right to supportive communication, rehabilitation, participation, integration in society etc. The human rights obligation on the preventive protection against violence and the right to non-violent care are not mentioned in the *Laender* laws either.

With regard to the right to life and physical integrity (cf. Article 2 ECHR, Article 6 ICCPR) as well as the prohibition against subjection to cruel, inhuman or degrading treatment (cf. Article 3 ECHR, Article 7 ICCPR), a preventive approach in the area of the nursing and care of elderly persons in nursing homes is mandatory. The same applies for the protection against arbitrary deprivation of liberty (cf. Article 5 ECHR, Article 1 Federal Constitutional Law on the Protection of Personal Freedom, Article 9 ICCPR), which however has a uniform regulatory content nationwide thanks to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*). In order to protect elderly

Protection against  
violence and arbitrary  
deprivation of liberty

persons in long-term care against violence or abuse or arbitrary deprivation of liberty, in addition to adequate financing and staffing of control mechanisms such as the supervision of homes and resident representatives pursuant to the Nursing and Residential Homes Residence Act, relevant opportunities to voice complaints must be available and accessible to residents and their relatives.

Standardisation and precise specification necessary

In order to anchor and further promote the protection of human rights in the daily nursing routine of elderly persons, the rights of residents in nursing homes should be reformulated, standardised throughout the country and, for the purpose of improved enforceability, specified as precisely as possible. Furthermore, it must be guaranteed that the residents are informed of their rights and relatives and other trusted persons know these rights as well.

- ▶ *The rights of residents must be standardised throughout the country and specified as precisely as possible with the objective of fully implementing human rights guarantees for the purpose of improved enforceability.*
- ▶ *It must be guaranteed that residents are informed of their rights, and that relatives and trusted persons know these rights.*

### 6.1.3 Complaint management

Complaint management as an important preventive tool

Voicing complaints gives each individual including the organisation the opportunity to bring about clarification, sort out misunderstandings and solve problems. For this reason, it is extremely important to the NPM that care facilities have several easily accessible complaint channels in place. This will give clients, their relatives but also volunteers an opportunity to communicate their dissatisfaction or critical observations in a way that seems most appropriate for them. It must therefore be guaranteed that complaints can be submitted verbally, in writing, by telephone, by email but also anonymously. Professional complaint management is an important preventive mechanism to avoid conflict and violence, and should thus motivate those involved to voice their criticism. Staff should be informed about complaint and processing channels and be able to provide information about who deals with which communication form and which content. Transparent complaint management is an expression of an open culture and proof of an endeavour to rectify conflict and the willingness to solve problems. This helps staff to become more confident in properly dealing with criticism.

Issues on confidence and relationship level

The overwhelming majority of complaints in care facilities that came to light during interviews with the commissions had to do with issues regarding the confidence and relationship level and was linked with concrete negative experiences. If these issues cannot be rectified quickly, the resulting frustration and annoyance can continue to have an effect.



Residents and their relatives need to be certain that the nursing home deals with critical observations and is seriously interested in making improvements. No organisation is safe from “blindness of the system” and negative routines.

The way in which individual facilities deal with complaints differs greatly, as ascertained by the commissions on their visits to retirement and nursing homes.

The commissions were told in one facility in Tyrol and in Burgenland that the establishment of a low-threshold complaint management had not been dealt with, as it was possible to contact the head nurses or facility manager, which was a rare occurrence anyway. In a nursing home in Upper Austria, Commission 2 observed that written criticism could be submitted but that staff were unable to explain how the complaints are processed and how the outcome is communicated. It was also not possible to voice complaints anonymously. The home operator assured the NPM that a comprehensive new concept would be developed and implemented in 2018.

Few complaints do not necessarily indicate customer satisfaction

In a facility in Styria, residents testified to Commission 3 that there were several cases of verbal abuse on the part of two employees. They also spoke of “assault” when being assisted with personal hygiene. In concrete terms, they described situations in which those in need of care were shouted at or even “pushed” in front of others. As a penalty for undesired behaviour, these persons’ mobile phones were taken away temporarily or they were forced to stay in their room or not allowed to go to the dining room. Residents claimed that they have stopped complaining about these caregivers, as there has been no reaction to date. They also rarely tell their relatives anything negative “so that they won’t worry”. The management of the facility and the staff on the other hand were convinced that there is an open complaint culture in their organisation, as there is the opportunity to voice complaints in a forum once a month. An internal anonymous complaint channel was however not planned. Besides, there were no notices on contacting the Styrian Patient and Care Ombudsman Board (*Steirische PatientInnen- und Pflegeombudsschaft*) and the representatives of the residents. There was also a complete lack of information on the rights of residents. When the problematic behaviour of the caregivers was brought up, the manager admitted to the commission that she was aware of the allegations and had organised that the two caregivers in question are no longer permitted to work alone and “were under observation”. Commission 3 had the impression that trying to improve the atmosphere or openly discuss the problem with those affected had no priority.

A care facility in Lower Austria installed a residents’ council in order to give the residents the possibility to have their say. The residents elect one representative for each floor who is invited to regular meetings with the home management. Ideas, feedback, wishes and filed complaints are discussed and decided on together, as are the form in which residents are informed about solutions and what is rejected or in the process of being implemented.

Residents’ council

- ▶ *Professional complaint management is an important preventive mechanism for avoiding conflict.*
- ▶ *Residents should be supported in submitting verbal, written or anonymous complaints.*
- ▶ *Complaints should be followed up on without delay. Misunderstandings and unfulfilled wishes must be clarified, the lack of information rectified, and solvable problems should also be addressed quickly.*

#### 6.1.4 Hospice culture and palliative care

Palliative care in nursing homes is organisational process

A project on “Hospice Culture and Palliative Care in Nursing Homes” (*“Hospizkultur und Palliative Care in Pflegeheimen”*) was developed by Hospiz Österreich (Hospice Austria) in 2004 based on experience gained in Vorarlberg. Experience has been gathered on model projects in Vorarlberg, Lower Austria, Salzburg, Vienna, Styria and Burgenland for more than a decade and is documented in the form of quality objectives, structural and process standards and guidelines. The Austrian Institute for Health (*Österreichisches Bundesinstitut für Gesundheitswesen*) published a process manual for hospice and palliative facilities for adults that was developed with the involvement of expert teams from the *Hospiz Austria* umbrella organisation and employees from the hospice and palliative facilities. The manual is used by the NPM for defining assessment criteria.

Hospice culture and palliative care is an approach that enhances the quality of life of those, who are in the final phase of their lives and enables them to pass away with dignity. Holistic nursing, palliative medical care and pain therapy to ease the symptoms accommodates the mental, social and spiritual wishes of the patients. With the help of a specifically developed communication tool – the care dialogue – residents’ wishes are voiced in order to facilitate advance planning.

This type of care requires special knowledge and experience in treating pain and dementia as well as communication that recognises and respects the special situation of the residents. Interdisciplinary collaboration, above all between the medical and nursing staff, and the involvement of close relatives play a key role. The Hospice Culture and Palliative Care in Nursing Homes project is therefore a comprehensive, two-year organisational development process focusing on hospice and palliative care. Part of this process is the further training of 80% of the staff from all professions according to the palliative geriatric curriculum, further training within the framework of the Care Dialogue (*Vorsorgedialog*) project - an integral part of hospice culture and palliative care - and the continued development of procedures in nursing homes to better satisfy residents’ needs during the end-of-life process. Advance care planning for the final phase of life is an important condition for enabling

persons to pass away in familiar surroundings. If the project on Hospice Culture and Palliative Care in Nursing Homes is not established in nursing homes and there is a shortage of staff anyway, persons in the final phase of their lives are often moved to hospitals. The NPM is of the opinion that this can constitute a violation of human rights.

In order to preserve the quality of life and human dignity until the end, the NPM holds the view that the goal must be to implement and sustainably maintain Hospice Culture and Palliative Care in Nursing Homes project throughout Austria.

At the beginning of 2017, 129 retirement and nursing homes in eight *Laender* had applied the Hospice Culture and Palliative Care in Nursing Homes project. Home operators in individual *Laender* have made commendable efforts in this regard in recent years and have specially trained their staff. Corresponding initiatives have thus been implemented in two thirds of all state nursing homes in Lower Austria (33 out of 48). However, this is still far from a nationwide implementation in 850 nursing homes all over Austria. But this could change. In addition to care funding, an increased budget of EUR 18 million per year has been made available for the hospice and palliative care area for the financial equalisation (redistribution of income) period 2017 to 2021, whereby the Federal Government, *Laender* and public social insurance carriers will share a third of this respectively.

No nationwide implementation

The NPM states that Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, sees a serious violation of human rights in the denial of palliative care. He expressed this in January 2018 as follows:

“The importance of palliative care as an integral part of health services and its denial as a human rights violation are being increasingly recognised at the international level. Special Rapporteurs of the UN on Torture and on Health stated that the denial of pain relief causing severe pain and suffering may amount to cruel, inhuman or degrading treatment. Within the Council of Europe, the Recommendation of the Committee of Ministers on the human rights of older persons devoted a chapter to palliative care, providing that ‘any older person who is in need of palliative care should be entitled to access it without undue delay, in a setting which is consistent with his or her needs and preferences, including at home and in long-term care settings.’” (Source: <https://www.coe.int/en/web/commissioner/-/the-right-of-older-persons-to-dignity-and-autonomy-in-care>).

Denial of palliative care is a human rights violation

The commissions visited facilities which still lack spatial or other conditions to enable residents to receive palliative support in the final phase of their lives and bid their relatives farewell in intimacy. In this context, a nursing home was visited in Styria which only offered shared rooms and had no rooms available where the relatives of the dying could spend the night. Staff shortages on night duty made it impossible to spend time with the dying.

Missing condition for palliative care

In other retirement and nursing homes visited by the commissions, there are farewell rooms and prayer rooms. Some facilities are taking part in hospice projects. There are palliative care plans that include emergency and treatment plans, and are regularly evaluated by all those involved (medical and nursing staff, relatives, and if possible the residents as well). Palliative care is a focal point in further training there.

Alleviation of fears through Care Dialogue

In 2017, the Care Dialogue (*Vorsorgedialog*) became an important and integral component of hospice culture and palliative care projects. Facilities that are working on or have already implemented this reported about their experience to the commissions. Addressing this topic is perceived as a relief because it alleviates the fears of residents and their representatives and, at the same time, supports the care staff in ethically difficult decisions at the end of a life.

Palliative care affirms the finite nature of life and advocates as peaceful a death as possible for residents. This includes possible ways of dying and the differentiated use of passive euthanasia options (dispensing with life-prolonging intervention). The Care Dialogue thus encourages the self-determination of residents with regard to dying too and guarantees an individual end-of-life care as a measure of respect for the inseparable dignity of human beings in the final phase of their life. The Care Dialogue is also anchored in the 2<sup>nd</sup> Adult Protection Law that will come into effect on 1 July 2018. Legally speaking, this is equivalent to a substantial patient decree, provided that the resident is sufficiently able to reason and make decisions during the dialogue.

Guidelines for palliative sedation therapy

The NPM considers the Austrian guideline for palliative sedation therapy (PST) a progress. There was no standardised ethically grounded guideline for this therapy in Austria until 2017. On the recommendation of the Bioethics Commission, a multi-professional working group created a guideline for palliative sedation therapy on behalf of the Austrian Palliative Association (*Österreichische Palliativgesellschaft*). The guideline was published as an open source in Vienna Medical Weekly (*Wiener Medizinische Wochenschrift*) in 2017.

PST is important when caring for terminally ill residents who are experiencing intolerable suffering. It is not a standard medical measure but the last medical way of controlling intense pain, which cannot be otherwise treated in therapy, with a pharmacological lowering of consciousness. The legally effective execution of PST requires the same legitimation criteria as other medical therapies: a corresponding indication and a legally effective consent to the treatment.

- ▶ *Every seriously and terminally ill person has a right to the comprehensive medical, nursing, psychosocial and spiritual care and support that is commensurate with their individual life situation and hospice-palliative care needs.*
- ▶ *The nationwide implementation of an equal access to hospice and palliative care in nursing homes has to be sensitive to the personal and cultural values, beliefs and rituals in order to facilitate dying with dignity.*
- ▶ *Care Dialogues should be established in all facilities. Residents and their trusted persons should be supported in making decisions that affect the final phase of their life. This requires space and time for passing on comprehensible information related to predictions as well as treatment and care options.*

### 6.1.5 Drug safety - polypharmacy

Many of the residents of retirement and nursing homes are multimorbid and have cognitive and/or physical restrictions. This means that they are extremely vulnerable and worthy of protection.

During their visits to retirement and nursing homes the commissions observe that geriatric patients often receive polypharmaceutical treatment. The NPM is well aware that prescriptions are necessary in isolated cases under certain circumstances. In most cases however, it is not possible for the commissions to examine whether or in how far the prescribing doctors and nursing staff considered the possible effects of this type of medication. In many cases, it is also not transparent how medication-based therapy objectives and care planning are aligned and evaluated.

The number of side effects and undesired interactions increases with the amount of medication taken. According to a study, there is a 13% probability of interaction if two medicines are taken simultaneously. If four medicines are taken, the probability is 38%, and 82% for seven medicines taken on the same day. If ten medicines are prescribed per day, over 45 interactions can be expected mathematically speaking (source: Hiemke, C. / Eckermann, G. (2014): *“Kombinationstherapie/Polypharmazie – Interaktionen von Psychopharmaka”*. Arzneimitteltherapie 2014; 32: 361-370). However, these medication-based interactions are often misinterpreted as the symptoms of new diseases in elderly people. Dizziness, disorientation and falls are often seen as age-related changes for which new medicines are prescribed. For elderly persons, the most frequent health problems caused by medication are states of confusion, depression, tendency to collapse, constipation, incontinence and Parkinson's disease with impaired movement.

The undesired effects of medication foster intellectual decline, immobility (impaired movement), instability and incontinence. For this reason, drug safety is of key importance. It is also scientifically proven that inconsiderate

pharmacy in geriatric patients increases the probability of mortality and morbidity.

In order to make the provision of medication and care planning safer, not only the individual competence of all those involved in the administration of medication should be strengthened, but also the cooperation and communication of all stakeholders (general practitioner, medical specialists, pharmacists, nursing staff, social support, patient and relatives) improved and intensified.

But in reality this is lacking to a great extent. In the year under review, the Medical Chamber of Tyrol sent out a circular – which is in the possession of the NPM – expressly recommending all practising office-based doctors to strictly separate medical documentation from nursing documentation in care facilities. They also hold the view that the nursing staff do not have to be informed about diagnoses and medical therapy objectives.

It goes without saying that a good collaboration of all professions in the interest of the patients is essential. However, it is not guaranteed in all care facilities. “Tribal thinking” on the part of the medical profession – in other words, the tendency to act separately or even in competition with nursing – is indefensible and unacceptable as far as the NPM is concerned. The Federal Ministry of Labour, Social Affairs, Health and Consumer Protection was informed about this. Qualified nursing staff may not be left in the dark about diagnoses and therapy objectives or where health promotion, prevention, therapy, rehabilitation, palliation, but also safe medication therapy are concerned. After all, they are also responsible for measures to improve the quality of life and should be able to plan the same. Furthermore, the lack of coordination feeds stressful – and expensive – “revolving door effects” if those in need of care are alternating between the nursing home and hospitals at short intervals.

Documentation is not merged

Medication reviews by medical, pharmaceutical and nursing staff are long since established in the Anglo-American region. This type of cooperation is legally possible in Austria too and is practised in isolated cases. There are also some care facilities in which general practitioners use the nursing home documentation system and document visits and treatments themselves. This helps prevent transcription errors, reduces the workload for nursing staff and improves the safety of residents. Care facilities in which joint nursing rounds and case reviews take place demonstrate how the important nursing home/general practitioner interface can be optimised. The availability of the doctors is regulated. Treatment by a substitute is guaranteed if the doctor is not on-site or has other commitments. There are also fixed emergency rules which are observed by both sides.

Another key aspect of drug safety is the adequate handling of psychotropic medication. Without question, treatment with psychotropic medication is one of the most important pillars of modern psychiatric therapy. Having said that, in the interest of those affected a clear indication and careful application of therapeutic standards are a must in this context. In the year under review, the commissions observed several cases in which the use of psychotropic medication was questionable:

Use of psychotropic medication

In a Tyrolean facility, a remarkably high number of prescriptions for long-term medication (13 to 16) and additional individual medication was observed for almost all of those in need. One resident was prescribed Psychopax and Temesta at the same time. Both drugs are benzodiazepines (tranquilisers that can cause addiction). Besides, Psychopax is on the Austrian list of potentially inappropriate medication (PIM) (see also Annual Report 2014, pp. 82 et seq. and Annual Report 2015, pp. 109 et seq.) and is thus potentially inappropriate medication for elderly persons. Commission 1 was also critical of psychotropic medication being prescribed for persons who had not been diagnosed with mental illnesses in the nursing home. Even more so, as only the following indications were found: “hiccups”, “for nausea/shortness of breath”, “before showering”; for “agitation, when worried, headache, pressure in the head”.

Due to the lack of availability of data on the safety and efficacy of some medication in elderly persons and the lack of evidence of the safe use of medicine in old age, the list of potentially inappropriate medication (PIM list), which is based on expert knowledge, was created for the Austrian pharmaceuticals market. 73 substances are classified as being “potentially inappropriate” for patients over 65 on the PIM list. It is assumed that avoiding this medication contributes to improving the safety of medicine-based therapy in old age. Ultimately, thanks to the many practical tips, the PIM list can also be used as a decision-making tool to support doctors when selecting a therapy.

- ▶ *Residents must be protected against polypharmacy by constantly assessing existing medication and discontinuing medicine-based therapy if it is not (no longer) necessary.*
- ▶ *In particular, prescribing benzodiazepines and antipsychotics without corresponding indication or without regular evaluation of whether another prescription is necessary should stop.*
- ▶ *A changed morbidity spectrum requires the interlocking of primary medical and nursing care. The collaboration between general practitioner's surgery and nursing specialists should comprise joint case planning, effective communication and mutual understanding.*

### 6.1.6 Misplacement of persons with chronic illnesses in Styrian nursing home

Large facilities for persons with psychiatric disease

In the year under review, Commission 3 visited nursing homes in Styria that care for persons with psychiatric diagnoses. These facilities have 70 to 140 care places and are primarily for the long-term care of patients with a psychiatric disease. In these cases, private operators also receive a psychiatry allowance from the *Land* in addition to the regular daily rate.

In the past, the NPM has already criticised placing persons with mental illnesses in nursing homes. The chronically ill are thus excluded from normal everyday life. However, the objective of the psychiatry reforms in recent decades was to build up local care structures for persons with chronic mental illness in tow with reducing the number of beds in psychiatric hospitals. This was also designed to avoid repeated long-term stays and involuntary placement in psychiatric long-term wards.

But there have been no accompanying structural reform efforts for the development of adequate, alternative and local assistance for persons with chronic psychiatric diseases in Styria. The failure to build up local care structures (fully assisted living and housing facilities and a rehabilitating daily structure) coupled with the simultaneous surplus of beds results in persons currently being hospitalised at just 30 years of age.

The main focus in the care of persons with chronic psychiatric diseases in the facilities visited by Commission 3 is primarily on nursing aspects. The nursing homes have neither the specific needs-based treatment concepts that are adapted to individual needs for assisting persons with ICD-F diagnoses nor do they provide tailored support measures for their rehabilitation. Continuing and long-standing functional problems however would call for specific assistance and help for every functional area (self-care, work, taking part in social life). Nursing homes are not in a position to provide this. It is crucial that the misplacements are (at least gradually) reversed and stopped. The NPM views the approach practised by the regional government of Styria to be a breach of the UN Convention on the Rights of Persons with Disabilities (CRPD). This comprises sponsoring nursing homes with psychiatry allowances when they admit younger persons rather than reallocating existing funds to the setting up and expanding of suitable residential groups, partially assisted living and social and occupational rehabilitation.



- ▶ *Persons with mental illnesses must be cared for in compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD) in low-threshold and local care settings. Misplacements must be reversed and stopped.*
- ▶ *Specific needs-based care concepts must be established for the treatment of persons with chronic psychiatric diseases.*
- ▶ *Individual support measures that facilitate full reintegration should be part of the rehabilitative treatment concept.*

### 6.1.7 Positive observations

On a positive note, most institutions, facilities and operators were able to see and accept the suggestions made by the commissions as welcomed feedback. The scope or content of the OPCAT mandate are only questioned in exceptions. The recommendations of the NPM are recognised to a great extent and some of them quickly implemented, as the following examples show.

Reaction to recommendations by the NPM

First and foremost, heightened awareness for both the mechanical and medication-based restriction of freedom was achieved in the area of the “core mandate” of the NPM, the monitoring of measures that restrict freedom. There were report updates and the recommendation of an evaluation was followed through by taking up contact with the representatives of the residents. In some cases, training on the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) or changes in documentation were announced. Several facilities reported that meetings with the competent general practitioner have brought about improvement in cooperation and the issue of more precise prescriptions for administering the appropriate medication. In December 2017 the President of the Austrian Healthcare and Nursing Association assured the NPM in writing and in reaction to last year’s report that an e-learning tool for nursing staff is being developed that provides information about the Nursing and Residential Homes Residence Act and resulting obligations. It should also help in implementing alternatives for medication-based and mechanical restrictions of freedom. This tool is scheduled to be deployed in further training sessions in 2018.

Measures that restrict freedom

The NPM made many recommendations on how nursing homes should be organised in order to enable those in need of care to keep their individual routines in this living environment. It is important to the NPM that the nursing process routines are not so formalised that they obstruct these claims. Accommodating the requirements of those in need of care has been proved to prevent violence. The subjective quality of life of the residents is thus improved.

Normality principle

Some retirement and nursing homes have acted on these recommendations and changed work rosters for example, introduced a late shift and stopped having evening meals so early or scheduled them more flexibly. A nursing

home in Lower Austria actively offers late mealtimes and even provides these at night if desired. Afternoon and evening entertainment was introduced in a facility for senior citizens in Styria at the request of the residents. New concepts for guaranteeing that residents regularly spend time outside and a more extensive activity plan were developed by facilities in Vienna and Tyrol for example, and brought to the attention of the commissions. In one home in Lower Austria, the hitherto practice of “set” shower days was replaced by a more flexible alternative after the visit by the commission. “Remembrance areas” commemorating those who have passed away were made more appealing. Directly after the commission’s visit, a facility in Upper Austria gave all residents without serious cognitive impairments front door keys, which they had been denied until then. Screens for safeguarding privacy in double rooms were bought for the first time in a nursing home in Burgenland. Dividing curtains were hung up in a retirement home in Upper Austria.

Measures for relieving the staff

Attempts to relieve staff were another consequence of NPM activity. Teambuilding days were therefore introduced in a facility in Lower Austria, shift lengths restructured and special staff rest areas created. The installation of a night shift could also be achieved in a few isolated cases. Increased further training was often announced as a consequence of the commissions’ visits. One facility in Lower Austria thus provided training in hospice and palliative care for the majority of staff. A senior citizens’ home in Tyrol acted on the recommendation of further training on violence prevention and validation for example. Training on dealing with persons suffering from dementia was held in a facility in Salzburg. The NPM is of the opinion that supervision should be available in all nursing homes. Commissions were told in a retirement and nursing home in Salzburg and in Burgenland that individual and group supervision offers are perceived by nursing staff as an enormous relief. In a facility in Lower Austria, there is a life and social counsellor available to the staff whom they can contact with work-related or private problems.

Fall management

Some facilities recognised the knowledge deficits identified by the NPM with respect to professional fall management. One Tyrolean facility thus declared fall prevention to be the main focus of further training in 2017 and hired a new member of staff for this purpose.

Pain management

In the year under review, the commissions again recommended setting pain management measures based on the current nursing standards and introducing tools for assessing pain in patients with advanced dementia (PAINAD scale). This was also confirmed.

Accessibility of call buttons and alarm systems

Many facilities inspected and optimised the height and accessibility of call buttons in all rooms after the express recommendation from the NPM. One Styrian facility now also offers those in need mobile call buttons in the form of wristbands. The NPM is fully aware that residents suffering from dementia sometimes activate the alarm systems to get attention and care without there being an “obvious emergency situation”. They often do this repeatedly and at

short intervals. The reason for this can be that they suddenly feel acute anxiety and need to be comforted personally. This does not justify the temporary “deactivation of emergency call systems”.

Measures recommended for improving accessibility for persons with disabilities were implemented in some facilities. These included the visually contrasting design of walls, floors, skirting boards, and handles or putting coloured marking and fall protection devices at the top of stairs. On recommendation, additional handrails were mounted, foot mats arranged flush or glass surfaces made more recognisable as such. Information was made more legible and understandable in some facilities, because being able to inform oneself and communicate about the shared environment is a basic need. The interior design between bed and toilet was improved by direct visual connections making it easier for residents to go there on their own. In a nursing home in Upper Austria, mirror tiles were laid and new lamps mounted in the rooms for wheelchair users in order to compensate for the insufficient lighting conditions. Recommendations for improved orientation in the use of rooms were acted on in a Tyrolean facility for example. These included having the “handcraft group” in the nursing home produce signs with simple graphic images, symbols or photos that indicate what the room is used for. The interior space of the rooms were given a dementia-sensitive design to support the residents’ perception of time. Large clocks and calendars as well as decoration around a certain theme help the residents recognise the seasons or special days or public holidays.

Accessibility for persons with disabilities and structural measures

## 6.2 Hospitals and psychiatric institutions

### 6.2.1 Introduction

In the year under review, the commissions of the NPM visited 36 medical facilities including 21 psychiatric and 15 somatic clinics or wards. Most of the observations made by the commissions in the year under review dealt with the issues of “health care” (18) and “measures that restrict freedom” (17). There were also critical observations on personnel matters (13) and structural deficits (12).

With regard to current formal legal suggestions made by the NPM in the area of preventive human rights monitoring, the (former) Federal Ministry of Health and Women’s Affairs promised improvements in the Hospital and Convalescent Homes Act (*Krankenanstalten- und Kurzanstaltengesetz*) and the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) in a declaration in July 2017. The “Health” area was transferred to the field of competence of the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection in January 2018 as a result of the amendment to the Federal Ministry of Health in 2017. The NPM tentatively assumes that preventive human rights monitoring in health care institutions and facilities will continue to be developed by the new Federal Minister using the results achieved to date as a base.

Central recording of measures that restrict freedom

In accordance with the long-standing demand by the NPM, the Ministry promised that the obligation for psychiatric wards and hospitals to keep a central register for recording measures that restrict freedom will be enshrined in law with the next amendment of the Hospital and Convalescent Homes Act. A legal amendment is necessary because the commissions again observed in the year under review 2017 that central registers in medical facilities were not in place on a nationwide basis. An anonymous central register that complies with the CPT standards is a vital condition for an effective and systematic prevention strategy to reduce the use of measures that restrict freedom. The central register makes it possible to compare the number of such measures inside the clinic but also between the medical facilities. Only when these data are available can there be a concrete discussion on how such measures can be avoided. They also form the basis for developing pertinent strategies that help the institutions to avoid measures that restrict freedom.

Sexual harassment by hospital personnel

The Human Rights Advisory Council has dealt with the problem of sexual harassment of patients by personnel in depth and developed recommendations for improvement for the purpose of a preventive approach (see Annual Report 2016, p. 121 et seq.). One suggestion was that the patient advocacies of the *Laender* should be invited when there are allegations of sexualised violence to patients. They could assist the victim support groups in hospitals, especially if a member of the medical facility staff is suspected. According to one promise,

this recommendation should also be implemented with the next amendment to the Hospital and Convalescent Homes Act.

However, the NPM would like to emphasise that in addition to formal legal requirements, a comprehensive preventive concept for avoiding sexual assault is necessary. This includes basic and further training to increase the awareness of clinic staff with respect to dealing with “sexuality”. These training sessions should emphasise that patients can perceive suggestive remarks for example or even an imprudent, fleeting physical touch as a violation of personal integrity.

It has regularly come to the knowledge of the NPM that security organs, in rural areas in particular, are forced to judge whether the conditions for necessary hospitalisation pursuant to the Hospitalisation of Mentally Ill Persons Act are given in the event of imminent danger. Police officers are thus often left alone when having to decide 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. These decisions are extremely stressful for people without a medical background and foster misjudgement and the insufficient description of situations in states of emergency. As a consequence, doctors in psychiatric wards may not think that the conditions for hospitalisation are fulfilled, and those affected are left alone in what is still a difficult situation, sometimes far from home even at night.

Hospitalisation without  
medical certificate

The NPM thus suggested that emergency doctors as well as office-based psychiatric specialists be legally authorised to issue certificates pursuant to the Hospitalisation Act. The former Federal Ministry of Health and Women’s Affairs indicated to the NPM that the topic is being taken seriously and different solutions are being discussed, for which a formal legal solution is also being sought.

It was outlined in previous reports (see Annual Report 2015, p. 123 et seq.) that even in the area of application of the Hospitalisation Act pursuant to the jurisdiction of the Supreme Court, the administration of psychotropic medication can constitute a restriction of the freedom of movement in certain conditions. This should, contrary to current practice, be specially documented as a medication-based restriction of freedom and reported to the patient advocacy pursuant to Section 33 Hospitalisation Act. The Supreme Court substantiated this by explaining that it is not critical “within the meaning of restrictions of the freedom of movement” whether a restriction of freedom is effected by physical coercive measures or by pharmacological intervention. The observations made by the NPM during the period under review, however, give reason to believe that in psychiatric hospitals the opinion still prevails that every medication-based therapy is indicated and thus an indispensable component of psychiatric medical treatment. From the NPM’s point of view, it is still essential that potential medication-based restrictions of freedom in

Medication-based  
restriction of freedom

psychiatric hospitals are included in guidelines and mandatory reporting is introduced pursuant to the Hospitalisation Act.

Reporting measures that restrict freedom

Another area of contention in the day-to-day routine of psychiatric hospitals emanates from the Supreme Court jurisdiction stipulating that every application of measures that restrict freedom must be reported immediately, that is without any delay. This obligation applies regardless of whether vacation-related delays can be expected in the procedure in isolated cases.

However, the NPM observed that the organisational procedures required have still not been implemented on a nationwide basis. Reports are still not submitted immediately, in particular on Sundays, public holidays and weekends. On the other hand, due to the continued emphatic confrontation of the issue by the NPM, the medical facilities have now indicated that they are willing to close existing “time gaps” through IT solutions and streamlining of the reporting procedure for example.

Extension of video interpreting system

The increasingly problematic intercultural care of patients poses a continuing challenge for psychiatric hospitals. Language barriers can lead to communication problems that result in misjudgement in the area of nursing and medical treatment. The extended use of video interpreters in hospitals is increasingly helping to bring about the necessary improvement in communication. Video interpreting systems were installed in all regional hospitals in Lower Austria in the first six months of 2017. Measures were also taken to expand the already existing video interpreting systems in Vienna. However, expansion of this nature is not only advisable for foreign languages but should also be used to improve communication with certain patients (e.g. sign language). This ensures that an interpreter can be involved in the treatment setting without delay.

A further positive development is the willingness of some hospitals to acquire less severe solutions to avoid using measures that restrict freedom, e.g. low beds or sensor floor mats. It is thus possible to reduce restrictions of the freedom of movement to the required minimum level.

Security deployment

The NPM also criticised the deployment of the security service in Innsbruck Regional Hospital, University Hospital for Psychiatry, in 2017, as the security service was granted extensive powers (see Annual Report 2016, p. 127 et seq.). Thereafter, the Tyrol clinics agreed on further procedures at a meeting with representatives of the University Hospital for Psychiatry and the cooperative management of Innsbruck Regional Hospital, the Police Department of Tyrol and the local Innsbruck police. As recommended by the NPM, it was agreed that only health care staff are authorised to take measures that restrict freedom, such as detention or returning the patient to the psychiatric ward. This also applies in cases of accompanied transportation. Insofar as patients under the Hospitalisation Act escape, the police will have to be called in future if these patients pose a threat to third parties. The security service shall thus

reduce their activity to de-escalation measures in such cases and should only intervene in emergency situations if this is absolutely necessary to protect the staff from existing, direct, imminent danger.

The NPM is fully aware that, due to the increase in dangerous situations, there is a greater need for security for the health care staff including employee protection aspects. The presence of private security personnel in itself is therefore viewed as support. This is understandable but falls short of the mark. It is important to understand how aggression emerges, as this provides information for preventive measures. Staff-related, organisational and patient-related strategies have to intertwine here. Time constraints, the much lamented work overload and staff shortages continue to provide the breeding ground for a tense communication atmosphere. If the needs and feelings of persons who subjectively consider themselves to be in a health emergency are not sufficiently appreciated, their annoyance can erupt as an overreaction in order to get attention.

In most cases, the facilities concentrate on secondary prevention, which only sets in after escalation has started. Specifically focusing on primary intervention measures that prevent crises from occurring in the first place would be just as important. These include training in verbal and non-verbal de-escalating behaviour and communication strategies but also other measures that demonstrably reduce the number of conflicts: bright waiting areas with sufficient possibilities to be alone and have privacy, two entrances and exits per room, emergency buttons or silent alarms, easily understandable orientation systems etc. For the purpose of tertiary prevention, it is also necessary to develop clear instructions on what to do after an incident. Staff who are traumatised by a violent incident need personal support in order to work through what they have experienced. An inadequate prevention strategy thus fosters those emergency situations which cannot be countered with security services alone.

The NPM continues to expressly object to private security companies being routinely deployed on the threshold to nursing and care whereas effective alternatives (e.g. specially trained professional crisis teams) are not taken into consideration.

- ▶ *Central registers for recording measures that restrict freedom should be enshrined in the law as an effective and systematic prevention strategy as quickly as possible.*
- ▶ *A comprehensive preventive concept is required in order to avoid sexual assault in medical facilities.*
- ▶ *Medication-based restrictions of freedom can also be applied in psychiatric hospitals and must be reported pursuant to the Hospitalisation of Mentally Ill Persons Act ().*
- ▶ *Staff-related, organisational and patient-related strategies must be intertwined in violence protection. Security services should never be deployed in the borderline area to nursing and care. Preference should be given to alternative measures (e.g. crisis teams) in as far as possible.*

## 6.2.2 Hidden violence in the day-to-day routine of psychiatric hospitals

Coercive measures are a component of psychiatric treatment that can be vital in acute situations with aggressive patients. Proximal restrictions such as restraint for the benefit of the patients can be necessary during the nursing process. One of the main tasks of the NPM in this area is to monitor the general conditions and point out non-compliance where appropriate. This is often caused by the insufficient exploitation of preventive measures for avoiding restrictions of freedom. Corresponding observations are highlighted in this report.

A distinction must be made for aspects of a structural nature and the non-physical use of force, which can have a negative impact on the care situation.

**Structural violence** These include insufficient human resources. Staff shortages are a problem in many institutions and facilities, in particular during the night, when a lot of staff are on sick leave and at the weekends. This causes stress for the staff and overload in acute situations. From the view of the NPM, it is thus necessary to create a more flexible system. This would guarantee being able to react faster to existing demands and ensure that sufficient capacity is available. Otherwise, it is to be feared that staff will be unable to cope with the tasks and end up suffering themselves from mental illness such as burn-out.

**Psychological violence** Difficult underlying conditions can also result in some forms of psychological violence which manifest as threats, insults and abusive language for example. Cognitive or emotional, affective or mental damage can be the consequence. An appreciative approach and careful choice of words are of great importance, especially when dealing with persons with mental illnesses, some of whom are in a psychiatric facility against their will and often feel at the mercy of others and helpless.



Patients plausibly claimed in interviews with the commissions that they were threatened with restraint if they questioned their medication or did not comply with the prescribed therapy. They were also urged to take their medication in a very aggressive manner (“If you do not take the medicine, then...”). One patient reported that she was threatened with the cancellation of her forthcoming discharge from the facility if she did not clear away the trays.

Threat and restraint

The interviewed patients, some of whom have been admitted to a psychiatric ward several times, find such treatment degrading and frightening.

The NPM is insistent that the nursing staff should be sensitized in general about the use of such verbal pressure. Pertinent information from the NPM is taken very seriously by the hospitals and is the basis for meeting with staff in order to underline the significance of an appreciative approach when dealing with patients.

Ultimately, violence to patients can be accounted for in treatment methods that are difficult to see objectively. An unfriendly look, roughness when assisting with personal hygiene or apparent impatience during care treatments can thus be perceived by the patients as intimidating or degrading.

The NPM also observed that the prescription of so-called PRN medication often fails to comply with the regulations: amount, dose, channel and time of administration must be recorded in the patient documentation by the doctors authorised to write prescriptions. Whilst the administration of medication is a medical activity, it can be delegated to qualified nursing staff within the framework of a multi-professional area of competence.

Precise prescription of PRN medication necessary

Prescriptions that do not include a specified time plan are only permissible if the criteria for assessing the time and the dose of the medication to be administered are clear, unequivocal and transparent according to medical standards. It must be possible to preclude an inadmissible diagnostic or therapeutic activity by the nursing staff. However, the documentation viewed contained some vague information (such as “additionally for severe agitation” or “for agitation”). The consequence of such unspecific prescription of a PRN medication is naturally that the nursing staff have a relatively large amount of leeway. It cannot be ruled out that medication is used hastily to sedate patients without first trying milder measures. This kind of approach can also allow hidden violence to occur which patients can perceive as a “sanction” in extreme cases.

- ▶ *Flexible personnel planning systems must be implemented in medical facilities in order to facilitate fast reaction to concrete conditions and existing requirements.*
- ▶ *Attention must be given to an appreciative approach when caring for persons with mental illnesses in order to avoid a feeling of powerlessness and degradation.*
- ▶ *The prescription of PRN medication must be precise and in accordance with the legal requirements.*

### 6.2.3 Application of measures that restrict freedom

Protection of personal integrity

Measures that restrict freedom are only permissible if they are applied to avert a serious or considerable danger to the life or health of the patient or others, or if they support medical treatment or care and are not inappropriate. Therefore, it must be examined on a case-by-case basis whether measures that restrict freedom are absolutely necessary to reach this goal both qualitatively (type of measure) and quantitatively (spatial scope and duration of measure). Restrictions of freedom can only be considered as a last resort in which case the principle of minimum possible intervention applies.

The NPM observed in the current year under review that these requirements regarding restraints are not always complied with in practice in psychiatric hospitals.

Restraints in beds in hallways and in shared rooms

In the absence of a specially designated room, restraints were often applied in the hallway or in shared rooms in the presence of other patients. This kind of approach is absolutely unacceptable, as the privacy and personal space of those affected is violated and other patients can be frightened and traumatised when they experience coercive measures.

A similar situation is, for example, when people can see into rooms designated for restraints. In cases like these, the NPM normally succeeded in having some form of privacy screen installed in the relevant wards.

Furthermore, restraints are still applied in which only an abdominal restraint (one-point restraint) is used, even though this is associated with a greater risk of strangulation and does not comply with the specifications of the manufacturers. The NPM still insists that 1:1 supervision is ensured if possible in the event of a restraint. Supervision of this type would, however, be advisable as a pre-emptive measure in order to avoid having to restrict the freedom of the patient in the first place.

Follow-up meetings have alleviating effect

Follow-up meetings after the application of a measure that restricts freedom have an important function. They help in working through the experience and are seen as a relief by those affected. Studies and reports from former patients prove that follow-up meetings make it easier to cope with these experiences,

which are often perceived as traumatising. However, the experience of the NPM indicates that these follow-up meetings are often not given sufficient attention or that there was no reference to a follow-up meeting in the inspected medical history after a restraint had been applied.

Reference is made to the importance and necessity of follow-up meetings in the CPT standards. According to the CPT, follow-up meetings should take place as soon as possible after a restraint. This gives the medical staff the opportunity to explain why the restraint was applied and build up a positive doctor-patient relationship. The follow-up meetings give the patients the opportunity to talk about how they experienced the restraint. In this way, the health care professionals receive feedback on whether and how their own behaviour has to be changed in an imminent conflict situation. For this reason, the NPM sees follow-up meetings on restraints and other serious restrictions of freedom as a fixed component of medical treatment. Generally speaking, working through experiences with measures that restrict freedom from a professional and preventive human rights perspective should be emphasised more because they improve continued compliance.

CPT standards  
emphasise importance  
of follow-up meetings

Guidelines in which binding quality standards are defined should also serve this purpose. In this way, uncertainty on the part of the staff in dealing with measures that restrict freedom can be avoided. Detailed ongoing training programmes on the application of measures that restrict freedom are also necessary in parallel. The training content should not only be limited to the “technical” application of these measures. What should also be emphasised is the vital importance of the circumstances before, during and after a measure that restricts freedom in the interest of a preventive approach and as gentle a treatment as possible for the patients.

Guidelines

It is necessary that the application of measures that restrict freedom is documented in a comprehensible way. Corresponding proof of execution identifies the persons applying the measure and documents which interventions were made on which day, at which time, for how long, by which person. This also benefits quality assurance.

Complete  
documentation is  
essential

Therefore, the application of all interventions must be confirmed in writing or electronically by means of a local signal or set digital ID with time or time period and date. This is stipulated in the work aid for nursing documentation 2010 that was created on behalf of the former Federal Ministry of Health.

From a human rights point of view, it should be considered that these quality assurance measures make a considerable contribution to raising awareness. Due to the written documentation, the staff member applying the measure will automatically reflect on their actions.

Furthermore, the traceability of the measures taken is an important aspect for the protection of the patients in the same way as it is for investigations in cases of alleged human rights violations.

- ▶ *Intensive personal care with very frequent verbal contact and sufficient staffing must be provided in order to avoid or reduce the use of coercive measures.*
- ▶ *A designated single room must be set up for applying restraints.*
- ▶ *Measures that restrict freedom must be applied as gently as possible. This also includes holding follow-up meetings with the patients after the end of the measure.*
- ▶ *The application of measures that restrict freedom must be fully documented in a comprehensible way.*

#### 6.2.4 Measures that restrict freedom prescribed in advance

Doctor's prescription  
mandatory

The right to freedom is protected by the Constitution as one of the highest legally protected rights through Federal Constitutional Law on the Protection of Personal Freedom and through Article 5 ECHR. Section 33 of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) also regulates the procedure for restriction of the freedom of movement in detail. Restrictions of the freedom of movement depending on type, extent and duration are only permissible insofar as they are absolutely vital to avert danger pursuant to Section 3 (1) of the Hospitalisation Act (danger to patients themselves or to others) as well as to perform medical treatment or care on a case-by-case basis, and are not out of proportion to their purpose. Every restriction of the freedom of movement to one room or inside a room must be prescribed specifically by a doctor, documented in the medical history including the reason and reported to the representative of the affected person without delay.

During a visit to the gerontopsychiatric ward of Rankweil Regional Hospital, Commission 1 observed, however, that in practice, restrictions of freedom were applied using prescriptions that were written by doctors in advance on a weekly basis and held "on stock". This is incompatible with the legal requirements and results in the illegal infringement of the right to freedom guaranteed under constitutional law.

This practice means in particular that it is not the doctor who prescribes the measures but that the authority to carry out the measure by using the prescription is delegated to the nursing staff, who can decide on the "if" and "how long" directly before the measure is applied. This is even more the case, when several measures are prescribed as an alternative and/or cumulatively, because the nursing staff then also decide which of the possible measures is to be applied.

Advance prescriptions also preclude reporting the dangerous situation which makes the measure that restricts freedom allowable because the actual situation has not yet occurred and can therefore not be known. It can at most be predicted based on previous threats.

Dubious predictions

The NPM thus insisted that the current practice of restrictions of freedom facilitated by doctors who write advance prescriptions on a weekly basis has to stop. This should ensure the legally compliant application of restrictions of freedom in the ward.

As a reaction to this criticism, a working group was set up in the affected gerontopsychiatric ward. Together with the patient advocates, the group is developing the definition and implementation of a procedure that is designed to guarantee the legally compliant application and documentation of restrictions of freedom.

The NPM will evaluate the results of this working group and ensure that the legally compliant application and documentation of restrictions of freedom are guaranteed in practice.

► *The application of measures that restrict freedom due to advance doctors' prescriptions must stop because it results in the illegal delegation of the relevant mandatory authority to write prescriptions to the nursing staff.*

### 6.2.5 Inadequate child and adolescent psychiatric care

Some 165,000 children and adolescents are considered to be in need of treatment in Austria. A current study by the Medical University of Vienna and the Ludwig Boltzmann Institute shows that actually a quarter of all 10- to 18-year-olds are affected by some form of mental illness. But there are structural deficits both in the outpatient and inpatient area of child and adolescent psychiatry as was observed by the Federal Ministry of Health and Women's Affairs in the Child and Adolescent Health Report published in 2016.

Considerable underachievement in planning objectives

The Austrian Health Care Structure Plan (*Österreichischer Strukturplan Gesundheit*) 2017 still stipulates a benchmark of 0.08 to 0.13 inpatient child and adolescent psychiatric beds per 1,000 inhabitants.

The number of beds available nationwide for child and adolescent psychiatry has risen slightly from 389 in 2015 to 392 beds in 2016. However, the 2016 bed index for child and adolescent psychiatry was still only 0.04 beds per 1,000 inhabitants due to the average national growth in population. In addition to the beds in child and adolescent psychiatric wards, there were another 122 beds for the psychosomatic care of children and adolescents in 2016.

It is, however, still incontestable that there is a large gap between the actual number of available beds and the targets set down in health planning. This is also evident from the fact that the number of stays in hospitals registered for children and adolescents up to 19 years of age diagnosed with mental and behavioural disorders increased from 15,363 in 2014 to 16,552 in 2016.

High proportion of stays in adult psychiatric wards

Of these in 2016, 6,626 stays (40%) were in child and adolescent psychiatric wards, 2,095 stays (12.7%) in child and adolescent psychosomatic wards, and 7,831 stays (47.3%) in wards for various adult-related specialist fields including 2,868 stays (17.3%) in adult psychiatric wards. There was thus a slight increase in the proportion of children and adolescents admitted to a child and adolescent psychiatric ward, whilst there was only a slight decrease in the proportion of children and adolescents in adult psychiatry.

In the age group up to 14 years, 46.3% of stays were in child and adolescent psychiatric wards in 2016, 21.3% in child and adolescent psychosomatic wards, and 32.3% in wards for various adult-related specialist fields including 0.7% in adult psychiatric wards. There was thus a slight drop in the number and proportion of this age group in adult psychiatry from 66 (1%) in 2014 to 52 (0.7 %) in 2016. The comparable figure in the age group of the 15 to 19 year olds, however, continues to be proportionally high in 2016 at 29.6% (2,816 stays). The proportion of this age group fell slightly compared to 2014 (31.1%) but there was actually an increase in the number of stays (in 2014: 2,750).

Stressful environment for children and adolescents

Being confronted with adults with mental illnesses is extremely stressful for minors, as their needs cannot be adequately met in this environment. Adult psychiatry does not provide age-appropriate care, a pedagogical programme or allow children and adolescents to be with others of the same age. Adult psychiatry has neither the necessary resources nor specially trained staff for taking care of minors with mental illnesses.

The jurisdiction therefore emphasises the rule of separation for adolescents in psychiatric hospitals. Obligatory care in a dedicated child and adolescent psychiatric ward is inferred in the UN Convention on the Rights of the Child, the Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) and the Patient Charter.

Transition psychiatry

The NPM is of the view that, in order to ease the transition phase from childhood to adulthood, it is necessary to provide continuous treatment of adolescents from the age of 16 through 24 that involves multidisciplinary outpatient day-care, inpatient care and complementary services. The creation of relevant treatments, in particular a transition section in dedicated wards, is required to this end. Special areas for adolescents should be set up in psychiatric institutions, in which child psychiatrists and psychotherapists work closely with experts in adult fields of expertise, in order to guarantee the ongoing treatment of patients in this age group.

On the basis of these general deficiencies and problems in the care area, the NPM recently highlighted the situation in Styria and Vienna as an example. Existing deficiencies in the cooperation with the patient advocacies were also highlighted at press conferences.

A mere 33 inpatient beds for child and adolescent psychiatry and 14 child and adolescent psychiatry day-clinic places were available in Styria in 2016 for example. Seen in the context of the current bed index of 0.04, Styria held last place in Austria.

Care deficits in Styria

This inadequate care situation causes extreme stress in child and adolescent wards in the Graz Süd-West/Standort Süd Regional Hospital. Adolescents regularly have to be placed in adult wards. This already grossly inadequate care is exacerbated by the absence of medical specialists for child and adolescent psychiatry who have a contract with the public health insurance office in Styria. There are only outpatient services for minors in the day-care clinics in Graz Süd-West/Standort Süd Regional Hospital and in Hochsteiermark/Leoben Regional Hospital.

Action was taken as part of the Regional Health Care Structure Plan for Styria (*Regionaler Strukturplan Gesundheit Steiermark*) 2025 in response to the criticism formulated by the NPM. The plan includes setting up a total of 84 beds for child and adolescent psychiatry, of which 72 are for the Graz region (15 beds in the University Hospital Graz and 57 in Graz Süd-West/Standort Süd Regional Hospital) and 12 as a separate day-care clinic in the Hochsteiermark/Standort Leoben Regional Hospital. This is equivalent to a capacity increase of 38 beds compared to the current 46 beds. The minimum number of 96 beds defined in the Austrian Health Care Structure Plan 2017 has not been achieved, but a significant expansion of the outpatient care facilities outside of the hospital sector is planned in parallel with the reinforcement of the inpatient area. As a supplementary measure instigated by the NPM, a chair of child and adolescent psychiatry is being set up for the first time at the University Hospital Graz.

In the interest of a decentralised, outpatient child and adolescent specialist service, a total of ten outpatient child and adolescent psychiatric facilities are to be created in Styria. These were in the development phase at the time when this report was completed. These outpatient facilities should be closely linked to some of the existing psychosocial counselling centres for children and adolescents. In 2018, the NPM will continue monitoring if and in how far the goal of treating children and adolescents as outpatients for as long as possible can be met; regardless of the type of illness.

There is also significant underperformance of the goals of the Austrian Health Care Structure Plan 2017 in Vienna (128 to 208 beds). The child and adolescent psychiatry at the Neurological Rehabilitation Centre Rosenhügel and Vienna General Hospital had only a total of 56 beds in 2016.

Insufficient bed capacity in Vienna

Current municipal health care planning includes 15 new beds at the Neurological Rehabilitation Centre Rosenhügel, which should be ready for occupancy in the first six months of 2018. Furthermore, an additional ward with 24 inpatient and six day-care places is being set up at Vienna North Hospital. Additional positions have already been created in the nursing, psychological and administrative areas in both the Neurological Rehabilitation Centre Rosenhügel and Vienna General Hospital. The number of admissions to adult psychiatry decreased to 163 in 2016.

Rapid implementation of intended projects urgently required

Current developments in the field of child and adolescent psychiatry demonstrate that appropriate measures have been taken to finally rectify the many years of shortcomings. Existing care services are also being expanded in Tyrol and Vorarlberg.

However, it must be carefully observed, if the planning objectives are actually met. In any way, the planning horizon in Styria and the expansion in the inpatient area (up to 2025) have to be reconsidered, and the existing inpatient capacity must be increased at a faster rate. These structural changes are urgently necessary to stop the current practice of caring for children and adolescents in adult psychiatry in as far as possible.

Increase in number of training places to cover demand

Furthermore, the efforts being made to heighten awareness for child and adolescent psychiatry in the area of medical specialist training must be stepped up considerably. This is necessary to meet the growing demand emanating from the required expansion of treatments in the outpatient and inpatient area.

Shortage of contracted office-based medical specialists

In the view of the NPM, medical specialists for child and adolescent psychiatry who have contracts with a public health insurance office should be increasingly integrated in this care structure. The aim is to facilitate local care and to promote the de-stigmatisation of the psychiatric treatment of children and adolescents in the interest of the patients. As a rule, the opening of outpatient child and adolescent psychiatric facilities is commendable, but the range of services – as in other medical fields – should be supplemented by contracted office-based doctors who can be consulted at the expense of social public health insurance. The nationwide stepping up of public health insurance fund contracts should help ensure the prevention, early diagnosis and timely treatment of children and adolescents in particular in order to avoid as far as possible the further deterioration and progression of an acute mental disorder into a chronic condition. A differentiated system in which the services both in the inpatient and day-care area, as well as the outpatient and office-based area are fully networked would make it possible that the living conditions of the affected children and adolescents and their parents can be considered in a flexible way. It would also enable them to choose between care in an outpatient facility and at an office-based doctor's surgery at least in the medium term.



In this context, the NPM questioned the practice of admitting and treating predominantly minor patients with psychiatric diagnoses (depressive phase, ADHD, conduct disorder) in the psychosomatic sections of child and adolescent psychiatric wards.

Psychosomatic sections  
in psychiatric wards

Since further treatment in the event of an acute serious psychiatric disease that requires forced placement and measures that restrict freedom is not possible in these psychosomatic sections, the affected minors have to be accommodated in a child and adolescent psychiatric ward. In Styria for example, this means that such a transfer from the psychosomatic section of the Hochsteiermark/ Standort Leoben General Hospital and the University Hospital Graz, where a child and adolescent psychiatric ward is already planned, to the Süd-West/ Standort Süd Regional Hospital is required. This transfer is undoubtedly stressful for those involved and can also be perceived as punishment.

There is a similar problem in Carinthia because minor patients have to be transferred to the child and adolescent psychiatric ward at the Klagenfurt Regional Hospital in the event of massive crises during their stay in the psychosomatic section of the paediatric ward in Villach Regional Hospital.

The situation in these wards is exacerbated by the fact that they are very confined. The critical lack of space is also evident in the use of beds in hallways and extra beds in shared rooms. This means that psychiatrically ill children and adolescents with special needs are regularly placed in rooms with somatically ill children.

The NPM thus considers it desirable that, as a first step, psychiatric beds are clearly designated as such in psychosomatic sections and fully taken care of by psychiatrically trained staff and medical specialists for child and adolescent psychiatry. In the medium term, there are plans to set up a separate child and adolescent psychiatric ward in both Villach Regional Hospital and Hochsteiermark/ Standort Leoben Regional Hospital. This would improve regional care on the one hand, and help avoiding patient transports in the interest of the affected children on the other.

- ▶ *The intended increase in bed capacity in the child and adolescent psychiatry area should be implemented quickly.*
- ▶ *Strengthening and the regionalisation of the structures for outpatient and day-care clinic child and adolescent psychiatry are urgently required.*
- ▶ *Training capacity must be stepped up to meet increasing demand and expansion of services in the area of child and adolescent psychiatry.*

- ▶ *The number of office-based medical specialists for child and adolescent psychiatry who have a contract with public health insurance offices should be increased in all Laender in light of the rising nationwide demand.*
- ▶ *The care mandate of the psychosomatic sections of paediatric wards should be clearly defined by separating it from treatment reserved for child and adolescent psychiatric wards.*

## 6.2.6 Deficits in regional inpatient psychiatric care

The NPM already pointed out deficiencies in regional inpatient care for persons with psychiatric diseases in Styria and Carinthia (see Annual Report 2016 p. 131 et seq.).

### Centralisation in Styria

In Styria, inpatient psychiatric care is centralised in Graz. Affected persons are thus isolated from their normal surroundings. The caregivers have to spend a considerable amount of time traveling in order to be able to visit the affected persons, which is often an irregular occurrence. Furthermore, in acute situations, time-consuming patient transfers from the outskirts of Styria to Graz are often necessary, causing patients a considerable amount of additional stress in what is already a difficult situation.

According to the Regional Health Care Structure Plan for Styria 2025 however, the concentration of psychiatric inpatient care in the Graz area is to remain unchanged as a matter of principle. Only at the Hochsteiermark Regional Hospital in Bruck an der Mur a psychiatric ward including accommodation area is to be set up.

Furthermore, the range of psychiatric services in the Graz metropolitan area will be reorganised. The Elisabethinen Hospital in cooperation with the Hospital of St. John of God in Graz (*Krankenhaus der Barmherzigen Brüder*) under the name “KA Graz-Mitte” will have a psychiatric ward with a predominant focus on geriatric psychiatry.

The NPM believes that the planned opening of a psychiatric facility at the Hochsteiermark General Hospital in Bruck an der Mur should be implemented as quickly as possible in order to at least make a first step towards regional inpatient care. Consequently, a third location at the very least with acute beds including accommodation should be set up in Upper Styria. The transfer of beds should also free up capacity in the Graz Süd-West/Standort Süd General Hospital where the existing confined space makes it difficult to care adequately for the patients.

### Inadequate area for hospitalisation of mentally ill persons

A similar problem still exists in the Department of Psychiatry and Psychotherapeutic Medicine at Villach Regional Hospital. The lack of space caused by the inadequate building structure and the lack of a sufficiently

protected area have a considerable negative impact on the care situation of the patients. These inadequate overall conditions mean in particular that patients in acute situations usually have to be taken to the psychiatric ward of Klagenfurt Regional Hospital by the paramedics.

In this way, the decision of whether those affected can “just about” be treated in an open ward or be transferred to Klagenfurt Regional Hospital is imposed on the staff. Also from a legal liability perspective, it appears unjustified to transfer such a responsibility to the medical and nursing staff, when it could be avoided in a specific organisation. This causes stress and demotivates, and can ultimately be to the detriment of the affected patients.

It must also be considered that the legal entity behind the medical facility must ensure that patients are treated according to the principles and recognised methods of medical science. The medical facility is thus bound by the obligation to consider whether it will be possible to fulfil the treatment contract with the existing human and spatial resources when admitting the patient.

The NPM thus still insists that the ward for hospitalisation of persons with mental illnesses in Villach Regional Hospital be extended as an interim solution before the planned completion of the psychiatric facility and the structural changes in Villach and Klagenfurt, which can be expected in 2020/2021 at the earliest.

- ▶ *Local care of the patients must be ensured as part of the regionalisation of psychiatry.*
- ▶ *Time-consuming transports must be avoided by setting up decentralised accommodation areas for patients in acute situations.*

### 6.2.7 De-escalation training programmes

The CPT standards stipulate that initial attempts to bring agitated or violent patients under control should not be of a physical nature in as far as possible (e.g. use of verbal orders).

Staff in psychiatric facilities should thus be trained both in non-physical and manual control techniques. This should enable the staff to apply the appropriate technique in difficult situations, with which the risk of injury to the patients but also to the staff can be substantially reduced.

Training in non-physical control techniques

In this context however, the NPM observed that only some of the staff completed the relevant training programmes. A visit to the Otto Wagner Hospital indicated that almost all of the nursing staff (95%) had completed the basic de-escalation management training. In contrast, only a small minority

of the medical and therapeutic staff, psychologists as well as social workers had completed the training (less than 10% respectively).

All staff with patient contact should have adequate competence in the field of de-escalation in the interest of violence prevention.

The NPM is thus of the view that an incentive system should be created in the medical facilities to ensure that as many employees as possible from all professions take part in de-escalation management training programmes. In addition to corresponding basic training, regular detailed courses should be offered.

► *All staff of the medical facility with patient contact should take part in de-escalation training programmes in the interest of comprehensive violence protection.*

## 6.2.8 Protection of privacy and personal space

**Structural deficits** In the year under review, the NPM once again observed that, due to the confined space in psychiatric hospitals, the personal space of the patients is often not adequately safeguarded. Patients are still often cared for in shared rooms, which are only provisionally divided by folding screens.

The legal entities behind the medical facilities regularly promise to refurbish existing buildings and construct new facilities. The implementation of such measures, however, can usually only be expected in several years' time. From the NPM's point of view, interim solutions are thus necessary in order to improve the care situation of the patients.

It can be stressful for patients who are not suffering from a cognitive disorder if they are taken care of in a ward together with patients who have considerable care needs or are seriously cognitively impaired. This can cause sleep problems which can in turn require more of the prescribed sleeping pills. It would therefore be expedient to take care of patients with predominantly neurological complaints in combination with pain symptoms or depression in "quiet" wards. This applies to persons suffering from dementia in particular, for whom the unfamiliar surroundings, strangers, unfamiliar rooms, unfamiliar routines and requirements are frightening. If multi-morbidity or the severity of the psychiatric disease so require, a specialised geriatric psychiatric service is necessary for these patients.

**Therapy conversations in shared rooms** A massive infringement of the privacy and personal space of patients also occurs when they are informed about their diagnoses and treatment in meetings with the staff held in front of other patients or visitors in the room or in the hallway. Observations made on a visit to Zwettl Regional Clinic indicated that doctors

usually do their rounds in shared rooms and that a meeting room is only available for palliative patients. The Lower Austrian regional clinics holding company (*NÖ Landeskliniken-Holding*) seized the criticism as an opportunity to initiate a discussion process and develop solutions in the relevant advisory boards and committees in order to better guarantee the right to privacy and data protection in the future despite structural restrictions.

- ▶ *In the field of psychiatry, refurbishment measures and new construction are urgently required and must be initiated as soon as possible in order to guarantee contemporary care.*
- ▶ *Therapeutic meetings should take place in designated rooms in the interest of protecting the personal space of the patients.*

### 6.2.9 Long-term stays of psychiatric patients

The commissions observed repeatedly on their monitoring and control visits that patients are cared for in psychiatric hospitals for long periods of time although this is not necessary from a medical point of view.

Such long-term stays in psychiatric hospitals do not comply with current standards of medical science and are mainly attributable to the insufficiency of non-residential places for specific groups of persons.

Long-term stays in conflict with UN CRPD

The UN Convention on the Rights of Persons with Disabilities (CRPD) requires that persons with disabilities including psychiatric long-term patients are able to choose where they stay based on their needs and can decide themselves where and with whom they live. In this way, local care should be guaranteed that enables those affected to lead a self-determined life in the community and avoids isolation and segregation. Under this aspect too, a long-term stay in a psychiatric hospital is problematic, particularly in acute psychiatric wards.

The NPM thus considers it urgently necessary that suitable care places are created for seriously ill persons, in particular for persons with multiple diagnoses and behavioural disorders. These care places must have a sufficiently high staff ratio and nursing qualifications in order to be able to adequately care for seriously ill patients. Furthermore, there is a need for transitional treatment places for patients who are being discharged from an acute psychiatric ward.

Expansion of specialised facilities necessary

Placing psychiatric patients in “normal” retirement and nursing homes is, however, not suitable as adequate care cannot be guaranteed in these facilities. The NPM thus argues emphatically in favour of expanding non-residential areas and creating adequate care places for psychiatric patients.

Flawed discharge management

Discharge management at Graz Süd-West/Standort Süd Regional Hospital also gave cause for criticism. Commission 3 observed during their visit that one long-term patient was discharged due to the authorisation of her legal guardian and was transferred to Vienna by an “authorised” person.

As a matter of principle it is, however, impermissible that legally appointed guardians divest themselves of their responsibility by delegating their tasks to third parties. The discharge and transfer of this patient to Vienna was thus conducted without the legal consent for the patient, which was extremely problematic in view of an acute risk of suicide. It was evidently not examined if the authorised “escort” was legally entitled to carry out the discharge procedure.

The reservations on the part of the NPM were considered insofar as authorisations made by legal guardians will be examined more closely in the future in cases where the status is unclear.

- ▶ *The number of non-residential places for taking care of persons with psychiatric diseases must continue to be increased to avoid hospital stays for which there is no medical indication.*
- ▶ *The authority of persons having powers of representation must be carefully examined as part of discharge management.*

## 6.3 Child and youth welfare facilities

### 6.3.1 Introduction

In the year under review 2017, a total of 93 facilities in which children and adolescents are cared for were visited. Most of the observations in 2017 had to do with living conditions, health care and the personnel. There was also a large number of findings on the topics of the “right to privacy” and “signs of torture, maltreatment, abuse, neglect and degrading treatment”. Complaint management was also the subject of many observations made by the six commissions.

Not only facility-related problems are depicted in the findings of the commissions. Structural deficits in child and youth welfare are also described. Negative practices in the facilities are communicated to the management in the concluding meetings. Rectification is frequently promised immediately or implemented directly after the visits. Afterwards many facilities express their gratitude for constructive criticism and external feedback, but are also delighted when notice is taken of the improvements they are working on. If this is not the case or when findings can only be made after viewing the documents, the NPM contacts the private or state-owned competent authorities for child and youth welfare and protection requesting an opinion.

In this way, it was possible to initiate further development of participation opportunities in several facilities last year. The children’s right to participate could be achieved thanks to the active, age-appropriate involvement of the children and adolescents in the meetings on which the development reports are based and the creation of children’s councils. Minors should be given different alternatives to lodge complaints internally or externally, for example by offering letter boxes or installing a digital app that presents the children and youth advocacy organisations. The commissions were also successful in improving medical documentation in several facilities. Increased awareness for the need to store medicines safely was also generated. Promises were made to take children to medical specialists for paediatrics, dentistry and ophthalmology in the future.

Many improvements  
again

At the suggestion of the commissions, a dietitian was involved in creating healthy menu plans that also included the minors’ wishes in several shared accommodations. The NPM assumes that it is necessary to offer minors from dysfunctional families nutritional education in order to realise their right to the best possible health, especially considering that their eating habits develop from model learning. This has nothing to do with strict rules and prohibitions. On the contrary, it must be accepted that some children and adolescents have eaten mainly fast food to date and have never become familiar with common unprocessed foods or alternative ways of cooking. Having their say in the weekly menu plan, shopping and the ingredients of balanced meals

are designed to promote healthy eating. Eating together has been a ritual of cohabitation since the beginning of time. For this reason, it was suggested that the working times of cooks be changed so that children and adolescents can have a warm meal when they come from school.

In several shared accommodations there was positive change. Double rooms are now only used for younger children and all adolescents have their own, separate room. Lockable safes were purchased and new locking systems ordered for the children's and adolescents' rooms in order to protect their privacy. House rules were revised upon recommendation of the commissions to be less strict and the way in which rule violations are dealt with were reconsidered.

Quality has its price The response of many private owners and/or operators to criticism, namely that better quality socio-pedagogical work incurs higher costs, is understandable from the NPM's point of view. Facility operators report that the competent supervisory authorities of the *Laender* have raised the requirements in recent years following recommendations of the NPM, but fail to provide the necessary funds required to this end by increasing the daily rates. Improvements that are considered necessary even by the facilities often have to be postponed for financial reasons. Facilities' attempts to effect an increase in the daily rates on the part of the *Laender* have been unsuccessful.

NPM promotes performance-related daily rates As the NPM is aware that better quality incurs higher costs, the *Laender* are requested to balance the additional costs for urgently required improvements from a human rights perspective with higher daily rates. The amount of the daily rates should be more orientated on the differentiated offers that have to be provided for individually caring for minors with a wide range of problems. A basic amount should be fixed by the *Laender* for all types of facilities, which can be increased depending on the needs of a child including special needs for therapies, special educational costs, additional staff etc. In Tyrol and Styria, there are already standard daily rates for different types of care forms.

Substantial differences in the *Laender* noticeable What is noticeable for the NPM is that there are differences in the facility standards in the *Laender*. Vienna, Lower Austria, Styria, Salzburg, Tyrol and Vorarlberg have implemented a delegation of authority to the regional governments stipulated in the execution laws of the *Laender*. This delegation of authority allows them to enact more detailed provisions regarding the conditions for the construction and operation of socio-pedagogical facilities by regulation. Other *Laender* have guidelines that contain quality standards. The standards are not uniform on a nationwide level, starting with the maximum number of children per group to the required qualifications of the staff. The staffing ratio also varies.

The NPM has been demanding uniform federal standards for years. The UN Committee on the Rights of the Child (CRC) also criticised the lack of uniform quality standards and differences in the numbers of available places in the *Laender* after the last official country review of Austria in 2012. It also



suggested anchoring the right to the best possible quality in out-of-home accommodation in the Federal Constitution.

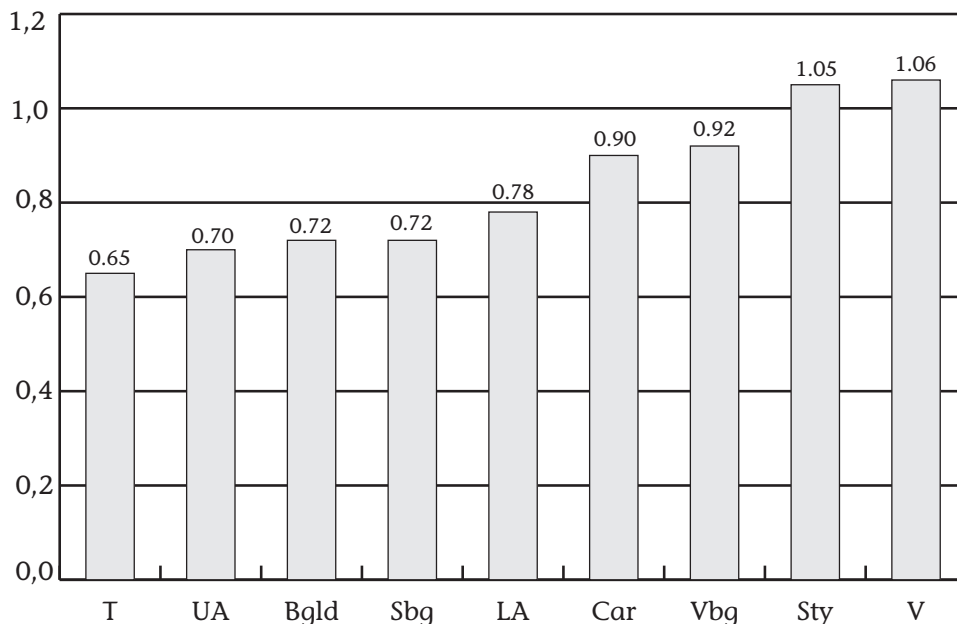
The child and youth welfare statistics and the figures provided to the *Laender* indicate that despite the Federal Children’s and Youth Service Act (*Bundes-Kinder- und Jugendhilfegesetz*) 2013 it has not been possible to fulfil the recommendation of the UN Committee. Even though the harmonisation of the minimum standards in child and youth welfare was the intention behind this federal fundamental act, there are still differing areas of focus in out-of-home care. These have considerable effects on the socio-pedagogical practice in facilities in the individual *Laender* and affect the development as well as the living conditions of the minors.

Harmonisation of standards not achieved

In 2016, 13,646 children and adolescents were living out of home throughout Austria (7,453 boys and 6,193 girls). Figures for 2017 are not yet available. In total, 8,423 minors live in socio-pedagogical facilities; 5,162 are cared for by foster parents. Since the coming into effect of the Federal Children’s and Youth Service Act 2013 and the implementing laws in the *Laender*, there has been an increase in preventive support and more outpatient child and youth facilities. Nevertheless, the number of children and adolescents in full residential care is growing. The percentage of children and adolescents who live out of home in relation to the total population varies greatly from *Land* to *Land*.

8,423 children in socio-pedagogical facilities

Percentage of out-of-home children and adolescents by *Land*\*



Every 100<sup>th</sup> child in Vienna and Styria does not live with parents

Legend:

- T = Tyrol
- UA = Upper Austria
- Bgld = Burgenland
- Sbg = Salzburg
- LA = Lower Austria
- Car = Carinthia
- Vbg = Vorarlberg
- Sty = Styria
- V = Vienna

\*Source: STATISTIK AUSTRIA, Child and youth welfare statistics 2016

NPM recommends increased expansion of outpatient support	The major differences between Tyrol with 0.65% and Vienna with 1.06% can only be partly explained by the idiosyncrasies of the large city. Why the figures between Styria and Tyrol differ so much and the data from the other <i>Laender</i> diverge to such an extent is not plausible to the NPM. The <i>Laender</i> are thus requested to find the causes of this development and to do everything in their power to prevent out-of-home care through an extended and closely meshed package of outpatient, family-supporting measures. The Association of Austrian Child and Youth Welfare Facilities ( <i>Dachverband Österreichischer Kinder- und Jugendhilfeeinrichtungen</i> ) followed these demands in a press release.
Cooperation with Ombuds Offices for Children and Youths	For years, there has been a cooperation agreement with the Ombuds Offices for Children and Youths of the <i>Laender</i> that functions very well. Valuable suggestions and invitations for visits were made once again in 2017. A lively sharing of experience took place with the NPM. The Ombuds Offices for Children and Youths were also invited to draft their own report on their observations, which was attached to the special report of the AOB on children and their rights in public institutions and facilities.
NGO Forum 2017	The NGO Forum 2017 was dedicated to children and adolescents. Representatives of human rights NGOs as well as from the federal ministries and the <i>Laender</i> attended sessions on the topic of “Protecting children and adolescents – preventing violence”. One of the four workshops on offer dealt with the topic of “Children and adolescents in state care”.

- ▶ *Further harmonisation of the Laender minimum standards in the socio-pedagogical care of children and adolescents should be pursued on a nationwide level.*
- ▶ *The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors.*

### 6.3.2 Upbringing free of violence is a human right

State must protect against violence	Article 2 of the Federal Constitutional Act on the Rights of Children ( <i>Bundesverfassungsgesetz über die Rechte von Kindern</i> ) stipulates that every child who is taken from its familiar surroundings either temporarily or permanently is entitled to special protection and assistance from the state. Article 8 ECHR also protects the right to private life in addition to the right to family life. This includes the right to self-determination of one’s own body and the protection of physical integrity. States have therefore the obligation to protect children and adolescents from all forms of physical violence, in particular sexual violence. Article 19 of the UN Convention on the Rights of the Child (CRC) also stipulates undertaking pertinent preventive measures to prevent violence to and sexual assault of children and adolescents.
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In 2013, the NPM resolved, after consultation with the Human Rights Advisory Council, the topic of “Measures to prevent violence” as a monitoring priority for visits to facilities for children and adolescents in out-of-home care. The evaluation of the interviews held by the commissions with minors and staff indicate that in the year under review violence in a wide range of forms poses a problem in almost every facility. The staff complain about an increase in the propensity of minors to use violence. In 2017, there were also observations that minors in socio-pedagogical shared accommodations or homes were victims of violence or abuse by other minors.

Propensity to use violence is on the rise

The commissions still observe that pedagogic staff do not take part in regular training on the topic of violence prevention, meaning that neither a conscious handling of violent incidents takes place nor measures for de-escalating conflicts are taken. Experience of the NPM verifies, however, that caregivers who have been trained in dealing with de-escalation can handle the situation more competently. The objective of these training programmes is to learn how to counter aggressive or violent behaviour and how to act appropriately in such a situation.

Violence protection concepts are an important tool in violence prevention. However, they are still not the standard in every child and youth welfare facility. Besides, the commissions also experienced that there are specific guidelines in many facilities but that the staff are not familiar with them.

Violence protection concepts do not exist or are unknown

Time and again children and adolescents are victims of sexual violence in out-of-home care. This also happens frequently between children. Often those boys and girls who have experienced abuse in their own families are particularly vulnerable, as they were unable to develop a reliable sense of proximity, distance and boundaries. Sexual assault occurs when sexual acts are forced. In such cases, a power imbalance or mutual trust is often exploited and the victim threatened or subjected to physical violence.

It is the responsibility of the qualified staff to protect minors from sexual assault. If once this protection was not possible, such incidents must be worked through in as far as possible, as the way in which the victims, the minor perpetrators and other residents are dealt with is very important. The following examples demonstrate that failure to take effective measures after initial evidence of boundary violations comes to light can have far-reaching consequences.

Sexual assault of children in out-of-home care

During a holiday programme with children from different shared accommodations in Burgenland, an 11-year-old was suspected of having participated in sexual assault. He stated that he had also been subjected to sexual assault by an older resident in a shared accommodation. The boys were interviewed in the child protection centre. However, as their statements differed, it was not possible to clarify what had actually happened. The suspected boy remained in the shared accommodation and nothing was undertaken to

Particularly serious negligence

protect the affected child and other children. A few months later, a pedagogue in the same shared accommodation caught another adolescent when sexually abusing his younger brother. Both boys stated that there had been several similar incidents. The technical supervision was informed by the facility about the incidents. Nonetheless, a spatial separation of victims and perpetrators inside the shared accommodation was only ordered after receiving a letter from the AOB that had been informed about the incidents through an anonymous complaint. In addition, double staffing was prescribed for night shifts.

Insufficient measures to protect children

On an unannounced visit three months later, the commission found an atmosphere of fear. The younger children claimed that they were afraid of the older adolescents and wanted to move out of the shared accommodation. The molesting adolescents had not been moved to a different facility but were still living in the shared accommodation. There were no written concepts or considerations in place regarding how unsupervised contact between the molesting adolescents and the other children can be prevented either. The double-staffed night shifts had already stopped after two weeks due to staff shortages. There was also criticism of the fact that a young mother with her new-born baby, who needed a lot of support from the staff in caring for the baby, were living in the shared accommodation. The *Land* had authorised the placement of mother and child in the facility even though the shared accommodation was in a crisis due to the incidents, and urgently needed all of the available human resources to implement effective measures to prevent further assaults. The NPM observed a large number of deficiencies and effected the transfer of seven children to other facilities.

Inadequate consequences

The protection of the children living in a shared accommodation in Vienna was also neglected after a 13-year-old had molested younger children there. A few months later, it was noticed that he had secretly met a 7-year-old girl in the night. Some time after that, the girl was seriously sexually abused by the then 14-year-old at such nocturnal meetings in the bathroom. The boy was suspended and moved to another shared accommodation located, however, in the same building complex. As there was visual contact from the rooms of the shared accommodation to other shared accommodations and it thus cannot be prevented that the two minors constantly run into each other, Commission 5 considered this measure to be completely inadequate to prevent further assaults.

No sex education concepts

Effective prevention requires that minors are instructed about the different types of boundary violation and encouraged to seek help. They need to be advised on their rights to physical and sexual self-determination, and learn to question gender stereotypes. Often the underlying structural conditions are in effect conducive to the occurrence of sexual violence. Structural conditions in facilities and a too low staffing ratio can mean that boundary violations are easily missed by the staff. Many employees are aware of the problem but there are no clearly defined strategies and responsibilities to prevent sexual assaults.

In most cases, such a concept is only developed after boundary violations have taken place.

The NPM expressly recommended all of the *Laender* in recent years to look at the implementation of a sex education concept as a mandatory condition for granting permits to facilities. This is already the case in Vienna. Lower Austria and Tyrol reacted to this demand and now already prescribe pertinent concepts for every new residential group as well as for the reorientation and restructuring of existing facilities. A deadline has been set for the implementation of a sex education concept in existing facilities. In Upper Austria, a conceptual framework for sex education applicable to all owners and/or operators and for use in all socio-pedagogical facilities was developed. In addition to this a training course on the topic of sex education was initiated by the University of Applied Sciences.

Sex education concepts as a pre-requisite

- ▶ *Violence prevention and sex education concepts should be a condition for granting permits for socio-pedagogical facilities in all Laender.*
- ▶ *The implementation of these concepts must be monitored by the technical supervision of the Laender.*
- ▶ *Recurring mandatory advanced training of the staff on the topic of sex education is necessary in all facilities.*

### 6.3.3 Handling of rule violations out of date

On their visits, the commissions repeatedly come up against a problematic way of dealing with sanctions. The principal task of socio-pedagogical and socio-therapeutic facilities is to create healing conditions for young persons who are disadvantaged in their development in order to support them professionally and encourage them. Children and adolescents should experience acceptance and recognition as a person, as well as stability, safety and a calculable environment. They have to feel understood and sheltered.

Problematic handling of rule violations

The commissions report about punitive measures that bear all the signs of inhuman and degrading treatment pursuant to Article 3 ECHR. A caregiver, for example, suggested to an adolescent who had scratched himself that he rub salt in the wound in order to change his behaviour. After that failed to bring about the desired reaction, the pedagogue informed him that the effect could be strengthened by water so that he could really “feel” what he had done. Practices that border on sadism must be strictly rejected when dealing with self-harming behaviour.

Cases of degrading, inhuman treatment

In December 2017 serious allegations by former residents and a social pedagogue became public. They concerned two shared accommodations run

by the same operator in Lower Austria and the subject matter was sanctioning practices. The AOB initiated *ex-officio* investigative proceedings thereupon which were not concluded at the time of completing this report. The regional government of Lower Austria deployed a special commission to examine the alleged abuse. The Head of Commission 3 is also a member of this special commission.

Direct link with misconduct

Sanctions should only be applied in pedagogic work after careful deliberation and on a case-by-case basis. They should be directly linked to the misconduct in time and not imposed arbitrarily depending on the caregiver. Cleaning the entire house, taking away a mobile phone for an unlimited period of time, withholding pocket money or grounding for weeks are certainly not adequate reactions to rule violations.

Sanctions that are too strict and bear no relation to the misbehaviour do not bring about the desired positive pedagogical effect. What is often not fully taken into account by the pedagogic staff is that the perceived problematic behaviour mirrors the patterns of behaviour experienced during early childhood and that the children have never learned strategies for alternative types of behaviour. Often the application of strict sanctioning systems is an expression of overload and helplessness by the staff. In one shared accommodation, the penalties imposed were written on a board with information about the misconduct and hung up in the caregivers' room for all to see from the hallway. This practice had the effect of setting a demarcation but in no way took the children's and adolescents' need for help into consideration. This can result in their reacting with behaviour that is even less desirable, which culminates in a spiral of behaviour patterns such as running away from the facility, regression or aggression.

Alternatives must be learned

A learning process can only take place for minors if the consequences for misconduct are clear and plausible. The reaction to rule violations should thus be customised on a case-by-case basis as opposed to a routine manner. Further training measures must be open to staff in order to develop alternatives to inflexible sanctioning systems. The concept of "New Authority" in particular, which rejects punishment in general and relies on the system of making amends, has been successful.

- ▶ *Degrading punishment is forbidden without exception.*
- ▶ *Sanctions must be directly associated with the rule violation.*

### 6.3.4 Measures that restrict freedom

The NPM has been criticising the lack of legal protection for children and adolescents in homes and facilities for the care and education of minors from a human rights perspective since 2013 and has demanded formal improvements in the law. The legislators have now fulfilled these demands and extended the scope of application of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) to such facilities. From 1 July 2018, measures that restrict freedom also have to be reported to the representatives of the residents in facilities in which at least three minors with physical or mental impairments can be cared for.

Nursing and Residential Homes Residence Act applies to facilities for children as from 1 July 2018

The reason, the type, the start and the duration of the measures that restrict freedom as well as the examination of previously applied alternative measures must be documented in writing. In the same way, the reason, the type, the start and the duration of the restriction of a resident's personal freedom applied with their respective consent must also be documented. Restrictions of freedom in socio-pedagogical facilities had to be documented in any case. To date, minors still repeatedly informed the commissions about restraints for which no record was found in the daily documentation.

Lack of documentation

It was also indisputable to date that restrictions of freedom may only be applied if they are appropriate for the situation and the educational objectives, and if no milder alternatives are available. The latter is not the case if, for example, a house door which is also a fire-resistant door is regularly locked to stop minors from running away, and access to the garden is always blocked due to staff shortages. What is particularly problematic here is that these measures usually also affect children in the shared accommodation who are not involved, meaning that their right to personal freedom is breached without due cause. There is no other option here than to apply more intensive pedagogical intervention and to find out why there is a tendency to run away (temporary 1:1 care).

Milder alternatives have to be developed

Minors reported of inadequate restraining techniques such as an adult sitting or kneeling on a child. In one shared accommodation, the caregivers restrained them by holding them by the neck with one arm twisted behind their back. A child was even injured in this way on one occasion. These kinds of practice are in no way adequate restraining techniques and thus worthy of criticism. Further training such as the PART programme (Professional Assault Response Training) are strongly recommended. The *Laender* have announced to the NPM that they intend to inform facilities about statutory amendments in time.

Inadequate restraining techniques

- ▶ *Child and youth welfare institutions must deal with the conditions that the Nursing and Residential Homes Residence Act requires for the permissible restriction of freedom, and they should actively seek cooperation with the representatives of the residents.*
- ▶ *Training on the new legal requirements is essential.*

### 6.3.5 Alarming personnel situation

Major problems with fluctuation	The NPM already reported in recent years about problems in recruiting personnel at the facilities. Vacancies are filled only temporarily or not at all. For the staff this means that they have to take on additional work. The consequence is work overload resulting in resignations. This personnel situation has a negative impact on the care situation of the minors.
Frequent changes of personnel is enormous stress factor	<p>Frequent breaks in relationships are nearly always a very stressful experience for the children and adolescents. During the commissions' visits, when asked what is negative in the shared accommodation, minors often mentioned the loss of caregivers. The frequent change of caregivers in a care facility is deemed highly critical. It can be assumed that minors whose original family bond is unsecure are subjected to additional risk factors that can intensify with high levels of personnel fluctuation.</p> <p>Psychological resilience research investigated why some children cope with severe stress better than others. They reached the conclusion that a stable relationship to a reliable and loving adult is the most important "protection factor" in alleviating the worst consequences of severe stress. The frequent change of personnel is thus a stress factor for children who are traumatised from the loss of trusted persons. This is ultimately reflected in the fact that many of these children are bound to child and adolescent psychiatry and regularly take psychotropic medication.</p>
Inadequate induction training	When there is shortage of personnel, it is often not possible to train in new staff. They are often left alone after a short time and work some night shifts without any support. Sometimes two or more groups of residents are merged at night or at the weekend, and the young employees without any work experience are left alone with these combined group set-ups and minors whom they do not know. Change in the care team thus happens, when new employees, who are very dedicated at the beginning, cannot cope with this high stress level and leave. Facilities do not seem to be able to break out of this vicious circle if they already had a bad reputation in the sector due to frequent staff shortages. The situation is exacerbated if it takes a long time to fill vacant positions (in one case a year).
Facilities need support	Problems like these were highlighted by the commissions in previous years. The NPM therefore requested information from all of the <i>Laender</i> to support



the facilities in solving the fluctuation problems. This is undertaken by the competent authorities for child and youth welfare and protection. The support measures offered by the *Laender* range from staff meetings (also with former employees), extra-occupational advance and further training, supervision, monitoring and coaching to manager training.

The effect of these measures by the competent supervisory authorities, however, seems to be of a limited nature. On follow-up visits to the facilities that are affected by high fluctuation, the commissions found that the situation had sometimes worsened.

Measures taken by the authorities to date are not sufficient

- ▶ *High personnel fluctuation must be avoided at all cost in the interest of minors.*
- ▶ *Causes of fluctuation must be prevented.*

### 6.3.6 Participation of children and adolescents

The commissions conduct interviews with the children and adolescents in order to establish, amongst others, whether participative measures were introduced in the facilities. These include “house councils“, children’s teams, children’s representatives and complaints letter boxes, opportunities to have their say and exercise self-determination. The answers were disillusioning in recent years. In many facilities, meetings of the children’s teams are no longer held or are only held at very long intervals. But according to the children and adolescents, even where they do take place, the adults still decide that their wishes cannot be accommodated.

Need to catch up

Participation, as stipulated in the UN Convention on the Rights of the Child (UNCRC) and the Federal Constitutional Act on the Rights of Children, is more than the right to be heard. It is a fundamental 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.

Children as experts for their own lives

Involving children and adolescents in different projects means that they can identify with and better support them. Participation can only function if both the management and the staff of a facility are positive about this topic. It can only take place if the employees are involved in the decision processes of the facility. The most important condition for this is that the children and adolescents recognise positive results and developments because in this way they realise that their commitment pays off.

Deficits in implementation

The impressions gained by the commissions regarding the lack of participation of children and adolescents in facilities and homes were partly confirmed by the supervisory authorities of the *Laender*. Deficiencies in the implementation of measures were also noticeable on the visits of the technical supervision. The terms “participation” and “inclusion” meant nothing to the children. In cases like these, the attention of the staff and the management is drawn to the importance and effectiveness of participation for the success of the socio-pedagogical work. Advanced training on these topics is offered.

- ▶ *Facilities need support in implementing the right to participation.*
- ▶ *The participation of the children and adolescents must be lived in everyday life.*

### 6.3.7 Lack of specialised accommodation places

Extended stays in psychiatry

On visits to child and adolescent psychiatric wards and in child and youth welfare crisis facilities, the commissions are repeatedly informed that adolescents with intensive support needs have to stay longer in inpatient care than required because there are not enough post-inpatient care places available.

Misplacement due to lack of specialised care places

At the same time, the commissions encounter severely traumatised children and adolescents in many socio-pedagogical facilities. The care in this setting is neither sufficient nor adequate and thus not expedient from a pedagogical viewpoint. The affected children need, above all, qualified, needs-based care. However, socio-therapeutic and socio-psychiatric services are missing all over Austria, the inevitable consequence of which is misplacements.

In Carinthia, there are currently 95 socio-therapeutic care places for a total of 828 children and adolescents in full residential care in the inpatient area. In Salzburg, there are 6 care places for 589 minors; in Styria, also 6 care places for 2,100 children and adolescents; in Lower Austria, 304 for 1,271 children and adolescents; in Upper Austria, 74 places for 1,121 children and adolescents; in Tyrol, 19 places for 609 children. In Vorarlberg, there are 20 places for 323 and in Vienna 100 special care places for 2,217 socio-pedagogically cared for children and adolescents. In Burgenland, there are 54 places for 284 out-of-home children and adolescents.

Available places vary greatly in the *Laender*

Even if a comparison between the *Laender* is difficult due to unequal requirement specifications for special care, differing names and responsibilities, it is quite clear that in some *Laender* the ratio of available special places in relation to the number of children housed in socio-pedagogical facilities is very low. In Styria, the imbalance is particularly noticeable. In other *Laender* such as Lower Austria, the proportion is very high. One explanation for this could

be that not all *Laender* have created the mandatory child and youth welfare plan pursuant to the Federal Children's and Youth Service Act 2013 yet. The NPM requests the relevant *Laender* to conduct needs analyses and increase the number of places as soon as possible.

There are also insufficient crisis de-escalation places in Austria. In recent years, the existing crisis centres have been nigh on continuously fully occupied and, at times, even severely overcrowded. This leads to above-average waiting times for a suitable care place. In Vienna, the average occupancy of the crisis centres was 98.57% in 2017. Time and again, on their visits the commissions find twelve instead of the eight children as prescribed. In November 2017, there was overcrowding in half of the crisis centres. In Lower Austria, the occupancy rate fluctuates between 80 and 100 %. Such a high occupancy rate means that these centres can only offer an emergency pedagogical care and not a professional crisis de-escalation. In some *Laender*, minors are even taken directly from the family to a hospital or shared accommodation if the crisis de-escalation places are full or if there is no crisis centre, as is the case in Burgenland. Cases of abuse in a shared accommodation gave cause for the NPM, with the involvement of the Human Rights Advisory Council, to address a recommendation to the regional government of Burgenland to create crisis de-escalation places.

Crisis places  
overcrowded

In addition, there should also be special crisis de-escalation places for children and adolescents with psychiatric diagnoses or post-traumatic stress disorders. The NPM therefore demands the setting up of special crisis centres similar to socio-therapeutic or socio-psychiatric residential groups, with specially trained and experienced staff and a higher staffing ratio.

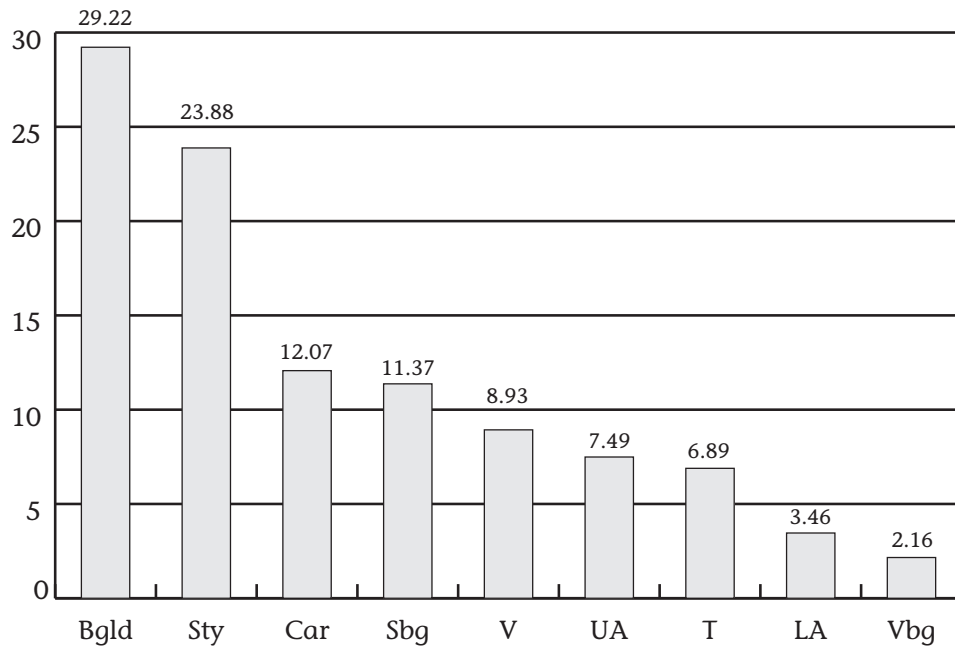
There are also insufficient care places in facilities for mothers and their children in Austria. There is no mother-and-child-home in Burgenland. In one facility, this resulted in a special permit being issued to a shared accommodation for the care of a baby and its mother. Such a makeshift solution is extremely stressful for both the other residents and the staff. It is also questionable if it was in the interest of the baby's wellbeing.

- ▶ *The number of socio-therapeutic care places must be increased substantially.*
- ▶ *Crisis de-escalation places must be urgently expanded to meet the requirements.*
- ▶ *Crisis centres must be created for children and adolescents suffering from psychiatric or post-traumatic stress disorders.*

### 6.3.8 Obstacles to maintaining the relationship to the family

Too many placements in other <i>Laender</i>	<p>The right to contact to both parents anchored in Article 9 (3) Convention on the Rights of the Child as one of the most important children's rights is also included in Article 2 (1) of the Federal Constitutional Act on the Rights of Children, and thus guaranteed under constitutional law. The lack of special care places depicted in the previous section is, however, still frequently the reason why many <i>Laender</i> house minors far away from their families in another <i>Land</i>. As a consequence relationships break, which makes returning the minors to the family even more difficult if not impossible.</p> <p>A current survey based on 2016 fortunately indicated that there has been a slight decrease in the number of children and adolescents housed in other <i>Laender</i> since the first time the data were recorded by the NPM in 2014. An increasing trend was observed only in Carinthia.</p>
Major differences within Austria	<p>At 29.22%, Burgenland has the highest proportion of minors housed outside of their own <i>Land</i>. This is even more astounding as, relatively speaking, there are plenty of socio-pedagogical and socio-therapeutic residential groups in Burgenland, yet just a third of the available places are occupied by children from Burgenland. The reason for this appears to be an allowance that the private operators in Burgenland can request for minors from other <i>Laender</i>, thus making caring for them more attractive. For this reason, consideration is being given in Burgenland to adopting the model that has been practised in Upper Austria for several years. The model allows a maximum of 15% of the total number of minors in a facility to be from other <i>Laender</i>. The number of minors from other <i>Laender</i> in Upper Austria has fallen from 126 to 84 since this rule was introduced.</p>
Some improvements noticeable	<p>Since 2012 Vienna has reduced placements outside of the <i>Land</i> from 354 to 198 by increasing the number of care places. In Salzburg and Styria too, the proportion of minors housed in other <i>Laender</i> has decreased since 2014. By contrast, at 23.88 %, Styria still has far too many minors housed outside of their own <i>Land</i>. In Lower Austria, placements in another <i>Land</i> have had to be authorised by the Department of Child and Youth Welfare of the regional government for quite a while now. Furthermore, this is also only permissible if no other adequate places are available in Lower Austria. At 3.46%, the number of minors housed in other <i>Laender</i> is correspondingly low and has been falling constantly since 2014. The structures in Vorarlberg come closest to fulfilling the children's rights requirements. Just 2.16 % of the minors housed out of home live in facilities in another <i>Land</i>.</p>

Placement outside of own *Land*  
(share in %)



Legend:

Bgld = Burgenland

Sty = Styria

Car = Carinthia

Sbg = Salzburg

V = Vienna

UA = Upper Austria

T = Tyrol

LA = Lower Austria

Vbg = Vorarlberg

This figures recorded for 2016 coincide with the observations of the commissions, which found facilities on their visits that are almost exclusively occupied by minors from other *Laender*. In Styria and Burgenland, the commissions encountered residential groups in which not one child came from the respective *Land*. If these are very far away from the place of residence of the family of origin and can only be reached with difficulty by public transport, regular personal contact to parents and siblings cannot be supported and secured. Expensive travel also makes it difficult to observe the right to contact. On the initiative of the NPM, facilities in Styria in future will have to ask the technical supervision whether a place is needed for a child from Styria before accepting a child from another *Land*. Do date, this practice was only applied inside the district. The NPM is hoping for an improvement in the situation from this measure.

- ▶ *Out-of-home placement at a great distance from the place of residence of the family of origin must be avoided. The aim is to protect the opportunity to visit and stay in contact in the interest of the children's wellbeing.*
- ▶ *As competent authorities for child and youth welfare and protection, the Laender have to provide a needs-based expansion of the care structures. The proportion of out-of-home minors from other Laender must be kept as low as possible.*

### 6.3.9 Group size affects quality of pedagogic work

Section 12 of the Federal Children's and Youth Service Act stipulates how child and adolescent welfare is to be organised by normalising standards recognised by experts and using the current status of science as a benchmark. The implementation laws adopted this regulation without subsequently creating harmonised care standards in the *Laender*. There are thus considerable differences in the maximum number of children cared for per group throughout Austria. In addition, group dynamic processes, which occur more frequently in large groups, increase the risk potential even if the staffing ratio is higher. The risk of sexual assault among the minors not being seen by the staff is higher in larger groups.

Group size too high in  
three *Laender*

In Vienna and Salzburg, a maximum of 8 minors live in one shared accommodation; in Upper Austria, Vorarlberg and Tyrol, the number is 9 minors; in Lower Austria, 10. Carinthia with 12 and Styria with 13 minors per group are far above these standards. Burgenland, where there are even 16 minors per group, is the "leader". The NPM, with the support of the Human Rights Advisory Council, took the opportunity to address the regional government of Burgenland with the recommendation of limiting the permissible group size to a maximum of 10 minors. The possibility to temporarily inflate the prescribed group size, as is possible in Tyrol and Lower Austria with the approval of the supervisory authority, should also be urgently reconsidered.

Home structures impede  
pedagogic work

Large homes with several groups are also not compatible with modern social education standards. Similar to large groups, the negative effects of group dynamics in large facilities are much stronger and impede development opportunities.

The staff in particular would like large facilities to be broken down into smaller socio-pedagogical and socio-therapeutic shared accommodations, as individual needs can be better catered to in smaller facilities. This was clearly evident from the interviews with the commissions. Several *Laender* have thus started to separate individual groups from large facilities. There are now no more large facilities in Vienna, Vorarlberg, Salzburg and Styria. The other *Laender* should follow this example. The private owners and/or operators should also be integrated in this separation process and requested to present restructuring plans.

- ▶ *A reduction in group size in accordance with the socio-pedagogical findings is recommended.*
- ▶ *In all Laender, children and adolescents should not be cared for in large facilities any more, but rather in small, family-like residential groups.*
- ▶ *As competent authorities for child and youth welfare and protection, the Laender must ensure that restructuring processes do not come to a standstill before completion.*

### 6.3.10 Different requirements for starting work in the *Laender*

A focal point of the Federal Children's and Youth Service Act 2013 was the professionalisation of the staff. Only qualified and suitable staff, in particular from the fields of social work, social education, psychology and psychotherapy, should be employed to work in child and youth welfare as intended by the legislators. This staff should be offered extra-occupational advance and further training as well as supervision on a regular basis. The staff must render their services in compliance with professional standards which are defined in detail by the *Laender*.

Focal point of the reform not implemented

Implementing laws adopted the regulation set forth in the Federal Fundamental Act according to which child and youth welfare services may only be rendered by qualified staff. However, the definition of who is qualified staff and under which conditions differs from *Land* to *Land*. For some *Laender*, these are exclusively graduates of colleges for social education and of universities of applied sciences with degrees in social work, as well as persons with university degrees in psychology, education or psychotherapy. In other *Laender*, kindergarten pedagogues, after-school staff, teachers, nurses, social workers, care staff for persons with disabilities, and youth workers are also recognised as qualified staff.

Different definition of qualified staff

Some *Laender* provide for extra-occupational qualification opportunities. In Burgenland and Vienna, persons who have no knowledge of education can work in socio-pedagogical shared accommodations if they begin their training in the first year of employment and complete this within five years. In Styria, they have to have completed two-thirds of their training before being allowed to work. The NPM considers these regulations to be extremely critical. What is even more difficult to understand is that an extra-occupational qualification is permissible for staff in socio-pedagogical and socio-psychiatric shared accommodations. In Vienna, these shared accommodations in which the most challenging children and adolescents live are run by private operators for example. They are free to hire staff who have not completed any pedagogic training. In the facilities of the Viennese Municipal Department 11 (MA 11), by contrast, only social pedagogues who have completed their training are allowed to work.

No qualified personnel

No harmonised regulation of education	The social pedagogue profession is not regulated in any pertinent law. Over many years, efforts to implement a harmonised regulation at the federal level have failed. As a consequence, the level of education is inhomogeneous, as educational institutions pursue different models in terms of learning content and the number of lessons and hours of practical experience. The same applies for the advance and further training offered. The NPM holds the view that a contemporary and harmonised regulation in these areas has been necessary for a long time. People who work in the social sector must have the necessary qualifications.
Also no uniform regulations for staffing ratios	The staffing ratio is also regulated differently in the <i>Laender</i> and, in some cases, not clearly defined. In some <i>Laender</i> , regulations stipulate that there must be a minimum number of care persons depending on the type of housing. In other <i>Laender</i> , there is no regulation and the number of qualified staff is only prescribed for the facilities in the respective permit notice. The NPM also views this very critically.

- ▶ *The NPM demands that only well-trained staff should work in child and youth welfare facilities.*
- ▶ *Uniform training standards and quality standards in child and youth welfare must be created for all of Austria.*

### 6.3.11 Continuation of support after reaching legal age

Entitlement to support ends after reaching legal age

The Federal Children's and Youth Service Act 2013 (*Bundes-Kinder-und Jugendhilfegesetz*) stipulates that parenting/educational support can be extended after the recipient has reached legal age if this is absolutely necessary to achieve the objectives defined in the assistance plan. There is no legal entitlement as was the intention behind the legislative proposal. In some *Laender*, the extension is only granted for six months or a year, which causes a feeling of insecurity for the adolescents.

Moreover, young adults in almost all *Laender* only receive further support in the form of full residential care if they were already living out of home. This means that adolescents are often not accepted in full residential care before reaching their 18th birthday even if out-of-home care has been indicated.

Individual support needs

When the number of young adults in residential care in 2016 is assessed in relation to the total number of those in full residential care, it is noticeable that some *Laender* continue granting assistance for longer than others. The amount of assistance granted to young adults is thus twice as high in Salzburg, Tyrol and Styria as it is in other *Laender*. These significant differences cannot only be explained by different support needs of the individual adolescents.



The supporting measure for young adults is capped at the age of 21 in any case. This is also a point of criticism by the NPM, as many minors who are living out of home do not start higher education for fear of not being able to complete it in time before the support stops.

- ▶ *The NPM demands an entitlement to support after reaching the legal age.*
- ▶ *Measures for young adults should be approved for the entire duration of their education.*

### 6.3.12 Unaccompanied minor refugees in reception conditions under the Basic Provision Agreement

Unaccompanied minor refugees are entitled to special protection and assistance from the state (Article 20 United Nations Convention on the Rights of the Child (UNCRC)). This obligation to protect and the measures derived therefrom are also explicitly set forth in the EU Reception Conditions Directive (2013/33/EU). The NPM uses these legal bases – besides the UNCRC, the ECHR, the EU Charter of Fundamental Rights and the Federal Constitutional Act on the Rights of Children – as assessment criteria for the fulfilment of state obligations. Pursuant to the UNCRC, unaccompanied minor refugees must be guaranteed the highest attainable health standard (Article 24). With Article 28 of the UNCRC, the Republic of Austria also recognises the right of every child to education. Other Articles of the UNCRC are also of importance for refugee children: the principle of non-discrimination (Article 2); the obligation to family reunification (Articles 9 and 10); the right to benefit from social security (Article 26) as well as adequate standards of living and maintenance (Article 27).

Assessment criteria

The laws relevant for child and youth welfare (Federal Children's and Youth Service Act) and the enacted implementing laws of the *Laender* as well as the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) make no distinction between minors from Austria and unaccompanied minor refugees. This is fulfilled for underaged unaccompanied minor refugees who are usually admitted to socio-pedagogical facilities. Older, predominantly male adolescents on the other hand, remain in reception conditions under the Basic Provision Agreement.

No justification for different standards

This has not only a negative impact on the quality of care. The distinction between Austrian children and refugees in this area is illegal and unconstitutional in the view of the NPM. The Supreme Court has also ruled that minors without Austrian citizenship must be treated the same as Austrian minors with regard to child and youth welfare services (OGH 4Ob 7/06t).

Facilities run under the child and youth welfare regime usually have substantially more resources than facilities that have to survive on the basis of daily rates for reception conditions under the Basic Provision Agreement and that can thus only implement lower standards. Furthermore, the *Laender* have also developed their own approach when it comes to the care of unaccompanied minor refugees. After visits by Commission 3 in Styria in recent years, the NPM criticised several times that the regional government authorised quarters for unaccompanied minor refugees exclusively as residential homes with a 1:15 staffing ratio unlike in other *Laender* where they are authorised predominantly as residential groups with a 1:10 staffing ratio. In larger facilities, this meant that the risk of many avoidable problems was accepted. A new Basic Welfare Support Act regulation in mid-2017 enabled Styria to at least draw level with other *Laender* with respect to staffing ratios. The benchmark for approved places was reduced from 40 to 30 and a somewhat higher daily rate for crisis care places was introduced. Throughout the country, there is a lack of special socio-therapeutic care places for unaccompanied minor refugees, which exist neither nationwide nor in sufficient numbers.

NPM observed many deficiencies

In 2017 the commissions noticed repeatedly that unaccompanied minor refugees with a seriously problematic background frequently changed facilities after a relatively short time. Despite clear indications of a mental illness requiring treatment or entrenched addictive behaviour, they showed no willingness to undergo psychiatric assessment or this was not performed due to a lack of services. Some of these unaccompanied minor refugees can only be accommodated in residential groups for a limited time before going missing again. It appears that it is not possible to build up a relationship using conventional concepts to those who are most in need of intensive support. The long waiting times for therapy places additionally thwart all efforts to counteract the risk behaviour.

The NPM observed repeatedly that the needs of minors in reception conditions under the Basic Provision Agreement are not sufficiently met, even though the situation has improved considerably compared to 2015 due to the decrease in new arrivals. Nevertheless, the list of deficiencies observed in 2017 is long and shocking in parts. It must be emphasised, however, that the caregivers themselves perform their work with great dedication.

Not enough qualified personnel

The management of facilities for unaccompanied minor refugees is responsible for providing a non-discriminatory and inclusive working environment. But it has to proactively prevent the potential work overload of the staff. It is indisputable that in many facilities not enough staff are employed or their qualifications are inadequate. There is rarely enough time to train in new members of staff. In extreme cases, as observed by Commission 4 in Vienna for example, this is limited to working one single shift with an experienced member of staff before taking over night shifts alone. The lack of pedagogic support concepts in the face of the imminent risk of radicalisation was also

criticised in this facility. There were also no concepts on how to deal with clients with mental disorders. Fortunately, there was an immediate reaction to the criticism from the NPM, and the regulatory requirements were tightened significantly. Commission 5 visited a recently opened facility in Lower Austria in which adolescents with particularly challenging behaviour were supposed to find a home. Since conciliar-psychiatric support was not in place despite the corresponding diagnoses of some residents, power struggles and altercations happened as anticipated. Repeated self-harm including an attempted suicide were met with interventions that are completely incompatible with pedagogic standards and in some cases could be classified as degrading treatment. The shared accommodation was closed down shortly after the visit by the commission, and the adolescents moved to another facility. The regional government of Lower Austria informed the NPM that special concepts are being considered for the support of unaccompanied minor refugees with similar needs, whereby “special care places” in existing facilities with additional staff and increased financing are planned.

The most frequent reactions to traumatic experiences in connection with exposure to violence and migration are symptoms of post-traumatic stress disorder (PTSD). The NPM holds the view that pedagogic staff must be vigilant regarding children and adolescents suffering from repeated sleeping disorders and nightmares or lack of concentration, or displaying aggressive or pessimistic and passive behaviour with a tendency to withdrawal. Care should be taken to involve native-speaking therapists during crisis de-escalation and to place these children and adolescents in a residential group that is relatively homogeneous with regard to the age structure and ethnic background in accordance with the “quality for kids standards”.

Insufficient support for  
traumatisation

Several facilities that provide reception conditions under the Basic Provision Agreement, which were visited by the commissions, were impersonal, bare or confined. In some cases, shared rooms were so small that it was not possible to be alone or receive visits and the environment was not conducive to learning. Broken or badly worn furniture, the lack of the simplest “study area” with desks, and the smell of faeces in the sanitary area were criticised on-site by Commission 1. These deficiencies were taken by the operator as an opportunity to initiate extensive refurbishment measures. The unaccompanied minor refugees welcomed the additional space created by converting four-bed rooms into double rooms as recommended by the NPM. In more extreme cases, not only was the accommodation unacceptable, but minors were sometimes even found in a neglected condition. At times, the unaccompanied minor refugees complained about restrictions (locked fridges, no WLAN, mobile phone bans and curfews etc.) or collective punishment. As follow-up visits showed, many of the deficiencies were rectified after the intervention from the NPM.

Sanitary and hygiene standards were sometimes considerably lower in basic provision facilities for unaccompanied minor refugees than those typical for the respective locality. One reason for this is that unaccompanied minor refugees are often not given sufficient support even though they are just beginning to develop self-organisation and self-responsibility skills. The same applies to preparing meals, as an understanding of healthy eating habits and an interest in cooking have first to be kindled. Sufficient support in going to important appointments (e.g. with the Public Employment Service, youth coaching, therapy offers, grinds, the doctor etc.) can only be provided if the conditions for comprehensive refugee social work are in place.

Right to education,  
participation and  
inclusion

Reports from the commissions indicate that many of the adolescent refugees are unable to exercise their right to education, participation and inclusion. The commissions reported that on unannounced visits they encountered unaccompanied minor refugees who just lay on their bed all day and voluntarily spoke of unfulfilled (sometimes unfulfillable) expectations, rejection, powerlessness and fear of the future. Minors of school age attend class, but there are no adequate training and further training offers everywhere for all of the others. German courses are only held once or twice a week in some regions. Faster integration as well as simpler communication with the support staff and the surroundings outside of the accommodation for unaccompanied minor refugees is thus difficult. In addition, staff in many facilities do not have the necessary language skills. In line with the UNHCR, the NPM recommends making it possible to hold daily German classes for unaccompanied minor refugees. Forced inactivity represents lost time in the biography of the adolescents and impedes their integration sustainably. The situation of those affected can become particularly uncertain from the end of their 18th year when they have to leave the accommodation for unaccompanied minor refugees and are not sufficiently prepared for an independent life. However, it also needs to be said that a group of the Vienna basic provision facilities are specialised in offering continued support for unaccompanied minor refugees.

- ▶ *The child's wellbeing must be the main focus in supporting unaccompanied minor refugees. The financing of the care facilities for unaccompanied minor refugees and the standards of reception conditions under the Basic Provision Agreement must be aligned with those of the socio-pedagogic facilities.*
- ▶ *Special attention must be given to the need to treat traumatisation and psycho-social knock-on effects. Qualified staff must be trained in recognising anomalies and symptoms so that they can quickly initiate help measures.*
- ▶ *The training and education opportunities for minor asylum seekers who are no longer of school age should be improved as a matter of principle.*

### 6.3.13 Positive observations

During the last year, the commissions also observed developments in some facilities that the NPM considers good practice.

In a Styrian facility, it was welcomed that the “New Authority” system is being practised in the shared accommodation. The principle of making amends was also established in school and kindergarten. “New Authority” is a systematic approach that empowers managers, pedagogues as well as parents, and gives them the opportunity to build up a respectful relationship culture and stimulate development processes. The manager of the facility who is also a New Authority coach presented these concepts on information evenings, which also triggered a positive reaction for the shared accommodation. This also contributed to the children being better integrated in the village community.

Integration thanks to exceptional dedication

## 6.4 Institutions and facilities for persons with disabilities

### 6.4.1 Introduction

The NPM visited 89 institutions and facilities for persons with disabilities in the year under review. The commissions observed deficiencies in the following areas in particular: measures that restrict freedom, living conditions, educational and occupational opportunities, health care and personnel.

Some shortcomings were discussed during the visits and subsequently rectified. For example, Commission 6 recommended a facility to contact the competent representatives of the residents to discuss the application of measures that restrict freedom and possible alternatives. The facility followed the recommendation without delay. In several facilities – after the respective recommendations of the NPM – improvements were promised immediately and implemented quickly. Complaint boxes were installed or house rules revised.

Some problems were solved quickly

Problems that cannot be solved immediately are formally addressed by the NPM to the operators of facilities or to the supervisory authorities. For example, Commission 2 reported about maladministration in a facility in Salzburg. The NPM confronted both the operator and the *Land* with the observed deficiencies. The management of the facility then hired more care staff, installed a support psychological service, established a psychiatric conciliar service, introduced regular supervision, revised the house rules and organised care measures based on individual needs. A workshop was held with the clients in which the criticism of the NPM was dealt with. In other cases, inadequacies in the application of measures that restrict freedom were removed. In one facility

the time-out room was designed better; in another, awareness processes with regard to restrictions of freedom were initiated.

Sometimes the conditions criticised by the NPM continue to exist at first because the implementation of the recommendations takes longer or can only be realised in stages or those who will have to pay for them reject the improvements in the first place.

Misconceptions of guarantees of UN CRPD

The NPM observed on many occasions that some operators and authorities have misconceptions of disability, barrier-free accessibility, self-determination or inclusion. Even in the sixth year of the activities of the NPM, it is still necessary to first create awareness in meetings for the material guarantees of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) which has been applied since 2008.

UN CRPD protects persons with psychological impairments

Pursuant to Article 1 of the UN CRPD, persons with disabilities include those “who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others“. This perception of the term is to be found neither in politics, the media nor in the public opinion in Austria. In some cases it is still denied to the commissions that persons with chronic mental illness and persons with substance use disorders suffering from mental impairments are covered by the scope of protection of the UN CRPD.

Barrier-free accessibility means access without help from third parties

The NPM has to educate on many levels. One supervisory authority argued for example that, contrary to the observations of the commission, an accommodation was barrier-free. And this even though the supervisory authority knew that wheelchair users could only use exits with the help of mobile ramps and are therefore dependent on assistance from the staff. The guaranteed barrier-free accessibility is thus not given, as this by definition requires access to the surrounding area without help from third parties in as far as possible. A lack of barrier-free accessibility was also evident in the inappropriate layout and furnishings of many institutions and facilities including too high reception counters in the entrance area or cloakrooms, and sanitary facilities that are unsuitable for wheelchair users. Some structural measures would have had to be reported as measures that restrict freedom pursuant to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*). These included doors that could only be opened by physically strong or big persons. External experts with disabilities who are consulted regularly by the NPM provide important input when dealing with these questions in particular. In 2017 the NPM also experienced that criticism substantiated by visual evidence by these persons during the visits was accepted.

Self-determined persons make their own decisions

But, as the NPM observed on several occasions, perceptions of what self-determination in essence means are often only sketchy in the institutions and facilities. Self-determination means that persons can make their own decisions

and organise their lives just as others can. Ensuring as much independence as possible for persons with disabilities and the right to decide for themselves are some of the most important principles of the UN CRPD. The care and support services provided in institutions must be customised as far as possible in order for this to be realised. Special attention must be given to rituals and needs, age, health condition, sexual orientation or language abilities. For example, it makes an enormous difference if existing abilities and preferred movement patterns are taken into consideration when moving persons with physical impairments. The more physical impairments a person has, the more important the tactile and kinaesthetic interaction when performing everyday activities (e.g. motion support, conscious motion control and help in using still existing body tension).

A lot of discipline, empathy and attention are required to allow that the current physical and mental state of persons with multiple disabilities flows into their everyday routine. Every nursing action on persons whose ability to move is actively or passively impaired is an intrusion into their private and personal space. Boundary violations for reasons of needing help can easily become a matter of course but are still unacceptable. The commissions found enough examples of this in the year under review. Rounds on which physical examinations were performed in the presence of third parties, be they other residents or their relatives and friends, were criticised as were changing dressings while the patient was eating or missing protection screens during personal hygiene, intimate care or excretion.

Occasionally, clients in residential facilities or sheltered workshops complained that they are not involved in decision-making processes. Decisions are made only with legal guardians or they are given no opportunity to inspect the documentation. The way in which everyday behaviour is documented mirrors the basic attitude of the respective organisational culture. These “unwritten rules” almost always deviate strongly from official internet presentations and models. Entries such as “XY is acting up or defiant today, but also well-behaved, obedient, weepy etc.” that judge behaviour in a derogatory manner without reference to the relevant situation demonstrate a power gap. For the NPM, remarks like these are evidence that there can be no mention of the joint development of rules for living together and communication with and about each other. When paternalistic fundamental convictions already prevail towards those who are able to express their dissatisfaction, it can be assumed that a sensitive approach to dealing with persons who cannot articulate their discontent is not possible.

As there is no universal “person with disabilities”, “one fits all” concepts are not compatible with the UN CRPD. In order to cater to the individual person, customised development and objectives planning should be defined together regularly (see Annual Report 2016, p. 164 et seq.).

Customised support  
necessary

Deinstitutionalisation facilitates individual ways of living

Customised ways of living are facilitated by inclusive types of housing close to the local community. Commission 1 reported of examples of good practice. The operator of a residential home moved the residents to a block of apartments close to the local community. In this building, the clients now live right beside other tenants. Customised support is provided and those being cared for can decide on their daily routine themselves. There is also sufficient assistant staff at the weekend. It is thus possible to go to festivals, discotheques or other events. The residents drafted their own house rules.

In spite of some positive incidences, however, there is a lack of comprehensive concepts for deinstitutionalisation in Austria. On the contrary, in some cases institutions and facilities are extended and deinstitutionalisation is considered to be difficult to implement. Sometimes the authorities also argue that persons in care prefer existing institutions and facilities to types of housing close to the local community. In this context, it is often overlooked that changing the habits and socialisation that have been taught over years is combined with fear. Deinstitutionalisation therefore requires cautious preparation and extensive information on processes and opportunities.

There is no change without resistance

Just how difficult it is to bring about change in institutions and facilities is illustrated by the case of a residential and day-care centre for persons with disabilities in Salzburg, which is operated by the *Land*. The NPM criticised many cases of maladministration in 2016 (completely inadequate buildings, no barrier-free accessible places to be alone, missing therapy and rehabilitation opportunities), which were vehemently refuted. A plot of land has since been purchased on which a turnkey residential facility with therapy places will be built in 2019. At the beginning of 2017, the documents presenting the rationale and financing for the new building were submitted to the Diet by the *Land* Government. In these documents the *Land* Government conceded that the existing confined conditions made it impossible to provide contemporary care for persons with disabilities. However, according to the lawyer of the facility, the deterioration of development opportunities caused by this is attributed to the peculiarities of the disabilities of persons living there, and not to insufficient structures. In a debate in the Diet in January 2018, the NPM insisted that it is necessary that the *Land* Government sits down with experts (e.g. self-advocacies, monitoring committee) and defines an inclusive concept in order to be able to provide persons with considerable support needs appropriate living conditions as well as the necessary therapy, support and care services.

The opposite of inclusion is isolation

Self-determination is also the condition for inclusion, in other words integration in society. It does not exist when persons with disabilities live and work isolated from the rest of society. This, for example, is the case when the only available sheltered workshops and houses of the same operator organisation are run in close proximity to each other. There are still regions in Austria where persons with disabilities are dependent on one employer and have to act in closed systems due to a lack of alternatives. One facility visited by Commission 3 in



Carinthia was granted permission to run years ago even though it is located 12 or 15 km from the nearest villages. It takes an hour to reach the next bus stop on foot. There are few neighbours with whom the residents can come into contact in the direct vicinity. (Re)integration is thus *de facto* impossible. Inclusion cannot be realised in such an environment.

Another problem affects some 23,000 people in Austria whose capacity is less than 50% than that of a person without disabilities and who are occupied in a daily structure or sheltered workshop. There they merely receive pocket money of about EUR 65 a month regardless of the scope of their work performance. This occupation is not legally recognised as an employment contract. Those occupied have only accident insurance but no health or pension insurance. This contradicts the UN CRPD, which is why the alignment with regular employment contracts should be a goal for the Government and the legislators.

Regular working conditions demanded in daily structures

The NPM often encounters young persons with impairments for whom – according to the medical model of understanding disability – a long-term incapacity to work was observed. A classification as “incapacitated for work” implies that these persons are excluded in any case from assistance by the Public Employment Service Austria (*Arbeitsmarktservice*). It is thus no longer possible to complete a (part) apprenticeship, and the only way to facilitate daily structure is through sheltered workshops run by services for persons with disabilities. This is inadequate from a human rights point of view and highlights the need for reform that can only be solved through political programmes with the interaction of the Federal Government and the *Laender*. The NPM has and will continue to advocate this.

Determination of long-term incapacity to work is obstacle to apprenticeship training

In general, the NPM can report very positively about many institutions and facilities. The cooperation with the management of the institutions and the staff was often good. One section of this chapter of the report is dedicated to positive practices.

The official country review of Austria 2019 by the competent UN Committee will investigate to what extent or if at all Austria fulfils the provisions of the UN CRPD. From the view of the NPM, many obligations are still not fulfilled despite improvements. The deficiencies described at the outset also have to be rectified in any case. Further problems are discussed in the following sections.

Official country review for the implementation of the UN CRPD

#### 6.4.2 Victim support for behaviour that violates boundaries

Creating awareness for development and measures for protection against violence in institutions and facilities for persons with disabilities is one of the core tasks of the NPM. In the past few years, the NPM has observed that when several risk factors converge, physical violence by the clients against other

residents and the staff is more frequent. Working with persons with multiple disabilities in particular can result in the extreme overload of organisations.

Commission 6 twice visited one facility in Lower Austria that also admits adult residents with high aggression potential. The staff claimed not to have been sufficiently prepared for the admission of three clients who, in addition to an intellectual impairment since birth, also required psychiatric treatment. Other residents in particular had to suffer from uncontrollable, aggressive, impulsive outbursts and aggression towards others as well as occasional physical attacks both as victims but also as observers. There was no clear concept on how to deal with this situation and which type of support has to be offered to the other affected residents.

Human Rights Advisory Council drafts statement on victim support

The NPM observed that victim support aspects were structurally denied in this facility and requested the Human Rights Advisory Council to address this topic using the incidents as a basis. The experts drafted an extensive statement that can be read on the AOB website. The NPM hopes to have created easier access to the document developed for them in an “easy to read” version in particular. The following aspects are depicted as extracts:

The Human Rights Advisory Council emphasised that persons with disabilities in assisted institutions and facilities belong to a particularly vulnerable group. The possibilities to set boundaries as well as accept help after experiencing violence are few. Therefore, mechanisms and measures are required to protect the human rights of those affected. At the same time, it is also important not to respond to those who act aggressively towards others and who have severe intellectual impairments and psychiatric disorders exclusively with criminalisation, enforcement and cancellation of the home contracts. This would thwart any successful attempt at providing support.

The protection of these victims cannot be subject to any compromise. Top priority must be given to the safety of persons in institutions and facilities. This includes anchoring a professional approach in the institutions and taking clear stance on violence.

Missing violence protection concepts

Suitable quality standards should be defined as the basis for effective victim support. Currently, guidelines on dealing with violence in institutions for persons with disabilities are not available in all *Laender*. All of the *Laender* should define these standards in order to prescribe a clear course of action for operator organisations.

Regardless of this, operators must ensure that persons can live (and work) in their facilities without violence. In order to reach this goal, preventive approaches have to be implemented in three areas: in primary prevention by preventing aggressive behaviour; in secondary prevention by taking de-escalation measures; and in tertiary prevention through structured follow-up. Sufficient resources are a basic condition for achieving this goal. Clients who

are affected by violence should be provided with accessible information in simple language, peer counselling inside and outside the facility as well as customised therapy services. Easy, barrier-free access to victim support facilities must be guaranteed.

Another important factor is that staff are sufficiently trained in violence prevention and can avail of supervision. Commissions recommended installing an emergency call system, which requires sufficient staff during the night and effective communication channels. Such a system should be a component of general emergency planning and not only be restricted to violent incidents.

Personnel training is essential

Ultimately, the measures taken when violence is used must be made unequivocally clear to violent clients. The availability of pertinent therapy offers is particularly important in this context. Many of the suggested measures can help both the victims and the perpetrators.

What is crucial for the success of these measures is that the preventive approach is implemented on all levels and safety aspects are considered in all activities. As a consequence, clients with a high potential for aggression and violence are only admitted if the respective facility is prepared for potential risks by means of safety management.

The NPM would like to emphasise that the main responsibility for fulfilling these requirements is with the public sector. In practice, it is often the case that only few shared accommodations or sheltered workshops are willing to admit clients with a high potential for violence because the risk appears to be too high for them.

Public sector responsible for providing offers

The lack of suitable alternatives is also “homemade”, as clients with a high potential for aggression are passed from facility to facility. Instead, it is necessary to create stable conditions with increased staffing. In a privately run facility in Lower Austria, clients were repeatedly expelled from the facility in spite of being in fulltime care according to notification from the supervisory authority. Those affected were “suspended” because of violent incidents and threats, and were homeless for some time as a punishment because they have no family ties. The facility failed to observe the procedure that is in place when clients can no longer be cared for: the *Land* Government was not informed of the sanction in advance. Discharging persons with disabilities from care without ensuring an alternative is, in the view of the NPM, a serious violation of human rights. This is regardless of the kind and severity of the incidents leading to expulsion.

Suitable and trained staff, adequate rooms and external support services can only be guaranteed with the corresponding financial resources. These funds must be made available.

Sufficient funds must be available

Effective violence prevention through participation

The NPM also observed positive examples in 2017, however. Mandatory de-escalation training programmes are planned in many institutions and facilities, violence protection concepts were drafted and implemented. Commission 4 reported about one facility that drafted a guideline for violence prevention with the involvement of the clients. The deployment of psychologists to support the entire team or individual persons was also viewed very positively. Several institutions and facilities also enshrined the opportunity of codetermination and self-determination as part of violence prevention. This can mean that the workplace is designed by the clients themselves. In this way, problems or crises can be detected and overcome at an early stage.

- ▶ *The authorities must draft quality standards for victim support in institutions and facilities. These should then serve the operators as guidelines for their work.*
- ▶ *The condition for effective violence prevention is the relevant training of the staff. This should be mandatory in institutions and facilities for persons with disabilities.*
- ▶ *Clients with a high potential for violence should only be admitted to an institution if it is prepared for dealing with potential risks.*
- ▶ *Regulations under Federal and Laender laws should stipulate a formulated de-escalation concept as the condition for granting permits for institutions and facilities for persons with disabilities.*

### 6.4.3 Sexual self-determination of persons with disabilities

Persons with disabilities are not gender-neutral beings

The NPM found different approaches to the topic of sexuality in institutions and facilities. Due to the wide range of models applied, the NPM tried to elaborate a framework for this topic that is compatible with human rights. The Human Rights Advisory Council was also asked for a statement in this respect. This process has not yet been completed.

The perception still prevails that persons with physical and/or mental disabilities are gender-neutral beings. This is also the case in institutions in which the management and staff deal with the care and needs of persons with disabilities on a daily basis. Commissions are often confronted with the statement that sexuality is “not an issue” or that there are no sexual needs. But even in institutions which generally recognise that persons with disabilities have sexual needs, the prevailing underlying conditions make satisfying these needs impossible.

Sexuality is one of the basic needs of human beings and is of significance for the development of the personality, health and wellbeing. This is indisputable in the international human rights discourse.

The right to sexuality arises from the right to health (the best of physical and mental health possible). The UN Committee on Economic, Social and Cultural Rights stipulated that certain types of freedom are linked to the right to health. These include control over one's own body including sexual freedom. The UN Special Rapporteur on the right to health also emphasised that this right also includes sexual health as well as a fulfilling and safe sex life. This includes being able to obtain sufficient information, contraceptives and health services. The competent UN Committee also observed that persons with disabilities are still subjected to discrimination in this respect. LGBT persons experience discrimination in several respects.

Right to sexuality is a human right

The right to respect for the family also includes a right to self-determination regarding one's own sexuality. But the principles of the UN CRPD such as equality, non-discrimination, self-determination and the principle of normality also infer the right to live in an environment in which persons with disabilities are not denied a self-determined sex life. On the one hand, this means that there are no bans (e.g. visiting bans) that impede this and, on the other, that necessary support is offered.

Reality shows that there are barriers in many institutions that inhibit or impede the realisation of the right to sexuality. All of the commissions reported about facilities they had visited in which there are no sex concepts. Commission 3 reported about views that the creation of sex concepts is not the responsibility of the facility. But even when there are concepts, these are not implemented, as was observed by Commission 5. In some institutions, the relevance of these concepts is denied by alluding to the advanced age of those affected.

Sexuality is a taboo in many institutions

The commissions observed that there is no privacy in many facilities. Shared rooms, no privacy screens, the lack of opportunities to lock rooms or visiting and overnight bans made it difficult to be alone. In some cases, it is the express wish of the relatives that every desire for masturbation or sexual advances are prevented in advance. The caregivers play a vital role insofar as they have to respect sexual integrity in their everyday work and address the topic actively with parents and legal guardians. Uncertainty and fears must be faced constructively.

Protection of sexual integrity

It can often be difficult to recognise sexual needs or to properly understand utterances from clients who are severely impaired in their ability to speak or use nonverbal communication. Staff in institutions have to be very sensitive and attentive here. A lack of information and sex education makes it difficult for persons to develop a self-confident attitude to their own body. This not only inhibits having an active sex life, it also increases the risk of becoming a victim of sexual violence.

According to studies, girls and women with disabilities are three times more likely to be subjected to sexual violence than other groups of persons because they are perceived as powerless and defenceless victims. Men with disabilities

Empowerment can protect against sexual violence

also have a higher risk of becoming a victim of sexual violence even if to a lesser extent than women. Easily accessible internal and external sex education offers and counselling opportunities should therefore be available.

Sex support must be possible

The freedoms mentioned also include the opportunity to avail of external sex support as is specially offered by some associations for persons with disabilities. Availing of paid sex services must be accessible for persons with disabilities – regardless of whether they live inside or outside of institutions and facilities – within the legally permissible framework. It must be considered in this context that many persons have difficulty in masturbating due to their intellectual and motoric impairments. When sexual needs cannot be fulfilled, helplessness can turn into anger and aggression that are directed towards the self or third parties. Denial of the sexuality of persons with disabilities, a lack of sex concepts in facilities or the categorical exclusion of all support services is not compatible with human rights standards. The rights of transgender, homosexual or bisexual persons should be given special emphasis here.

Inspection of the underlying conditions will be a focal point of NPM preventive monitoring and control work in the future. It should be mentioned in this context that there are existing examples of good practice and several institutions and facilities are pursuing this topic with great commitment. For example, Commission 3 reported about a facility in which the topic of sexuality was communicated openly. Together with a sex therapist, a concept was drafted involving the residents and sex education kits provided. Commission 5 reported about seminars on sexuality that were also offered outside the facility.

Commission 6 visited a facility in which support from a sex pedagogue is offered and all residents have sufficient privacy to enable them to lead a self-determined sex life. The Commission also reported about a residential group that set up a couple-support circle. Other institutions introduced mandatory participation in further training on this topic for the staff.

- ▶ *Sex concepts should be mandatorily created and implemented by all operators of institutions.*
- ▶ *Persons with disabilities must be guaranteed sufficient privacy in all facilities.*
- ▶ *Persons with disabilities should have the opportunity to receive sex education and information in institutions.*
- ▶ *Operators of facilities should remove legal uncertainties on the part of the staff through training and guidelines.*

#### 6.4.4 No saving at the expenses of human rights

Besides positive developments such as the National Council resolution on increasing budget resources for the occupational integration of persons with disabilities as well as the promotion of independence and budget increase of the Monitoring Committee in October 2017, the NPM also continued to observe backward steps.

Commission 2 thus reported about cost-cutting measures in a facility for persons with mental illnesses which meant that the intensity of care had to be reduced considerably. The staffing ratio was reduced from 1:2 to 1:4 due to cuts and on the initiative of the *Land*. This resulted in additional autonomy for some of the residents. Others, in turn, had serious problems with the change of shifts and reduction in the presence of qualified staff. Some residents reacted to the altered conditions with defecation and bedwetting. Persons with increased care needs had to leave the facility. Joint activities were reduced due to staff shortages.

Relocation of persons with mental illnesses due to cost-cutting measures

The reasons for the relocations were explained as having to do with changes in support needs and a necessary distinction in the types of housing. However, the *Land* conceded at the same time that the staffing ratio also had to be reduced for cost-cutting reasons. The *Land* argued that, in line with the principle of normality, a change in facility is reasonable for persons with impairments if this change is prepared accordingly.

The NPM cannot understand this argument. First of all, it is incompatible with the UN CRPD that persons with disabilities are taken from their care environment and moved to other facilities for financial reasons. Persons who are suffering complex long-term, mental illnesses rely on types of housing with as little stress as possible in which they are familiar with the routines to stabilise their situation. For the persons with chronic mental illnesses in particular, it is important to ensure together with those affected that a satisfying quality of life is achieved.

Financial reasons are no justification for relocation

But there has to be a balance between the conscious promotion of abilities and the safeguarding of resources in order to avoid overload. This can only be achieved through a specific continuity of care and constant monitoring of individually defined and pursued goals.

Overload must be avoided

When planning a change in the type of housing and care, multi-professional teams have to evaluate in how far help to helping oneself and the promotion of self-responsibility can be sufficiently guaranteed. Changes brought about by cost-cutting measures of the *Land* that act contrary to the wellbeing, the health or the maintaining of an already achieved functional level of those affected must be avoided. Deterioration in the quality of care and forced relocations have to be avoided.

Principle of normality is no justification for lack of preparation

Second, the principle of normality cannot be justification for a forced relocation or change in type of care for financial reasons. The principle of normality requires that the clients are not denied access to any fields of life outside of the facility. They have to receive the support necessary to enable them to lead a life that is as self-determined and individually organised as possible. According to information from the commission, the preparation in the facility was insufficient.

But there are only few incentives for independence in many other institutions and facilities too. Without the relevant planning that has the wellbeing of those affected as its exclusive focus as well as support and preparation, reference to the principle of normality is not appropriate and can only be seen as cynical. It is not compatible with the principles of the UN CRPD that persons with chronic mental illnesses with increased care and nursing needs have been losing their home due to staff shortages without sufficient preparation and without being offered alternatives.

Inclusion must be considered in budget planning

Economic grounds may therefore not result in the restriction of necessary services and measures. It is even more important to emphasise this, as further cost cuts cannot be ruled out in the near future. Awareness of the fact that inclusion may not leave any person behind must be the basis of all budget planning.

- ▶ *Cost cuts may not be allowed to result in persons with mental illness being moved to other institutions and facilities against their will.*
- ▶ *In order to enable the affected persons to live a more independent life, they have to be prepared as well as possible and supported accordingly.*
- ▶ *The inclusion of persons with disabilities must be considered as a basic principle in all budget planning.*

### 6.4.5 Pain in persons with disabilities

When persons without disabilities feel pain, they can take painkillers, consult a doctor, avail of physiotherapeutic help, go to therapy or communicate their pain to their surroundings.

Pain is perceived less by others

Persons with complex or multiple disabilities are often denied this. Even though according to one study, approx. 60% of children and approx. 75% of adults with severe and multiple disabilities suffer from chronic pain, there is still the widely held view that persons with disabilities are less sensitive to pain than others. As a consequence, persons without cognitive impairments receive analgesics three times more often than persons with cognitive impairments.



When persons with disabilities have pain, it is sometimes not perceived or played down by the care staff.

Commission 3 reported about a facility in which no pain assessment was conducted. It is obvious that this is untenable particularly for a group of persons who is reliant on a considerable amount of support services. The reasons for this are not ostensibly the negligence of the care staff but are above all the lack of knowledge and a complex diagnostic environment. The magazine "*Behinderte Menschen*" ("Persons with disabilities") focussed on this topic in the No. 2/17 edition. It is particularly important to address this issue from a human rights perspective because both the right to health (Article 25 UN CRPD), the right to physical and mental integrity (Article 17 UN CRPD) and in serious cases even the right to protection against violence (Article 16 UN CRPD) or protection against degrading treatment (Article 15 UN CRPD) are violated if pain is not treated.

Lack of knowledge

It is often difficult for persons who are unable to speak and have complex disabilities to communicate their needs. Expressions of pain in whatever form are sometimes not taken seriously and attributed to the respective disabilities. This is why the caregiver has a crucial role in perceiving the sensitivities of persons with disabilities in particular. Communication barriers that lead to misunderstandings can only be overcome by care staff if there is a stable, long-term relationship to the clients and if they are familiar with their gesticulation and facial expressions.

Communication barriers must be overcome

The professional support of persons with disabilities who are suffering from pain on the part of doctors and the care staff is thus indispensable, and the refusal to give the necessary attention is inhuman. For this reason, qualified staff must have the necessary knowledge to notice when these persons are in pain and take the right steps for treatment. Care staff should also be routinely instructed in alternative pain treatments and apply the same as an alternative or supplement to medication-based treatments. Positioning aids, suitable seating, customised wheelchairs and the like can help to reduce pain. But breathing exercises, reducing tension or aromatherapies are also examples of ways of alleviating pain.

Knowledge dissemination on the topic of pain is necessary

Persons with complex disabilities should not be merely passively observed, perceived and diagnosed. In the interest of self-determination and the independence of the clients, it is necessary to provide them with the most suitable tools possible or to develop the same with them so that they can communicate their needs themselves. In the Report 2016, the NPM already criticised the frequent lack of willingness to apply supported communication. This has considerable negative effects in the area of pain diagnosis.

- ▶ *Knowledge about pain diagnoses and the treatment of persons with disabilities must be enhanced for both the care staff and the medical staff.*
- ▶ *Stable relationships between the staff and the persons being cared for are necessary to be able to perceive when these are in pain. High fluctuation rates and staff shortages have thus to be avoided.*
- ▶ *The use of supported communication when required is urgently necessary as communication barriers have to be removed.*

#### 6.4.6 Discrimination of persons with chronic mental illnesses

Since its establishment in 2012, the NPM has repeatedly ascertained structural deficits in building up needs-based social and health services for persons with chronic mental illnesses. The consequence is that the affected persons are denied social inclusion, and a deterioration in health is accepted (see Annual Report 2015, p. 152 et seq.). The life situation of many persons with chronic mental disorders is characterised by poverty and dependence on institutions.

Housing in remote farmsteads

In Carinthia, there are about 30 centres for psychosocial rehabilitation in which some 650 persons with mental or psychiatric diseases live. In these centres they have no access to professional occupational and social rehabilitation or to leisure facilities. However, they also have no other alternative. Many of the centres are remote farmsteads in which the residents have often been living for decades and sometimes work on the farm for a mere pocket money. Due to a lack of alternatives, the younger chronically ill persons are housed in medium-sized remote institutions and facilities. There they have no chance of ever being able to build up outside contacts, entering sponsored employment, starting a family or choosing other types of housing. The criticism of the care structures approved by the regional government of Carinthia as formulated in the NPM Report 2016 (see Annual Report 2016, p. 168 et seq.) was enhanced by a number of additional and concrete recommendations.

Commitment to implement the UN CRPD

On *Land* level, the regional government committed unanimously to implement the UN CRPD by 2020. For that reason alone, the *Land* has to rectify the structural shortfalls of recent decades in this area. The discrimination of persons with chronic mental illnesses in institutions such as centres for psychosocial rehabilitation is possible because unlike other facilities for persons with disabilities, their housing is not subject to the Carinthian Equal Opportunities Act (*Kärntner Chancengleichheitsgesetz*). The consequences are inadequate support of those affected and of the centres for psychosocial rehabilitation.

The NPM achieved that outpatient care structures close to the local community and the financial provisions for establishing a *Land* monitoring office were agreed with the implementation of the Psychiatry Plan 2017. The implementation of the UN CRPD at the Office of the Carinthian Ombudsman

for Persons with Disabilities will thus be guaranteed. By the end of February 2018, the NPM expects to receive an interim report containing the results of an evaluation of the living conditions and individual support opportunities of all residents under 40 living in centres for psychosocial rehabilitation. The NPM made a recommendation to include centres for psychosocial rehabilitation and after-care facilities for those suffering from drug and alcohol addiction in the scope of the Carinthian Equal Opportunities Act. In this regard it has been confirmed that priority will be given to adding this measure to the Governmental Programme 2018-2023. The current regulation of Section 2 (3) of the Carinthian Equal Opportunities Act can only be classified as the unobjective legal discrimination of persons with chronic mental illnesses whose limitations have not been considered and recognised as mental disability to date. Robert Musil described the discrimination of persons with chronic illnesses in his novel “*Der Mann ohne Eigenschaften*” (“The Man Without Qualities”) with the words: “The unfortunates suffered not only from inferior health, but also from an inferior illness.”

- ▶ *The NPM repeats the recommendation that the scope of the Carinthian Equal Opportunities Act be extended to include the housing of persons with mental illnesses in so called centres for psychosocial rehabilitation, but also of persons with substance use disorders in after-care facilities.*

#### 6.4.7 Serious substance use disorders are mental disabilities

Whilst the pathological significance of depression and anxiety disorders as illnesses mostly goes unchallenged, patients with psychiatric diagnoses and/or substance use disorders (dependence on and abuse of alcohol or drugs) have to live with the prejudice that their situation is their own fault. Drawing borders between the prevailing perceptions of what is normal and what is illness-related behaviour questions the identity of those affected and puts their social integration at risk. Not every psychiatric disease ends in mental disability. Nevertheless, there are chronically ill patients who cannot cope with the requirements of everyday social roles over a long time or permanently.

Discrimination,  
institutionalisation and  
exclusion from society

Based on the social model of disability, the NPM thus comes to the conclusion, in contrast to widespread prejudices (and several regulations in the *Laender* laws), that “chronic addiction” can be covered by the term “mental disability” in the meaning of the UN CRPD. The condition, however, is that this is accompanied by a long-term medical functional impairment that in combination with social barriers results or could result in difficulty in taking part in society.

UN CRPD covers  
chronic addiction

**Psychiatric comorbidities** Dependence on addictive substances, in particular, illegal substances, is stigmatised in society. This isolates persons from their surroundings, and relatives are also often marginalised. And yet the reasons for addiction are manifold. In addition to genetic, neurobiological and neurochemical factors, social, psychological and neuropsychological influencing factors also often play a significant role. Concomitant comorbid psychiatric disorders are more the rule than the exception with alcohol and drug abuse. It is important to recognise that these illnesses are not healed once the “drugs” are no longer inside the body or withdrawal symptoms (abstinence syndrome) have eased off. On the contrary, the substance-related dependencies continue and relapses can be perceived as an integral part of the illnesses. At this point, it is worth drawing a comparison with other chronic somatic and psychiatric diseases (diabetes mellitus, high blood pressure, asthma, schizophrenia, depression), as these also require long-term or lifelong treatment and multi-professional interventions.

**Structural deficits** Commissions 3 and 6 visited outpatient and inpatient facilities that offer opioid substitution therapies in Carinthia, Lower Austria and Styria for the first time at the end of 2016 and during the year under review 2017. This brought several structural deficits to light that worthy of detailed discussion. Experts criticised that the existing treatment concepts restricted personal rights but that there were no individual declarations of consent. In some cases, the focus of the treatment is only on the substance use disorder but not on the underlying psychiatric or somatic illnesses. The treatment of these is thus inadequate.

A massive undersupply of outpatient and inpatient treatment options and the resultant unacceptable waiting times for persons who wish to undergo opioid substitution therapy was observed in Carinthia. The regional government of Carinthia has since promised to take remedial action. Instructions were also issued to further develop the outdated Addiction Aid Plan with new concepts for the “Carinthian Addiction Strategy 2018 to 2028”. This is urgently necessary in the view of the NPM because contrary to most of the other *Laender*, the health care of those suffering from addiction in Carinthia is provided mainly in the Clinic Klagenfurt (*Klinikum Klagenfurt am Wörthersee*), and only to a minor extent in facilities which are recognised by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection according to Section 15 of the Narcotic Substances Act (*Suchtmittelgesetz*). To date, the regional government of Carinthia has not managed to convince office-based doctors to become involved, which would make it possible to offer more outpatient treatment.

In one facility, Commission 3 viewed the lack of individual therapy plans drawn up with the consent of the patients as well as the insufficiently established cooperation with adult psychiatry in emergencies or crises as highly critical. Also the lack of verifiable evidence that patients are informed

that the mortality risk increases exponentially through fatal overdoses in the event of discontinuation or withdrawal of opioid substitution therapy is criticised as dangerous inaction. Due to the availability – considerably increased through the Darknet – of hitherto completely unknown highly dangerous synthetic designer drugs, which is confirmed by the State Office of Criminal Investigation, the current development is very critical. There were eleven predominantly young drug-related deaths in Carinthia in 2017.

In the summer of 2017, under the leadership of Gabriele Fischer, university professor and an internationally recognised addiction expert, the NPM established a working group with members from all of the commissions, in which both AOB staff and a former recipient of opioid substitution therapy were involved. The task of this working group was to systematise existing observations on outpatient and inpatient institutions and facilities for persons suffering from addiction, to name structural human rights problem areas that occurred several times and to develop scenarios for the NPM approach on future visits. The working group completed their activities at the end of October 2017 after holding three meetings. Based on this, members of this working group will form a commission that will work on specific areas of focus throughout Austria.

- ▶ *Those suffering from addiction must have free and quick access to treatment programmes. Needs-based, top quality treatment programmes based on scientific standards must thus be guaranteed in the inpatient and in outpatient sector.*
- ▶ *The adequate treatment of comorbid disorders and illnesses has to be an integrative component of such treatment programmes in after-care facilities.*
- ▶ *Relapses must be seen as a part of substance use disorders that is inherent in crises and require an in-depth multidisciplinary therapeutic approach.*
- ▶ *Professional action-oriented expertise on assessing and predicting suicidal tendencies must be applied before therapy is (involuntary) discontinued. Evidence must be provided that the affected person has been informed of the increased mortality risk caused by discontinuing therapy.*
- ▶ *Follow-up care facilities must implement standardised crisis and discharge management with functioning interfaces to better quality care services in hospitals.*

### 6.4.8 Positive observations

The NPM also visited institutions and facilities in 2017 whose overall approach can be considered good practice.

Open to the „outside world“ A fundamental factor in enabling inclusion is the central location of apartments and residential groups inside towns. Several of the institutions and facilities fulfil this requirement and make a point of opening up to the “outside world”. One residential group for example runs a partner post office and another runs a “repair cafe“. Both of these services are gladly accepted by the local populations. In one facility where emphasis is on artistic creation the takings from art sales go to the artists.

Integration in the primary labour market Although integration in the primary labour market often proves to be difficult for many clients, the commissions were able to report about the great dedication of many institutions. One facility has maintained contact to regional companies for many years. As a result, clients at least have access to marginal employment.

Encouraging clients to complain Effective complaint management is not only helpful in enabling persons in institutions and facilities to exercise their rights, but also can serve as a preventive measure against violence and aggression. It is not only about having the opportunity to complain but having the confidence to formulate a complaint. Some facilities encourage their clients to articulate complaints in order to learn from them. In these cases, complaints are perceived as a positive factor and as a tool that self-determined persons can use.

One of the facilities enabled their staff to visit other facilities. The teams were able to share their experience, network and thus learn from each other.

Flexible options One facility for persons with severe intellectual and multiple disabilities stands out due to the fact that highly qualified multi-professional teams care for the clients according to their individual needs. There are “Client Days” when residents take a day off from the daily structure and do something together with their caregivers. Communication books are created for each nonverbal resident to record and explain their individual ways of expression.

► *Examples of good practice should serve as models for the operators of institutions and facilities.*

## 6.5 Correctional institutions

### 6.5.1 Introduction

The NPM made a total of 35 visits in 2017 to observe the conditions under which persons were held in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. The main results of these visits can be divided into ten sections.

The first section presents criticisms of the placement and treatment of persons who were mentally ill when they committed criminal offences. The second section covers prison inmates with psychological idiosyncrasies, and the third section is devoted to the topic of women in prison. The fourth part concerns health care. The fifth part deals with the right to privacy. Recommendations regarding psychological supervision for employees in facilities of the penitentiary system and facilities for the detention of mentally ill offenders can be found in the sixth chapter. Details regarding the challenges of dealing with persons who speak different languages can be found in the part entitled "Access to information". The deficiencies in living conditions that the NPM observed are followed by remarks on structural deficits at the facilities visited. As in past years, the reporting part ends with positive observations.

Summary of observations

### 6.5.2 Facilities for the detention of mentally ill offenders and follow-up care facilities

#### 6.5.2.1 Reform of facilities for the detention of mentally ill offenders

The core area of the NPM's mandate includes monitoring of the living conditions of persons who were mentally ill when they committed criminal offences and were deprived of their liberty for special preventive reasons. The court may order that "preventive measures" be taken with respect to these persons – in addition to or in place of the punishment. It depends on whether said persons could be held accountable for their actions at the time of the crime.

"Preventive measures" are ordered for an indefinite period of time. They are to be carried out for as long as their purpose requires. This does not preclude life-long detention and is precisely why placement of persons in facilities for the detention of mentally ill offenders is particularly sensitive from a human rights perspective. Any encroachment on personal freedom may only continue for as long as "necessary". One may only be deprived of personal freedom "if and to the extent that this action is not disproportionate to the purpose of the measure" (Art. 1 (3) of the Federal Constitutional Act on the Protection of Personal Liberty).

Problems from a human rights point of view

**Structural deficits** From the very first visits to wards and facilities for the detention of mentally ill offenders, the NPM found serious deficiencies (see NPM Report 2013, p. 56). These include a lack of treatment alternatives, placement among regular prisoners, overly long detentions due to a lack of after-care facilities, too few experts and a lack of quality standards for the preparation of expert opinions. Persons being held in detention frequently told the NPM that they desired more transparency and information regarding decisions to loosen prison rules.

**Reform has been sought since 2014** Based on these observations, the NPM demanded fundamental, in-depth reform: facilities for the detention of mentally ill offenders should be made more treatment-oriented and humane. In June 2014, the Federal Minister, encouraged by media reports regarding a distressing event (see Annual Report 2014, pp. 137 et seq.), established a working group for this task. More than 40 experts from different areas of detention in facilities of the penitentiary system and detention of mentally ill offenders participated in this working group, including a representative of the NPM. At the beginning of 2015, the group submitted a 96-page final report with a requirements catalogue.

Based on the working group’s proposals and recommendations, some organisational improvements were made to better assign prisoners with mental health care needs to facilities where they can receive the best possible treatment. Nevertheless, it took two and a half years before the draft of the Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) was presented before the general public at a “Conference to implement a modern form of detention for mentally ill offenders” on 18 July 2017.

**Draft of the Detention of Mentally Ill Offenders Act** The Federal Minister acknowledged that the detention of mentally ill offenders is embedded in criminal law. The criminal courts have full jurisdiction: from temporary imprisonment to a complete refusal to imprison. In the future, persons will be placed into modern forensic therapeutic centres, which will offer care and treatment. Restrictions on personal freedom in prison will be linked to a modern legal protection system. The long-outdated designation of the persons detained in these facilities as “mentally disturbed” is now abandoned. Instead, the draft speaks of “criminal offenders with serious mental disorders”. According to the authors of the draft, more than 90% of the working group’s recommendations from 2014 will be implemented if it becomes law.

**Two striking weaknesses** The NPM notes with approval that therapeutic centres are being established and that preventive measures will only be enforced in facilities specially designed for this purpose. However, two items in the draft do not meet the NPM’s expectations. The first relates to the assessment by which such measures will be imposed on persons. The second relates to the demand that such measures be imposed on juvenile criminal offenders only for a limited period of time, which was rejected. The experts of the working group have taken a clear position on these two items.



One of the goals of this draft is to increase the accuracy of the measures imposed. This objective cannot be reached solely by utilising an expert in clinical psychology in addition to an expert in psychiatry, “if necessary”. Obtaining expert opinions from clinical psychologists more frequently is also a demand of the working group. In Switzerland, panels of experts are used to determine whether or not to commit a person to an institution.

Expert opinions from different specialised areas

Therefore, examination by experts in psychiatry and clinical psychology should be mandatory. Only after an examination and diagnosis by both experts should the court impose measures. If the experts come to different conclusions, an additional assessment should be obtained from both specialised areas. The working group (in its recommendation No. 50) made explicit reference to the importance and expertise of clinical psychology experts.

Unfortunately, the authors of the draft did not follow the recommendation (No. 4 lit. c) to prohibit the commitment of juveniles to institutions for an indefinite period, which could include a life-long commitment.

Too little consideration given to juveniles

No further details are provided on how to handle juveniles and young adults who are not placed in Gerasdorf correctional institution. Their placement in the forensic wards of psychiatric clinics has long been shown to be highly problematic because the socio-therapeutic needs of young persons are often not properly met there. They cannot complete their school education or vocational training in a hospital. Moreover, they are often placed together with adults.

- ▶ *Mentally ill offenders should only be detained in specially designed therapeutic centres.*
- ▶ *The draft of the Detention of Mentally Ill Offenders Act should be revised with respect to the specific needs of juveniles and the accuracy of the decision to impose preventive measures.*

### 6.5.2.2 Observations and recommendations regarding facilities for the detention of mentally ill offenders

In addition to the considerations relating to the reorganisation of facilities for the detention of mentally ill offenders which were discussed above, the NPM also dealt with the living conditions of persons who are held in facilities for the detention of mentally ill offenders in the year under review.

As of 1 January 2018, 878 persons were being held in facilities for the detention of mentally ill offenders, of which 497 persons were being not accountable for their actions and therefore held pursuant to Section 21 (1) of the Austrian Criminal Code (*Strafgesetzbuch*). The rest was held pursuant to Section 21 (2) of the Austrian Criminal Code (i.e. because they were accountable for their

High occupancy pressure

actions). The increase in criminal offenders who are not accountable for their actions has been especially dramatic. Since 1 January 2017, there have been 78 new admissions, which equal an increase of 18.6 %.

**Need for investment unavoidable** In 2017, the NPM made nine visits to facilities for the detention of mentally ill offenders and after-care facilities. These visits again revealed striking deficiencies, which the competent Federal Minister cannot rectify without the approval of additional funds.

### Material conditions - Göllersdorf correctional institution

In May 2017, the NPM visited Göllersdorf correctional institution. The goal of the visit was to evaluate the extent to which this special institution meets the criteria for a therapeutic centre – or can meet these criteria in the future.

**Devastating criticism** The commission concluded that the material conditions at Göllersdorf correctional institution could not be improved to such an extent that the quality standards of a therapeutic centre could be achieved. A high quality therapeutic centre requires sufficient space and privacy for persons being held in detention to enable the creation of a therapeutic atmosphere conducive to healing. After inspection of all the wards of Göllersdorf correctional institution, it was concluded that these standards could not be met.

**The facility is already too large** In the view of the NPM, a facility with a capacity of 130 to 140 places is not longer up-to-date. On an international level, comparable facilities have 40 to 60 places. The standard for therapeutic facilities for mentally ill persons is a single or double bedroom with a 50:50 ratio and an attached sanitary area. The placement of three persons into a single room should generally be avoided.

A tour of the institution showed that there is often no opportunity to be alone in the living areas. The communal area is often just the corridor or a shabby, sad and very smoke-filled shared social room. Since the doors to the rooms are open, there is no opportunity to get away from other people for a short period of time, at least, and calm oneself down. For persons with a mental illness this is a substantial additional stress factor.

**The space situation is oppressive** There is no privacy if three or four persons occupy a room. In some rooms, beds are only one and one-half metres from each other. Such crowded space prevents treatment progress, particularly if the detention is of lengthy duration. Detention in this institution does not facilitate recovery, it makes it more difficult. Accordingly, some inmates still showed clear signs of hospitalisation.

**Doctors consider the situation intolerable** Many patients expressed a desire for privacy or the possibility to be alone. The doctors on duty also said that the occupancy of a room by three to four persons is intolerable. In addition, the length of detention at Göllersdorf correctional institution averages five to six years.

The Federal Ministry did not contest the NPM's observations but rather admitted that most of the inmate cells at Göllersdorf correctional institution are occupied by two to four persons. Single cells are only available occasionally, and are mainly occupied by inmates who are disruptive or in need of great care. It is uncontested that placement in a single room during the night is desirable, and this is also required in the draft of the Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*).

In addition, it was confirmed that structural conditions are "suboptimal" and "in many respects do not constitute a modern and adequate therapeutic setting". It was said that the level of care should compensate for the deficient material conditions and attempt to avoid hospitalisation and a deprivation syndrome.

Care cannot compensate for the deficiencies

The NPM does not deny that a therapeutic daily structure and therapy sessions held outside of the living areas are part of adequate treatment and care. However, these efforts cannot compensate for the deficient material conditions. In some inmate cells not every inmate has a chair. Some prisoners with mental health care needs store their belongings in suitcases under the bed. Lockable boxes are in the corridor. The inadequate living conditions are made worse by hygienic deficiencies. For example, one of the inmates in a cell for multiple inmates has a bucket beside his bed into which he spits frequently.

Living out of a suitcase

Not only are the sleeping and communal areas shabby and dirty, but the sanitary facilities are also inadequate. At one station, ten persons being held in detention shared one bathroom, which had four showers adjacent to each other with no partition. In another area, up to 19 inmates had to manage with one bathroom (consisting of two showers and three sinks). Extensive traces of old or inadequately treated fungal infestations can be seen in many places. There is a washing machine and a dryer in one small room with no natural fresh air supply. Even though the commission was shown a renovated ventilation system, the room was decidedly warm and humid on the day of the visit.

Mould in showers and baths

In general, the persons being held in detention are responsible for the daily cleaning of the living area. However, they need the support of the staff for this: the supervision and control of the cleaning work is the responsibility of the station staff. It is undeniable that they must often do a lot of motivational work to ensure reasonably proper cleaning.

Hygienic deficits

The outsourcing of cleaning work to an external company is opposed by the employee representatives. The NPM seriously doubts whether this makes economic sense. The question of outsourcing the cleaning work should be clarified within the context of a project. The NPM was assured that the local police station staff committees and the central committees will be included in the project.

Cigarette smoke in every room	The NPM also discussed the lack of protection for non-smokers as a structural problem. The commission does not deny that very many persons being held in detention are smokers. For example, at stations 2D and 1C almost everyone (including staff) smokes. At station 2C, it is 15 detainees out of 22.
A new concept is indispensable	There is a prohibition on smoking in the residential rooms, but smoking is permitted in the communal rooms and corridors. Since the doors are open all day, the smoke penetrates into the rooms. Therefore, the NPM demands that Göllersdorf correctional institution develop a new concept for a better way to separate smokers from non-smokers.
New buildings required	<p>In view of these serious deficiencies, the NPM asked the Federal Ministry to disclose what additional ideas it has regarding Göllersdorf correctional institution. The response was that the grounds of Göllersdorf correctional institution are large enough to be suitable for the construction of an annexe. The NPM was not satisfied with the response because there are still no specific plans for this, and asked what ideas the Federal Ministry has for creating modern conditions for a facility for the detention of mentally ill offenders in the foreseeable future. Such conditions should not significantly fall below the conditions in the penal system from a material, spatial and structural standpoint – if the Federal Ministry intends to remain at that location.</p> <p>The Federal Ministry did not dispute that there is sufficient space for an annexe on the grounds of Göllersdorf correctional institution. However, before constructing an annexe or seeking competitive bids for the project, budgetary coverage must be ensured (which is currently not available). Since such coverage has not been ensured, realisation of this project cannot be promised.</p>
Funds should be approved quickly	The NPM can only inform legislators of the completely inadequate conditions at Göllersdorf correctional institution. Appropriate funding should be quickly provided to ensure that there are modern facilities for the detention of mentally ill offenders at this site.

- ▶ *The prison administration should provide appropriate funding to construct modern facilities for the detention of mentally ill offenders.*
- ▶ *Conditions at facilities for the detention of mentally ill offenders should contribute to the recovery of persons with mental illnesses held there.*
- ▶ *Adequate measures should be taken to remedy the, at times, completely inadequate material conditions and the, at times, inhumane living conditions of persons being held in detention (e.g. at Göllersdorf correctional institution).*

## Infrastructural fixtures and fittings and dealing with demotivated persons held in detention - Floridsdorf satellite facility at Mittersteig correctional institution

In November 2016, the glaring deficiencies in the therapy rooms of Floridsdorf satellite facility at Mittersteig correctional institution again came to the attention of the NPM. On the day of the visit, therapy was being conducted in the only free rooms: the offices of the deputy prison warden and the ergo therapist. However, these rooms are equipped as offices and lack a therapeutic environment. The meetings of the day-release prisoners' group are held in the visiting room. The group participants sit there in two rows. The room is completely filled.

Lack of therapeutic climate

Many assessments are made at Mittersteig correctional institution. Inmates complained that such assessments were conducted in rooms directly adjacent to the visiting room. Therefore, conversations could not be kept confidential.

Therefore, the NPM suggested that a spatial concept be developed for Floridsdorf satellite facility. If it is not possible to use additional rooms in the adjacent court building, a reduction in the number of inmate cells and their replacement with therapy rooms should be considered.

Spatial concept requested

The actual reason for the visit was not to determine the deficiencies in terms of space, which were already known. Rather, the NPM wished to address the matter of treating demotivated, therapy-resistant persons in detention. For this purpose, the commission inspected files, questioned inmates and discussed individual problem cases with caregivers. The commission suggested that stronger measures be taken to motivate persons in detention who refuse therapies. The NPM is aware of the difficulty of establishing a relationship with a person who refuses to participate in any (therapeutic) meetings. Special training sessions in conducting therapy sessions with unmotivated inmates could be of assistance to the staff of specialised services.

Therapy-resistant persons in detention

In this regard, the Federal Ministry stated that the current focus of social workers and psychologists in caring for detainees who reject therapy is on their lack of motivation. In addition, the topic or problem of unmotivated inmates is the subject of psychological supervision.

Irrespective of this, the prison administration is aware of the existence of this problem. Therefore, a special training course ("Motivational Interviewing" based on Miller & Rollnick) has been included in the seminar programme for 2018.

Additional course offered

- ▶ *In terms of the treatment and care of persons held in detention, individualised therapy offerings are as important as appropriate room accommodations.*
- ▶ *Efforts should always be made to induce unmotivated detainees to participate in therapy.*
- ▶ *Special training courses should be offered to assist staff in coping with the challenges of dealing with unmotivated detainees.*

### Therapy brought to a standstill by transfer of prisoners with mental health care needs – Schwarzau correctional institution; Asten Centre for Forensic Science

Prototype of best practice The draft of the new Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) provides that prisoners with mental health care needs should only be placed and treated in forensic therapeutic centres. The first such centre was opened in Asten in the spring of 2010. It is located on the grounds of Asten satellite facility at Linz correctional institution and is headed by a psychologist.

In the opinion of the NPM, the Asten Centre for Forensic Science – particularly after completion of the annexe in 2015 – meets the spatial requirements for adequate care and for preparing prisoners with mental health care needs for life after detention (see Annual Report 2015, p. 184 et seq.). It is a particularly positive development that the entrance area no longer has gate guards, but a reception desk. The presence of uniformed police officers is avoided to the extent possible. Prison guards are only responsible for exterior security at the facility.

Women have been discriminated against for years Until 2017, only male prisoners with mental health care needs were admitted to Asten Centre for Forensic Science. Female prisoners with mental health care needs who could be held accountable for their actions were placed in Schwarzau correctional institution. The NPM considered the conditions there to be completely inadequate and demanded that women be provided with modern accommodations which met standards (see Annual Report 2015, p. 185).

Creation of a women's ward in Asten During a visit to Schwarzau correctional institution in the autumn of 2016, the NPM learned of plans to transfer all prisoners with mental health care needs at Schwarzau correctional institution to a specially designed residential group at the Asten Centre for Forensic Science.

Therapy at a standstill before transfer The NPM heartily welcomes this step. However, it is worthy of criticism that the therapy offered to the female patients was greatly scaled back after the planned transfer was announced. As early as mid-2016, no new psychotherapies were

initiated in some instances. Many female patients remained without treatment for months.

When confronted with this, the Federal Ministry stated that no therapies were terminated due to the planned transfer. However, it conceded that therapies that were indicated were temporarily not commenced. The NPM reminded the Federal Ministry that prisoners with mental health care needs urgently need therapeutic treatment. Planned organisational changes may not be used as an excuse.

The ward for the detention of mentally ill offenders who are accountable for their actions at Schwarzau correctional institution was closed in February 2017. All female patients were transferred to Asten Centre for Forensic Science. The newly established residential group has a capacity of 14 and ensures adequate accommodation and appropriate therapeutic care.

Ward closed at Schwarzau correctional institution

- ▶ *Prisoners with mental health care needs must receive therapeutic care.*
- ▶ *Therapy for prisoners with mental health care needs must commence promptly after admission. A standstill which lasts for months is unacceptable.*

### Forensic ward - Graz Süd-West Regional Hospital

In addition to the deficiencies found in correctional institutions, the NPM also found a need for improvement in many hospitals. In October 2016, the NPM visited the forensic ward at Graz Süd-West Regional Hospital. This is a closed ward for persons who committed crimes while mentally ill but were not criminally liable at the time of the crime. The ward has 18 treatment places.

In this hospital as well, patients suffer due to crowded rooms. The patients are placed in six- or seven-bed rooms – often for lengthy periods of time. The attempt to place screens next to the beds does not resolve the problem of a lack of privacy. The agitation and snoring of fellow patients during the night are serious disruptive elements and scarcely permit a restful sleep.

No privacy due to the crowded situation

As a result of the crowded rooms, the NPM found violations of the rule requiring separation of persons being held in provisional detention under Section 429 of the Austrian Code of Civil Procedure (*Strafprozessordnung*) and sentenced persons being held in detention under Section 21 (1) of the Austrian Criminal Code (*Strafgesetzbuch*).

Violation of the separation rule

This criticism was not rebutted. If admitted, detainees are transferred from the closed detention station to the successor open station. Only in exceptional cases, especially if there are security concerns, do persons being held in

detention pursuant to Section 21 (1) of the Austrian Criminal Code remain in the closed detention station until matters are stabilised. Contact with persons held in provisional detention at this station cannot be completely excluded, even if the treatments may be different. The type of placement is based on the psychiatric condition and the risk.

Less favourable treatment as compared to correctional institution

The NPM notes the effort to take the separation rule into account, when possible. It is true that the penal law provisions regarding pre-trial detention (Sections 182 et seq. of the Austrian Code of Civil Procedure) only apply to inmates held in institutions for mentally ill criminal offenders. However, for reasons of equal treatment, detainees who are held in public psychiatric hospitals provisionally should be entitled to the same conditions as persons in correctional institutions.

Overcrowded *Inquisitenzimmer*

There was also no response to the criticism that the room for inmates in need of acute psychiatric care (*Inquisitenzimmer*) was occupied by three persons on the day of the visit. This special room is generally occupied by a maximum of two persons. Only in individual cases, when further detention in a correctional institution does not make sense from a medical and psychiatric perspective due to the severity of the psychiatric disease, can the room be occupied by three persons on a temporary basis. In this case, there should be an immediate attempt to find another solution – in agreement with the medical superintendent. To the extent that the condition of the patient's health permits, the patient should be transferred as quickly as possible to a correctional institution which guarantees around-the-clock medical and psychiatric care.

Security straps visible

The NPM also recommended a series of improvements, some of which could be implemented with little expense. For example, the security straps on strap beds can be covered without great effort, so that they are no longer visible to patients. The implementation of this measure should be monitored regularly. In addition, consideration should be given to whether it is really necessary for all patients to post a security deposit for the keys to their lockable boxes.

Nursing service personnel were instructed to ensure that smoking rooms are ventilated more frequently. The existing exhaust system was subjected to a technical inspection. The extent to which additional structural measures can be taken based on security considerations is being evaluated.

Visits by adolescents prohibited

The NPM's criticism of a general restriction on visits by children under the age of 14 was also heeded. Instead of a general prohibition, there will be a case-by-case review in the future (e.g. when there are serious security concerns) of whether a restriction on visits by minors is absolutely necessary. In this case, a discussion with the patient and the relatives will be sought.



- ▶ *Based on the presumption of innocence, detainees held in provisional detention should be separated from court-sentenced prisoners with mental health care needs.*
- ▶ *The straps on strap beds should always be covered so they are not visible to patients.*
- ▶ *Until a smoking ban is implemented, smoking rooms should be regularly ventilated.*
- ▶ *Whether a restriction on visits by minors is necessary should be examined on a case-by-case basis.*

### Legal protection in instances of restraint or isolation – forensic ward at Hall Regional Hospital

Presently there is no legal protection that meets the requirements of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) for persons held in custody or in facilities for the detention of mentally ill offenders who are restrained or placed in isolation. The Hospitalisation of Mentally Ill Persons Act provides that a person affected by restrictions on his or her freedom should be represented by the patient advocate. During a visit to the forensic ward of Hall Regional Hospital in Tyrol on 19 May 2016, this nationwide deficiency was again evident.

Lack of legal protection

The Federal Ministry shared these concerns and promised that this deficiency would be eliminated by the Detention of Mentally Ill Offenders Act. This law will provide the same legal protection for persons placed in therapeutic centres as for persons placed in medical facilities. The NPM is generally pleased that patient advocates will also be responsible for prisoners with mental health care needs in the future. However, it is unfortunate that the legal protection provided under the draft of the Detention of Mentally Ill Offenders Act is not as extensive as under the Hospitalisation of Mentally Ill Persons Act.

Plans to hire patient advocates

Under the draft of the Detention of Mentally Ill Offenders Act, the institutions need not notify the patient advocate of all restrictions. However, the patient advocate can only represent a person and assist him or her in making objections if the patient advocate knows of the restriction. Therefore, legal protection under the Detention of Mentally Ill Offenders Act is illusory in these cases and falls below the legal protection afforded by Section 38a of the Hospitalisation of Mentally Ill Persons Act. In general, the authority of the patient advocate is vague.

New threat of unequal treatment

- ▶ *All persons who are restrained or isolated against their will in a public medical facility should have the opportunity to be represented.*
- ▶ *Detainees in facilities for the detention of mentally ill offenders should have the same legal protection that is provided under the Hospitalisation of Mentally Ill Persons Act.*

## Communicating with patients who speak foreign languages – Hall Regional Hospital, Graz Süd-West Regional Hospital

Hall Regional Hospital	<p>During a visit to the forensic ward of Hall Regional Hospital in November 2016, the NPM addressed the problem of communicating with patients who speak foreign languages, among other problems. During an attempt to converse with a detainee in the forensic ward, the commission learned that the patient could not speak German or English.</p>
No ability to communicate	<p>The on-duty nursing staff also could not communicate with the patient. The caregivers confirmed that an interpreter is available in principle. However, it is not possible to call in the interpreter before every nursing activity, since he is not present around the clock.</p> <p>Both <i>Tiroler Kliniken GmbH</i> and the Federal Ministry pointed out that it is solely within the medical responsibility and competence of the clinic to decide whether and how the clinic staff communicate with a patient before, during and after placing him or her in restraint. There is no requirement that verbal communications should be in the affected person's mother tongue. A close relationship can also result from relationship-oriented non-verbal communication, such as sign language, facial expressions or gestures. In the hospital's view, the constant presence of interpreters constitutes a significant security risk since they are not sufficiently familiar with the situation in a forensic ward and with the patients.</p>
Image folder and video interpreting	<p>However, the NPM's criticism was taken into account since the nursing staff made a folder with pictograms. It contains symbols and pictures of everyday items and situations with the corresponding German word or phrase. Moreover, an additional video interpreter account was ordered for the relevant ward. Video interpreter is available within a short period of time, as was demonstrated during a follow-up visit.</p>
Forensic ward at Graz Süd-West Regional Hospital	<p>During a visit to the forensic ward at Graz Süd-West Regional Hospital, it was also made clear that psychiatric treatment and therapy require a common understanding of a language. Graz-West Regional Hospital promised to intensify its efforts to utilise interpreters on a permanent basis.</p> <p>The NPM made reference to the video interpreting system, which has become established throughout Austria in the medical areas of all correctional institutions. The NPM recommended that Styrian Hospitals Limited Liability Company (<i>Steiermärkische Krankenanstaltengesellschaft</i>) considers the adoption of this system.</p>

- ▶ *A video interpreting system should be established in public hospitals.*
- ▶ *If it is not possible to communicate with a patient due to a language barrier, an interpreter should be called in or pictogrammes should be used.*

### 6.5.2.3 After-care and follow-up facilities

In the year under review, the NPM again visited socio-therapeutic residential facilities where persons are placed after being held in detention for mentally ill offenders (so-called after-care or follow-up care facilities). These facilities provide housing to persons after their detention has ended and prepare them for life in the outside world. Persons placed there also receive support in searching for apartments and work. Conditionally released persons are also assisted in complying with court-ordered instructions and avoiding future criminal offences.

Goal and tasks

The NPM has repeatedly criticised the shortage of after-care facilities. Recommendation for release from experts are often subject to the availability of a place at a suitable socio-therapeutic residential facility. In practice, this results in excessively long detentions. However, in the year under review the NPM became aware of a paradoxical situation: on one hand, inmates and their care personnel complain of the lack of places. On the other hand, the managers of after-care facilities say they are not full to capacity.

Needs-based assignment

The lack of such care facilities for juveniles and persons with multiple disabilities is particularly distressing. During a visit to the forensic ward at Hall Regional Hospital in mid-May 2016, the NPM found that one sixth of the assigned patients were only being held in the hospital because there was no suitable follow-up care place available.

Lack of residential places

- ▶ *There must be more follow-up-care places throughout Austria.*
- ▶ *The creation of follow-up-care places for juveniles and persons with multiple diagnoses must be a priority, particularly in the western Laender.*
- ▶ *To better match up supply and demand, allocation management must be optimised with respect to after-care facilities.*

### Ability to lodge complaint and crisis intervention plans - *Neuland Salzburg* after-care facility

In early February 2017, the NPM visited the *Neuland Salzburg* after-care facility. The shared accommodation made a good impression in terms of its quality of care and treatment of residents. But the NPM criticised the lack of ability to lodge complaints anonymously. In addition, there were no individualised crisis intervention plans for residents.

Open atmosphere

Both recommendations were implemented. A complaint box was set up in the entrance area of the residential building, far away from the charge office

Complaint box required

and the other offices and rooms to ensure anonymous use. The residents are notified of their ability to file complaints anonymously when they move into the house and at regular intervals, e.g. during house meetings. Management empties the box regularly. Moreover, the contact data for the Salzburg patient representatives is posted on every floor.

**Training in conflict and crisis management** The suggestion to prepare crisis intervention plans was also followed: the *Neuland* team participated in seminars on conflict and crisis management at social services facilities which were specifically aimed at their clientele. This included suicide prevention and de-escalation seminars, among others. Appropriate crisis and emergency plans were derived and developed based on these seminars. They provide guidance to all employees to enable a rapid, unified response and ensure the protection of all parties, if required.

**Good practice** The crisis plans are reviewed on an ongoing basis and appropriately supplemented when additional information is obtained (e.g. from additional seminars or practical experience gained from applying the plans). The preparation and implementation of needs-based crisis intervention plans is considered to be good practice.

**Preventive measures for employees** In addition, management is concerned about the mental and physical health of the employees. Permanent measures were implemented to improve their well-being while at the workplace. These include exercise activities, mental hygiene and team-building measures.

- ▶ *Risks must be recognised at an early stage to take appropriate measures to protect all parties.*
- ▶ *Individualised crisis intervention plans should include instructions for de-escalating situations.*

### Interface management upon final release - *SeneCura* social centre in Pöfing-Brunn

**Where to go after final release?** During its visit to the *SeneCura* social centre in Pöfing-Brunn, the NPM dealt with the question of how to ensure effective release management. A special challenge is presented by persons who are finally released from detention but cannot return to an independent lifestyle for reasons of age or poor health. The NPM investigated whether the Federal Ministry had sufficient contacts at facilities that can offer such people care and a place to live.

**Long-term planning by after-care facilities** The Federal Ministry stated that offerings related to the transition to full freedom are solely the responsibility of the respective facility, which can collaborate with the responsible public or independent agencies. The justice

administration's follow-up care management need only arrange for a suitable facility at the time of conditional release. The Federal Ministry informs the facility operator that the facility bears full responsibility, and the necessary long-term planning for the transition to freedom is considered to be part of the follow-up care concept.

In this regard, the NPM states: if conditional release is not revoked, it must be declared final. This ends any connection with the justice administration that may still exist. If persons cannot return to an independent lifestyle for reasons of age or poor health, it is the task of the *Laender* to offer them appropriate facilities where they can live and receive a certain level of care.

*Laender* responsibility

As part of effective interface management, it is the task of the facility in which the persons live until their conditional release. They need to contact the operators of social services facilities after obtaining the consent of the persons in question and facilities should then be proposed to the affected persons where they can live in the future and receive care.

Offerings for released persons

► *The Laender should offer supervised housing to persons who cannot return to an independent lifestyle due to age or poor health.*

### 6.5.3 Prison inmates with psychological ideosyncrasies

#### 6.5.3.1 Specialised care and therapy - Stein correctional institution; Garsten correctional institution

During visits to Stein correctional institution in February 2016 and Garsten correctional institution in June 2015, the NPM found that prison inmates who were classified as persons with psychological ideosyncrasies were not receiving adequate specialised care and therapy. Moreover, Stein correctional institution did not ensure that they were housed separately from other prison inmates.

Blatantly underserved

Prison inmates who are not suited for imprisonment with the general prison population due to their psychological ideosyncrasies (Section 129 of the Penitentiary System Act) must receive special therapeutic care for their condition. In addition, this group has a subjective right to be housed separately from other prison inmates under public law.

Observations made by the NPM revealed a structural problem with respect to the care and housing of this group. The NPM emphasised that these persons need intensive care provided by specialised personnel. If they do not receive this treatment, their health is jeopardised, and therefore their right to health.

Structural weakness

Moreover, it was worthy of criticism that there were no standards of care and no criteria for classifying inmates who are not suited for imprisonment with the general population due to psychological idiosyncrasies.

**Standards must be created** Therefore, the NPM recommended that these persons receive particularly intensive and specialised care and therapy. National standards must be established for the care of inmates who suffer from mental impairment. Moreover, classification criteria must be developed. Likewise, it was recommended that consideration be given to how and where to best house such inmates who need intensive care.

**Supervisory review initiated** The NPM's criticism led to a supervisory review of the living conditions of these inmates. A working group for this purpose was established at the Federal Ministry.

This working group developed care guidelines for prison inmates who are not suited for housing with the general prison population due to psychological idiosyncrasies. This was in line with the NPM's recommendation to establish standards for the treatment and care of these inmates. In addition, criteria were defined as guidelines for the classification of these persons.

In the future, the correctional institution should document special treatment and care requirements and the reasons for initiating, maintaining and terminating this form of detention.

**Accurate detection** *De facto*, the review of living conditions led to a significant reduction in the number of prison inmates held in accordance with Section 129 of the Penitentiary System Act nationwide. By mid-2017, it was fewer than ten persons.

**The term „psychological idiosyncrasy“ is not precisely defined** The NPM also pointed out that the term “psychological idiosyncrasy” (“*psychische Besonderheit*”) used in Section 129 of the Penitentiary System Act is imprecise. This vagueness raises constitutional law concerns.

The Federal Ministry promised that the working group would evaluate the statutory provision. There were still no results at the time of completing this report.

- ▶ ***Prison inmates with mental idiosyncrasies who are unsuited for housing with the general prison population must receive adequate specialised care and therapy.***
- ▶ ***Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from the other prison inmates.***
- ▶ ***Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification.***

## 6.5.4 Women in prison

### 6.5.4.1 Implementation of minimum standards for female prisoners - Vienna-Josefstadt correctional institution

In February 2016, the Federal Ministry issued the “Minimum standards for women in Austrian correctional institutions” (*“Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten”*) which established standards for the placement and care of female detainees awaiting trial and female inmates. The individual correctional institutions were then called upon to develop appropriate proposals on how to implement these minimum standards locally (see Annual Report 2016, pp. 192 et seq.). The minimum standard was to be implemented by 30 December 2016 at the latest.

Even though steps towards implementation were taken, the NPM found, for example, that the minimum standards had not yet been fully implemented in Vienna-Josefstadt correctional institution by the end of 2017.

Implementation period has expired

According to the minimum standards, female prisoners are generally to be housed in residential groups. Of the three wards in the women’s department at Vienna-Josefstadt correctional institution, only one ward was run as a residential group during the past year (and that one only partially). The situation should improve when there will be a structural separation of the areas for open residential groups on the wards for prisoners and persons awaiting trial. However, even after these partitions are completed, comparatively few women will profit from being housed in residential groups due to limited capacity.

Another weakness is that there is no social pedagogue in the women’s ward for adult inmates. A social pedagogue position to work 40 hours per week, which was requested by the head of the female prison, had not been approved at the time of completing this report.

Lack of care

Another negative observation by the NPM is that there are still no special further training offerings for employees of the female prison, even though this is mandated by the minimum standards. The Federal Ministry promised to provide training and information on the topic of female prisons. When this will be done remains to be seen.

No further training opportunities

- ▶ *The minimum standards for women in Austrian correctional institutions must be implemented as soon as possible.*
- ▶ *In addition to adequate accommodation, female inmates must also be assured adequate care.*

## 6.5.5 Health care

### 6.5.5.1 Tobacco consumption and protection of non-smokers

Tobacco consumption in facilities of the penitentiary system and facilities for the detention of mentally ill offenders and the lack of protection for non-smokers constitute a national problem. There is an above-average number of heavy smokers in facilities for the detention of mentally ill offenders and others. Moreover, the majority of inmate cells in correctional institutions are cells for smokers, and some are severely polluted by nicotine. The NPM also frequently found that smoking and non-smoking inmates were held together in cells for multiple inmates.

**Acute health risk** The negative health consequences of active and passive tobacco smoking are generally acknowledged. It is common knowledge that inhaling tobacco smoke hanging in the air is referred to as “passive smoking”. Passive smokers suffer the same acute and chronic illnesses as active smokers – only such illnesses are less extensive and less frequent. Tobacco smoke that is inhaled through passive smoking contains the same poisonous and carcinogenic substances as the smoke inhaled by smokers. Therefore, passive smoking also causes numerous illnesses, some of which are serious.

**Around-the-clock exposure to nicotine** A special health risk exists when persons who suffer from a pre-existing illness, which is worsened by smoke, are housed together with smokers. Except for an hour of outdoor exercise, inmates remain in cells polluted by nicotine for up to 23 hours per day. In some cases, the ventilation is very limited.

The prison administration is responsible for the inmates’ health. The Federal Ministry assured the NPM that facility management has consistently attempted to separate smokers and non-smokers, unless the affected persons were opposed to this.

At the same time, the Federal Ministry conceded that separation cannot always be guaranteed. This is explained by the high occupancy of many correctional institutions in conjunction with the shortage of space. In addition, there are the restrictions that accompany different forms of detention (such as first-time imprisonment or pre-release) and the requirement to separate accomplices in court prisons. Inmates often have other interests – such as placement based on nationality – which are taken into account, when possible. However, these interests are secondary in the case of a pre-existing medical illness.

**Not to be held in the same cell** Although it is understandable that smoking plays a different role in detention than in free society and providing separate accommodations can pose a challenge, the protection of non-smokers may not be disregarded. Therefore, the NPM recommends that non-smokers not be held together with smokers in cells for multiple inmates. Persons who do not smoke should be protected from



the health hazards of tobacco smoke. Adequate measures must be taken to implement this as soon as possible.

The duty of care, which applies in the penal system, also extends to a child living in detention. Small children must not be exposed to passive smoke. A total ban on smoking in the mother-child area should go without saying.

Children have a special need for protection

This recommendation is based on a visit to Graz-Jakomini correctional institution. The NPM noticed a seating arrangement there, which was located immediately in front of a mother-child inmate cell and was used as a smoker's corner. The mothers and children had to pass through this area, and the small children were constantly exposed to smoke. Immediately after the NPM's visit, this smoker's corner was removed so that children are no longer endangered by passive smoking.

The NPM also emphasises that employers and police station management must take suitable technical or organisational measures to ensure that personnel are protected from the effects of tobacco smoke in the workplace, in communal rooms and stand-by rooms. In addition, the Maternity Protection Act foresees employment limitations and restrictions in order to protect the health of the mother-to-be and the child.

Staff must also be protected

The Federal Ministry assured the NPM that the facility management would be informed that smoking is prohibited in the corridors, the charge offices, rooms where the inmates work, communal rooms and stand-by rooms. However, smoking areas can be set up at the correctional institutions.

In most correctional institutions, smoking is permitted out-of-doors, in inmate cells and in the specially marked smoking rooms. According to the Federal Ministry, the space inside the locked area is not a public space. Therefore, the ban on smoking does not apply there.

However, at the same time, the Federal Ministry generally acknowledges that it must seek improvement in the area of tobacco control. An information campaign directed at staff and inmates is under consideration. The campaign will point out the harmfulness of nicotine and its consequences, and provide information on various means to stop smoking. The Federal Ministry is convinced that more can be achieved by providing information than by prohibitions.

Convince rather than punish

The Federal Ministry plans to set up an interdisciplinary working group to improve tobacco control. In addition to persons engaged in correctional practice, experts on basic rights and medicine will be included in this working group. The results obtained by the working group will be used as the basis for formulating a comprehensive strategy to protect non-smokers in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. The working group will have its first meeting in early 2018.

Interdisciplinary working group

- ▶ *In line with non-smokers protection, it must be ensured that they are protected against the health-endangering effects of tobacco smoke as far as possible.*
- ▶ *Smoking and non-smoking inmates must be housed separately from each other.*
- ▶ *Under no circumstances may small children be exposed to smoke.*

### 6.5.5.2 Persons with substance use disorders

Far-reaching judgment of the ECHR

The question of how to properly treat and deal with delinquent addicts is not limited to Austria. The European Court of Human Rights (ECHR) has also addressed this problem (Wolfgang Adam Wenner against the Federal Republic of Germany, case No. 62303/13). The complainant claimed that he was denied drug substitution treatment during his imprisonment. In its decision of 1 September 2016, the ECHR found that the prison administration was required to offer drug substitution treatment to the inmate. The court ruled that this failure constituted a violation of Article 3 of the European Convention on Human Rights (prohibition on inhuman and degrading treatment).

Therapy during imprisonment

It is generally recognised that addiction and dependency should be considered illnesses. Substance use and substance addiction are diagnosable, treatable chronic psychiatric diseases, which require long-term therapeutic treatment. Therefore, affected inmates have a right to adequate treatment, care and counselling during the period of detention. Effective therapy for a substance use disorder is an essential prerequisite for successful resocialisation and for the prevention of addiction-related criminality.

Assistance even after release

Inmates with a substance use disorder often express an urgent desire for more high-quality therapy to permanently overcome their disease of addiction. These persons frequently complain to the NPM that they do not receive help, but rather are stigmatised and discriminated against. After imprisonment, many return to the same environment that made them addicts. Therefore, the NPM believes that it is necessary not only to address the question of what therapies are appropriate for addictive persons during the time of deprivation of liberty, but also to address adequate management of their transition, which must begin before release from imprisonment.

In November 2016, the NPM made a visit to the Innsbruck correctional institution, which was targeted at the topic of addicted inmates. The focus of the visit was the ward for drug offenders who require treatment (“forensic ward”). The ward had ten places in all and held only men.

This ward admits criminal offenders with a substance use disorder who are committed by the court pursuant to Section 22 of the Austrian Criminal Code (*Strafgesetzbuch*). The purpose of placement under Section 22 of the Austrian Criminal Code is to free criminal offenders from their addictions.

The emphasis is on curing them and improving their lives. The requirements for ordering measures under Section 22 of the Austrian Criminal Code include a connection between the person's dependency and the crime committed and a positive risk assessment.

Placements pursuant to Section 22 of the Austrian Criminal Code are primarily made in the specialised Vienna-Favoriten correctional institution. In addition, there are special wards for drug offenders who require treatment in some correctional institutions, such as Innsbruck correctional institution. However, these wards are often not reserved for persons placed pursuant to Section 22 of the Austrian Criminal Code. The majority of the detainees in such wards requested admission and therapy there voluntarily under Section 68a of the Penitentiary System Act (*Strafvollzugsgesetz*). This is also the case for Innsbruck correctional institution.

The ward for drug offenders who require treatment is on the ground floor of Innsbruck correctional institution in a section that is separated from the main building. It is operated as a residential group. The annexe was constructed in 2005. Its furnishings meet the requirements of a modern penal system. The ten single cells are bright, have large windows and furnishings that meet current standards. Likewise, the communal rooms, kitchen and eating areas have large windows or French doors. Another positive factor is that the ward is connected to an exercise yard, which is open until 10 p.m. The outdoor installation is green and well cared for. In the spring, the inmates plant vegetables in raised bed gardening.

Good setting

A multidisciplinary team is responsible for the care of the detainees. It consists of personnel from the psychological and social services, a prison guard and a psychotherapist.

The NPM gave positive feedback regarding the concept and the therapeutic offerings. However, the ward unfortunately has a very limited capacity. Most of the addicted persons are held in the main building and do not receive comparably intensive therapeutic treatment.

Ward is too small

It is also worthy of criticism that women and juveniles are in a significantly disadvantaged position. There is no institutionalised treatment concept for either group. The forensic ward at Innsbruck correctional institution is only open to male adults. Addicted female and juvenile persons cannot be admitted there.

Discrimination against women and juveniles

Work and employment are a significant part of the daily structure of addicted inmates. This includes participation in educational and training offerings. Operational structures must be oriented towards the special needs of addicted persons.

Discrimination in access to work

The NPM observed with approval that all persons on the ward for drug offenders who require treatment are assigned work. In addition to the therapeutic aspect,

this also reduces the preconception that persons with a substance use disorder are unfit for work. Unfortunately, addicted persons who are not placed in the forensic ward are still assigned very little work. This is especially true if they are receiving substitution treatment.

The NPM recommended that additional measures be taken to grant inmates with a substance use disorder greater access to work. Addicted persons should not experience discrimination in access to work or educational opportunities due to their illness. The principle of equal treatment must be applied.

Annexe would be desirable

In summary, the NPM concluded that Innsbruck correctional institution needs additional inmate cells to take into account the special treatment, care and counselling needs of addicted persons and prison inmates who require addiction treatment. Women and juveniles must have the same therapeutic offerings as male adults housed in the ward for drug offenders who require treatment.

Equalisation sought

It is unfortunate that the Federal Ministry did not agree to establish an additional ward or create additional inmate cells. However, the NPM notes with approval that the Federal Ministry addressed the topic of addicted inmates and discussed with Innsbruck correctional institution the possibility of expanding its care concept and creating additional work opportunities for addicted inmates outside of the “forensic ward”. The first discussion took place in mid-2017.

In the course of this meeting, the topic of creating a so-called “area without illegal drugs” was discussed. Addicted inmates who are voluntarily housed in this area will be offered more employment and therapeutic interventions with concomitant controls. The primary target group will be persons participating in a drug substitution programme. At the time of completing this report, the NPM had not yet made a conclusive assessment of the concept, which must include the organisational, substantive and spatial implementation of such an area. According to the Federal Ministry, occupation of such a ward could begin no sooner than the spring of 2019.

- ▶ *Inmates with a substance use disorder have a right to have their special treatment, care and counselling needs taken into account.*
- ▶ *There may be no discrimination against addicted persons with respect to their access to work and educational offerings due to their illness.*

### 6.5.5.3 Determining the need for medical and nursing staff

The lack of medical and nursing staff is a national problem. The NPM has repeatedly criticised the lack of specialists in psychiatry and the delays in filling general practitioner positions (see Annual Report 2016, p. 178).

Structural weakness

The health service in a correctional institution should be able to provide medical and nursing treatment under conditions comparable to those for patients who are at liberty [CPT/Inf/E(2002) 1 – rev. 2010, German, p. 33]. There must be an adequate number of medical personnel to meet this requirement.

The NPM raised the questions of which parameters should be used to calculate the need for personnel and what staffing level is needed to provide nursing and medical care to inmates. It became clear that the basis for the decisions and the key figures are lacking. At the end of 2017, the key figures for use in calculating requirements in the medical area were again the subject of intensive internal discussions within the Federal Ministry. According to the Ministry's own information, it has been working on this question since 2015.

Lack of key figures

Only the key figures for the deployment of nursing staff have been determined thus far. Three variables were identified for calculating the necessary number of permanent positions in the nursing service for each correctional institution. These three parameters are: "basic care", "assistance at doctor's appointments" and "substitution".

Relevant parameters

The amount of time the nursing service spends per inmate per year is determined for the parameter "basic care". For the parameter "assistance at doctor's appointments", the average time expended to assist an inmate during doctor's appointments, including the time used for preparation and follow-up, is calculated. The parameter "substitution" covers the time it takes to administer substitution medications.

For each correctional institution, the net time expended for general medical and psychiatric care was surveyed using these three factors. The necessary number of permanent positions was determined on this basis. The results of the calculation show how many full-time equivalents are needed in each correctional institution to cover the tasks performed by the nursing staff there.

Need is based on time expended

In determining the necessary number of full-time positions, it was also taken into account that the staffing capacity is based on the average annual working hours of an employee who works 42 calendar weeks per year. This is to avoid a situation where absences (e.g. due to vacation) result in personnel shortages.

Based on the results of these calculations, it was determined that seven of the 24 correctional institutions have a need for additional nursing staff. This need for additional staff was reported to the recruiting agency for justice supporting staff for 2018.

Objective need for nursing staff

The Göllersdorf, Stein and Vienna-Josefstadt correctional institutions and the Asten Centre for Forensic Science were excluded from this calculation procedure due to their special status. The staffing levels there will continue to be determined on an individual basis in the future.

Regular adjustments Staff requirement calculations will be evaluated once each year. The NPM will pay additional attention to whether the number of full-time permanent positions based on these calculations is actually sufficient to ensure adequate nursing care in the correctional institutions.

- ▶ *There must be an adequate number of medical and nursing staff to provide medical and nursing treatment under conditions that are comparable to those of patients who are at liberty.*
- ▶ *The key figures in the medical area, which have been lacking for years, must be determined as soon as possible.*
- ▶ *The need for nursing staff must be regularly assessed and adjusted.*

#### 6.5.5.4 Time and space of health examination upon arrival

Final assessment In previous years, the NPM has addressed the central question of when the obligatory health examination at the start of imprisonment should take place and what the examination should entail (see Annual Report 2016, pp. 173 et seq.). All inmates admitted to a correctional institution must undergo an initial examination by the institution's doctor. This obligation exists upon arrival or the start of imprisonment and upon transfer to another correctional institution (e.g. due to a transfer to a different prison or classification).

Standard established The NPM recommended that the Federal Ministry ensures that a uniform national health examination is conducted upon arrival in prison. This recommendation resulted in the issuance of a decree in August 2016 (BMJ-GD42708/0002-II 3/2016). According to this decree, the examination is to be conducted in a uniform manner with the assistance of an examination form, which can be accessed through the Electronic Patient Record Module. This standard medical history form is based on the general examination forms used for admission to a hospital.

Two additional supplements required The NPM supports the introduction of a national standard. However, the decree needs to be adapted in the following two ways: before the examination, prisoners should be expressly informed of the possibility of a blood test. The examination itself should be a full-body examination, including disrobement.

Blood test is in the inmate's own interest According to the explanatory remarks made by the Federal Ministry, a blood test is generally not required before imprisonment. Rather, a blood test is only ordered if it appears to be medically indicated in an individual case. Moreover,

a blood test is only permissible on a voluntary basis with the prior consent of the imprisoned person.

The NPM believes that it is necessary to adapt the decree so that prisoners are expressly informed that they can undergo a blood test in the course of the health examination upon arrival – which is in their own interest for the purpose of fully understanding their health condition. The NPM also recommends that any refusal by the inmate be documented in the Electronic Patient Record Module.

At the present time, disrobement is not a mandatory part of the health examination upon arrival. However, in the opinion of the NPM, the health examination upon arrival must consist of a full-body examination, including disrobement. Therefore, the NPM believes it is necessary to include this in the standardised examination catalogue for the health examination upon arrival.

Disrobement necessary

The purpose of the health examination upon arrival is to determine the condition of the person's health before he or she is placed in government custody. A second purpose of the health examination upon arrival is to discover any signs of mistreatment and to have them medically investigated.

It is not sufficient to leave it to the medical staff to determine, whether disrobement is necessary in the individual case after taking the medical history. Infectious diseases, rashes and possible allergies could be overlooked by the doctor or remain hidden. Therefore, the imprisoned person must be physically examined to effectively prevent the spread of communicable diseases and ensure that he or she receives adequate medical care.

In addition, disrobement is necessary to discover any injuries or signs of mistreatment. Moreover, the guidelines of the UN Istanbul Protocol require an examination and a detailed description of any injuries as standard documentation. The UN Istanbul Protocol is a manual for effective examination and documentation of torture and other cruel, inhuman or degrading treatment or punishment.

International standards

The NPM notes with regret that no adaptation of the decree has been promised.

With regard to the timing of the health examination upon arrival, the NPM emphasised last year that newly admitted prisoners should be subjected to a medical examination at the earliest possible time after admission.

New admissions

In the opinion of the NPM, even in the case of a transfer, the health examination upon arrival should be conducted on the day of arrival or within 24 hours. This is because the condition of a person's health can change.

Transfers

The NPM's recommendations in this matter were followed. It was ordered that newly admitted inmates must be automatically included on the doctor's appointment list in the Electronic Patient Record Module for the health examination upon arrival. The NPM also recommended that a note be placed

in the Module stating that the medical examination is to be conducted at the earliest possible time (within 24 hours). No such note is currently contained in the Module. The NPM recommends that the justice administration create the technical prerequisites for this.

- ▶ *A health examination upon arrival must consist of a full-body examination, including disrobing.*
- ▶ *At the health examination upon arrival, inmates should be expressly informed of the option of a blood test. The refusal by an inmate to undergo a blood test should be documented in the Electronic Patient Record Module.*
- ▶ *In the case of a transfer (e.g. due to a transfer to a different prison or a classification), a medical examination must also be performed within 24 hours.*
- ▶ *The automatic inclusion of newly admitted inmates on the doctor's appointment list in the Electronic Patient Record Module should also contain a note that the medical examination should be performed within 24 hours.*

#### 6.5.5.5 Presence of prison guards during medical examinations

The question of which persons should be present in the doctor's office during a medical treatment or examination is closely linked to the question of the scope and timing of the health examination upon arrival.

NPM made a recommendation in early 2017

The NPM made a recommendation to the Federal Minister on this matter in early 2017 (see Annual Report 2016, pp. 171 et seq.), which demanded that only trained medical and nursing staff should be utilised in the infirmaries and doctor's offices of correctional institutions. These persons may not perform any supervisory functions with respect to inmates. The presence of prison guards during a medical examination or treatment should be the absolute exception and only at the request of the doctor. Even in these cases, confidentiality must be protected to the maximum extent through technical or structural precautions (e.g. screens, glass partitions, headphones).

Thus far, this recommendation has not been followed. According to the Federal Ministry, there is a need for additional permanent positions in the nursing service. In addition, the Federal Ministry believes that the confidentiality of examinations has been adequately guaranteed because prison guards are subject to official confidentiality.

International criticism

The NPM cannot agree with this argument. An atmosphere of trust is a necessary component of the "doctor-patient relationship". Respect for privacy and confidentiality are fundamental rights of every patient. This means that discussions with doctors, examinations and treatments should not be conducted in the presence of third parties. In the course of its visits, the CPT has already criticised the inadequacy or total lack of confidentiality during



medical consultations (CPT visit to Austria in the autumn of 2014, CPT/Inf (2015) 34, German, p. 39).

With respect to the security concerns that have been raised, it should be noted that the security rights of medical and nursing staff are protected because prison employees can be called in at any time at the request of the doctor. The presence of prison guards should be limited to such cases.

Moreover, all examination rooms and infirmaries have emergency call systems. In addition to triggering alarms with touch-sensitive alarm buttons or alarm switches, an emergency call can be made at any time using a portable emergency call system, such as a DECT phone, radio or portable security alarm device.

Emergency call systems provide additional security

During its visits, the NPM also questioned the staff at the infirmaries, who confirmed that not every prisoner requires the presence of prison guards at medical examinations and treatments. The staff are generally open to the NPM's recommendation to protect the doctor-patient-treatment relationship.

A survey of the staff supports the recommendations

The persons questioned by the NPM considered it to be a practical solution to limit the use of prison guards to cases where their use is required based on a risk assessment or their use requested by the doctor on security grounds.

Unfortunately, in everyday prison life, at least one prison guard is usually still present during medical treatments or examinations. The NPM adheres to its earlier recommendations (see the NPM's recommendations in chapter 7.5).

#### **6.5.5.6 Tags to identify names or functions for doctor's office personnel**

During its visits, the NPM was often unsure of the roles played by various persons in the vicinity of the doctor's office, since people did not wear any tags to identify their functions. In the infirmaries of numerous correctional institutions, the medical and nursing staff and the law enforcement personnel all wear white clothing. Therefore, the person's outer appearance is not a reliable indicator of his or her profession or function.

In early 2017, the NPM recommended that prison guards wear easily legible name tags on their uniforms (see Annual Report 2016, p. 183 et seq.). If there are special security concerns, a number can be used on the tag instead of a name. In the view of the NPM, wearing clearly visible name tags is a suitable means of increasing trust in prison employees. Making persons identifiable helps to create greater transparency and avoid violence, and enables full and effective investigations of any potential misconduct. If the identity of the employee is unknown, this can be an obstacle to making an effective complaint.

Education and function are not identifiable

Identification eliminates uncertainty	The NPM is of the opinion that the wearing of visible tags by infirmary personnel to identify their name or function (e.g. doctors, qualified nursing staff) provides better orientation. This contributes to strengthening the relationship of trust, which is necessary for treatment in the medical area. The identification of employees by name – or at least by function – helps to create a communication- and relationship-oriented organisational structure, which is preferable to “anonymity” from a human rights perspective. It is part of the relationship culture between the inmates and the employees of the institution.
NPM’s recommendation not implemented	Unfortunately, the Federal Ministry did not follow the recommendation to obtain visible tags for medical staff or the recommendation that prison guards wear name tags.

► ***Infirmary staff should wear a clearly visible tag stating their name or function.***

### 6.5.6 Right to privacy

The following chapter provides an overview of cases during the past year in which the NPM voiced criticism in connection with the basic right to protection of privacy.

#### 6.5.6.1 Presence of media during raid - Stein and Graz-Karlau correctional institutions

Police raid	In early 2016, the general directorate for prisons and detention ordered a nationwide raid (targeted campaign). In the course of the raid, inmate cells, workshops and workplaces were inspected, and body searches were conducted on inmates (with full disrobement).
Presence of reporters and photographers	The NPM found that representatives of two of the print media, including photographers, were present during a raid on the Stein and Graz-Karlau correctional institutions. At the Stein correctional institution, they photographed workshops and inmate cells while the officers searched them. Items seized were photographed. At the Graz-Karlau correctional institution, photos were taken of the inmate cells and common areas of the institution (e.g. corridors, inmate cell doors, windows).
Inappropriate infringement on right to privacy	The NPM complained that the inmates’ right to privacy was infringed because official actions, such as searches of inmate cells and body searches, were observed and photographed by third parties. The public’s need to know is

satisfied if the prison administration informs representatives of the media of the results of the official action and the items found. It is not permissible to invite media representatives to participate in a search. Such procedures should be rejected due to the inappropriate infringement of the inmates' right to privacy.

With respect to Graz-Karlau correctional institution, the Federal Ministry stated that representatives of the media were given precise instructions before the start of the police raid regarding how they were to act and emphasising that the privacy of inmates and employees must be protected. It also stated that photographing the correctional institution was not permitted until after request and prior review and only in the presence of an employee of the directorate for prisons and detention. The NPM was assured that representatives of the media only took staged photos of the inmate cells at Graz-Karlau correctional institution and were not present during the "actual" official action.

The NPM also determined that representatives of the media were present at the Stein correctional institution when inmates were led from their inmate cells for body searches.

Infringement of basic rights

Searches of inmate cells and body searches are (non-public) official actions taken in the exercise of public power prerogatives. It is well known that searches of inmate cells and body searches necessarily involve infringements of the inmates' right to privacy. The infringement of privacy rights is only justified if it is sanctioned by law, pursues one or more of the goals set forth in Article 8 (2) of the European Convention on Human Rights (ECHR), and is necessary. Under the principle of proportionality, infringements of privacy rights must be kept at a minimum.

In the view of the NPM, the presence of representatives of the media at searches of inmate cells and body searches is incompatible with these clear constitutional requirements. The presence of representatives of the media during searches of inmate cells and body searches should clearly be avoided as a precautionary measure – regardless of whether any infringement of inmates' privacy is discernible in a specific case.

Incidents may not be repeated

- *Measures must be taken to ensure that no media representatives are present during searches of inmate cells and body searches.*

### 6.5.6.2 Body searches in the presence of third parties - Vienna-Josefstadt correctional institution

Body searches with full disrobement intimately involve the basic right of privacy.

Inmates are subject to mandatory searches in rooms provided for this purpose upon transfer or other admission to a correctional institution. The same applies in the case of release. This is a body search involving disrobement, which every inmate must undergo. A body search with disrobement shall also be carried out upon placement in a specially secured inmate cell if a prisoner is a danger to himself or others.

Full disrobement in presence of fellow prisoner During a visit to Vienna-Josefstadt correctional institution in January 2017, the NPM found that a fully disrobed inmate was subjected to a body search in the presence of a second inmate. Both inmates had to remove their clothing in the same inmate cell, each in a different corner with their backs turned to each other. Then their possessions were searched, and they were subjected to body searches.

Law disregarded This procedure violates statutory requirements stating that a body search with disrobement is to be carried out in the presence of two employees of the same gender as the prison inmate and in the absence of fellow prisoners and persons of the opposite sex.

Sense of shame infringed Body searches must always be conducted with respect for the inmate's sense of honour and human dignity. Conducting a search with a second inmate in the room infringes the dignity of the affected person, even if each stands in a corner with his back to the other. Such a procedure is likely to infringe the affected person's sense of shame and human dignity. The prohibition of inhumane and degrading treatment under Article 3 ECHR guarantees absolute protection. Such a procedure cannot be justified by staffing or logistical reasons.

No complete disrobement The NPM also criticises the fact that inmates must fully disrobe for body searches (at Vienna-Josefstadt correctional institution). In the opinion of the NPM, complete disrobement of inmates for body searches is contrary to human rights standards. Therefore, body searches should generally be conducted in a way that the person being subjected to the search only bares one part of the body at a time (see Annual Report 2015, p. 180).

Unfortunately, full disrobement was still included in the Federal Ministry's new training document on search practice. The NPM adheres to its criticism and recommendation and suggests that the training document be changed. It shall state that disrobement for body searches should take place in two stages – regardless of gender.

Detailed documentation The NPM further recommends that body searches that are accompanied by disrobement be documented in writing due to the intensity of the infringement.

The purpose and specific circumstances of the search must be recorded to ensure subsequent reviewability and to preclude abuse. General statements are not sufficient. It must always be stated why disrobement was required as part of the body search under certain circumstances.

Currently the conduct of a body search is only documented and reported to the prison warden if there is a suspicion that an administrative offence has been committed, and a report must be made in this regard. Additional documentation on its own form, as proposed by the NPM, is not required under prison law in the opinion of the Federal Ministry.

Recommendation  
rejected

- ▶ *All body searches must be conducted with respect for the inmate's sense of honour and human dignity.*
- ▶ *Body searches involving disrobement must not be carried out in the presence of fellow inmates.*
- ▶ *Body searches involving disrobement must be carried out in two stages so that the person being searched need not be fully disrobed.*
- ▶ *The cause and nature of a body search involving disrobement must be documented in writing.*

### 6.5.6.3 Health-related data posted on inmate cell doors Vienna-Josefstadt and Klagenfurt correctional institution

Posting health-related inmate data on inmate cell doors constitutes an impermissible infringement of the basic right to the protection of privacy, which is guaranteed in Article 8 ECHR and which includes a right to keep personal data secret. This includes health-related data. Such data is considered particularly worthy of protection under the Austrian Data Protection Act (*Datenschutzgesetz*).

Vienna-Josefstadt  
correctional institution

During a visit to Vienna-Josefstadt correctional institution in August 2016, the NPM noticed that medical data was listed next to the inmate's cell doors, right below the name of the inmate. The NPM stressed that posting such notices on inmate cell doors infringes the prisoner's legitimate right to confidentiality.

Sensitive data disclosed

Moreover, posting health-related data can be considered degrading treatment of the affected person because it informs third parties of the condition of the inmate's health without his or her consent. This can lead to ostracism and stigmatisation. The NPM recommended that health-related data no longer be posted on inmate cell doors in the future.

Threat of stigmatisation

The Federal Ministry assured the NPM that the ward commandant was notified that this procedure is impermissible in any form. It promised to monitor compliance.

Klagenfurt correctional institution    The NPM made comparable observations at Klagenfurt correctional institution. The NPM has repeatedly complained that the infirmary name tags, which also contain medical data, are not covered there. The tags are provided with hinged covers which are all open on the day of the visit. Therefore, anyone in the doctor's office can easily see who was housed in an infirmary inmate cell and for what reason.

- ▶ *It must be ensured that health-related data of inmates is not posted on the inmates' cell doors.*
- ▶ *The inmates' right to keep their personal data, particularly health data, secret, must be protected.*

#### **6.5.6.4 Confidentiality of medical consultations - Feldkirch correctional institution**

Infringement of the right to privacy    If the doors to the doctor's office are open during an examination or medical consultation, this is an inappropriate infringement of the inmate's right of privacy.

In August 2016, the NPM found that the doors of the doctor's examination room were frequently open or ajar during an examination or medical consultation at Feldkirch correctional institution. The NPM gave a reminder that the confidentiality of medical consultations in prisons must be ensured to the same extent as in the outside world and recommended that the doors to the doctor's office remain closed during consultations and examinations. Privacy and confidentiality must be protected.

- ▶ *The doors of the doctor's office must be kept closed during medical consultations and examinations to ensure privacy and confidentiality.*
- ▶ *Medical confidentiality must be ensured in prisons to the same extent as in the outside world.*

## 6.5.7 Personnel

### 6.5.7.1 Psychological supervision for prison employees

Regular psychological supervision is important to ensure the health of personnel and the maintenance and improvement of their working capability. Psychological supervision is a recognised instrument of psychological hygiene for the prevention of burnout, mobbing and violence. Verbal processing of experiences provides relief, especially in cases of excessive stress or after particularly difficult operations.

Purpose and meaning

The NPM has emphasised in the past that it is the facility management's task to motivate employees to avail themselves of psychological supervision. There is often ignorance or prejudice on the part of employees regarding what psychological supervision can effect. Overcoming these reservations should be a concern of superiors.

Existing reservations

During its visits last year, the NPM repeatedly observed that prison guards make very little use of psychological supervision. To reconcile and empirically prove these observations, the Federal Ministry was asked to provide the figures on psychological supervision for police officers and care providers at correctional institutions for 2016.

The result was that fewer than 10% of all prison guards nationwide availed themselves of psychological supervision in 2016. By contrast, in the same period about half of all care providers availed themselves of psychological supervision.

Non-law enforcement personnel are much more open-minded

It can generally be assumed that both care providers and police officers are subject to high stress in their daily work. Prison guards are generally the first responders when there are suicide attempts or suicides at the institution and must take appropriate defensive, first aid and resuscitation measures. These are especially stressful situations. Another core task of prison guards is to maintain order and security in the institution: police officers must intervene in conflicts between inmates and during attacks on employees. This is especially true for members of the task force.

High stress in all occupational groups

The low number of prison guards who avail themselves of psychological supervision is also alarming since numerous police officers complain of increasing psychological pressure during day-to-day work. This subjective feeling alone can create high stress during the care work that must be done on a daily basis. Therefore, it is all the more important to seek psychological supervision.

In late June 2017, a circular letter was sent to all correctional institutions in which the Federal Ministry noted that few prison guards nationwide avail themselves of psychological supervision. All facility managers were asked to motivate police officers, above all, to participate in psychological supervision

New decree

and to convince them that psychological supervision can keep a person healthy and enable him or her to better cope with the profession.

► *Law enforcement officers must be encouraged to regularly utilise psychological supervision.*

## 6.5.8 Access to information

### 6.5.8.1 Video interpreting

In previous years, the NPM has reported on the special challenge of language diversity and the successful pilot project “Video interpreting in correctional institutions” (see Annual Report 2015, pp. 163 et seq., and Annual Report 2016, p. 196 et seq.).

Intended expansion In late August 2017, the one-year pilot project entitled “Video interpreting in the area of administrative penalty proceedings and the juvenile section of Vienna-Josefstadt correctional institution” came to a close. The Federal Ministry reported that both employees and inmates were highly satisfied. The pilot project in the care area of Gerasdorf correctional institution will end in the spring of 2018. A nationwide roll-out of video interpreting in administrative penalty proceedings and in the care area is scheduled for mid-2018.

The national roll-out of video interpreting in the medical area was completed in April 2017. At least one video interpreting system is available in the medical area of every Austrian correctional institution. In all, there are currently 34 systems in use nationwide. Therefore, for the first time, professional video interpreting services can be accessed in all prison infirmaries.

However, during a visit to Salzburg-Puch correctional institution, the NPM noted that, despite the installation of the video interpreting system in the infirmary and the training of its employees, fellow prisoners were still being utilised to provide interpreting services when needed.

System needs to be used The Federal Ministry reminded both the law enforcement officers in the infirmary and the nursing staff to only use the video interpreting system installed in the infirmary when assistance in translation is needed due to difficulties in communication. Moreover, at training sessions, the office of the medical superintendent will reiterate that the system must be used.



- ▶ *Video interpreting systems should be obtained for all specialised services, for the admission area and the administrative penalty unit.*
- ▶ *When there are communication problems, trained interpreters should be utilised. Inmates should not be used as interpreters.*
- ▶ *The video interpreting systems should be made available in all infirmaries and used without exception.*

## 6.5.9 Living conditions

The NPM's observations regarding the living conditions of inmates are many and diverse. Some examples are provided below.

### 6.5.9.1 Lock-up times and work and employment opportunities

Since commencing its activities in July 2012, the NPM has tirelessly called attention to the nationwide structural problems at penal institutions due to excessive lock-up times and inadequate work and employment opportunities for inmates (see Annual Report 2012, p. 48 et seq.; NPM Report 2013, pp. 54 et seq.; Annual Report 2014, pp. 134 et seq.; Annual Report 2015, pp. 172 et seq.; Annual Report 2016, pp. 188 et seq.).

Structural weakness

In 2017, the NPM was once again confronted with inadequate employment opportunities and rigid lock-up times. For example, it found numerous days on which companies providing occupational opportunities at Graz-Jakomini and Vienna-Josefstadt correctional institutions shut down their operations. The lock-up times and employment situation for inmates at Krems correctional institution were also worthy of criticism.

Criticism remains the same

While the employment situation for juveniles at Gerasdorf correctional institution is very encouraging most of the time, many companies close during the summer months at this facility, too.

Unfortunately, the establishment of a well-balanced employment regime for detainees awaiting trial in prisons operated by the regional courts continues to be a special problem.

Less favourable treatment of detainees awaiting trial

The NPM reiterates its recommendations on these matters from past years (see the NPM's recommendations in chapter 7.5). Employment and activity programmes must be expanded, and lock-up times must be reduced.

- ▶ *It must be ensured that companies providing occupational opportunities at correctional institutions keep those continuously open. The inmate employment rate should be increased – either by optimising personnel resources or – if this is not possible – by adding personnel.*
- ▶ *Work opportunities for detainees awaiting trial must be expanded.*

### 6.5.9.2 Outdoor exercise and alternative opportunities to exercise - Vienna-Josefstadt correctional institution

Required minimum time not reached	Opportunities for outdoor exercise are especially important to the health of persons who have been deprived of their liberty. Legislators have granted inmates a subjective right vis-à-vis public authorities to one hour per day of time spent outdoors (two hours for juveniles), if weather permits and if they do not work outdoors. International guidelines also require an inmate to spend a daily minimum of one hour outdoors.
Repeated complaints	During a visit to Vienna-Josefstadt correctional institution in January 2017, prisoners repeatedly complained that outdoor exercise lasts for less than the required 60 minutes. Moreover, outdoor exercise is often cancelled when it drizzles, with the justification that this constitutes “bad weather”. The Federal Ministry has assured the NPM that the daily schedule of Vienna-Josefstadt correctional institution includes one hour of time spent outdoors. However, at the same time, it pointed out that compliance with this requirement depends on the cooperation of the inmates. If there is no cooperation, delays are unavoidable.
Delays must be taken into account	It is understandable that the requirement of daily time spent outdoors presents an organisational challenge in a large facility and that there can be delays. However, the time spent leading inmates to the outdoor area and bringing them back cannot be included in calculating time spent outdoors. The NPM emphasises that it is not sufficient to merely schedule a minimum time spend outdoors. Rather, it must be ensured that inmates actually spend the required minimum period of time outdoors in practice. In addition, the NPM recommends that alternative opportunities to exercise be offered when there is bad weather.

- ▶ *The required minimum daily period of outdoor exercise must be provided. This must be a net period available to inmates. The time spent leading inmates to and from the outdoor area may not be included in calculating time spent outdoors.*
- ▶ *If daily time spent outdoors is cancelled due to bad weather, alternative opportunities for exercise should be offered (e.g. in a gymnasium).*

### 6.5.9.3 Too little individual living space - Dornbirn satellite facility of Feldkirch correctional institution

In the year under review, the NPM again observed that some inmates have too little individual living space available to them in their inmate cells. The situation is exacerbated by overcrowding. Last year, the conditions at Suben and Feldkirch correctional institutions were used as an example (see Annual Report 2016, p. 191). In the past year, the NPM recommended that some two-person inmate cells at Dornbirn satellite facility of Feldkirch correctional institution only be occupied by one person.

The case law of the European Court of Human Rights does not establish a minimum size for an inmate cell, since this depends on various factors, e.g. the duration of detention, the opportunities for outdoor exercise and the constitution of the affected person. However, the court refers to the standards set by the CPT, which include minimum inmate cell sizes (e.g. CPT standards: Living space per prisoner in prison establishments; CPT/Inf [2015] 44).

Small inmate cells and confined spaces place enormous psychological stress on inmates. In principle, the usual level of suffering that is inherent in a prison sentence should not be exceeded. Conditions of imprisonment reach a degrading level when they cause feelings of anxiety, trepidation and inferiority in the affected persons.

Negative factors

For example, the windows in the inmate cells at Feldkirch satellite facility are so high up that only the rising mountain slopes and the sky are visible. In confined spaces, this factor can lead to a strong feeling of trepidation and intensify the conditions of imprisonment.

If overcrowding is added to these negative conditions, the prison climate is worsened exponentially. If there are more inmates than planned, there is an adverse impact on all services and activities at the correctional institution due to this additional burden. The quality of life for inmates and the working conditions of employees at the facility can significantly deteriorate. Irritability and dissatisfaction are the breeding ground for verbal and physical assault.

Overcrowding as an additional stress factor

Overcrowding can lead to a violation of Article 3 ECHR. Therefore, adequate preventive measures must be taken.

- ▶ *Inmate cells must be situated and furnished in such a way that prisoners are housed humanely and health hazards are avoided.*
- ▶ *Therefore, it must be ensured that inmates have adequate individual living space in their cells.*

#### 6.5.9.4 Separation of detainees awaiting trial from convicted prisoners - Feldkirch correctional institution

Statutory requirement Due to the high occupancy rate at Feldkirch correctional institution, the required separation between detainees awaiting trial and convicted prisoners was sometimes not maintained. Accused persons should not be housed together with prison inmates. The NPM recommends that sufficient inmate cells be created so that the statutory requirement to separate detainees awaiting trial from prison inmates can be met.

► *Detainees awaiting trial should be held separately from convicted prisoners.*

#### 6.5.9.5 Occupancy limit - Oberfucha satellite facility of Stein correctional institution

From the NPM's first visit, the Oberfucha satellite facility made a positive impression, which was reinforced during follow-up visits in July 2017. It became clear that smaller units often achieve better results in resocialisation work than larger ones. Particularly impressive was the empathetic demeanour of the employees, who have a positive attitude towards their profession and convey this attitude to the inmates.

Number of occupants should be reduced However, the NPM concluded that living conditions at the facility would suffer greatly if the facility were at full capacity. At the time of the visit, there were 21 persons being held at the satellite facility, which has a maximum capacity of 32. Neither the staff level nor the physical capacity of the facility would bear occupancy by 32 persons. To prevent crowded conditions of detention, the NPM recommended a review of the maximum occupancy level at Oberfucha satellite facility of Stein correctional institution.

At first, it was promised that the occupancy limit for Oberfucha satellite facility would be reduced from the current 32 inmates to 24. However, the Federal Ministry ultimately announced that the original occupancy limit of 32 persons would remain.

► *To prevent crowded conditions of detention, the maximum occupancy limit at correctional institutions must be reviewed from time to time and reduced, if necessary.*

## 6.5.10 Infrastructural fixtures and fittings

### 6.5.10.1 Rooms for visits by children - Vienna-Josefstadt correctional institution

During a visit to Vienna-Josefstadt correctional institution in August 2016, the NPM recommended that a family visiting room be set up, especially for mothers with children. To facilitate the preservation of family bonds during detention, appropriate space is required in addition to flexible visiting rules. This should permit a certain freedom of movement and family intimacy and guarantee a child-friendly atmosphere. Visits should leave positive memories for children and motivate them to return.

Child-unfriendly environment

Visits make an important contribution to the preservation of family ties. In turn, the preservation of family bonds plays an important role in avoiding recidivism and facilitating social reintegration. A series of factors, such as inflexible visiting hours and an uninviting atmosphere, can result in a rupture of family bonds and a loss of contact with children. Therefore, an environment should be created that meets security requirements but is conducive to good family contacts.

Atmosphere should be inviting

In general, the structural condition of Vienna-Josefstadt correctional institution is out of date. It prevents the implementation of a modern penal system. The NPM has repeatedly demanded that the Vienna-Josefstadt correctional institution be renovated as soon as possible.

The Federal Ministry promised a general renovation of the correctional institution, with the start of construction scheduled for early 2019. It promised that the renovation would include family visiting rooms and suitable visiting rooms for mothers with children.

General renovation to commence in early 2019

- ▶ *Suitable visiting rooms must be ensured for visits with children.*
- ▶ *Visits that include children should take place in a friendly atmosphere.*

### 6.5.10.2 Partitioning of the toilet facilities – satellite facility of Innsbruck correctional institution at Innsbruck Regional Court; Dornbirn satellite facility of Feldkirch correctional institution

The satellite facility of Innsbruck correctional institution on the basement floor of the Innsbruck Regional Court consists of eleven (holding) cells and one specially secured (holding) cell. During the first visit in June 2015, the NPM voiced criticism of the lack of structural partitioning of the toilet in any of the inmate cells even though there were multiple persons in these cells. The NPM also criticised the fact that the sanitary area was visible through the spy hole

Innsbruck Regional Court

and the tray slot. The NPM recommended that the toilet be separated from the rest of the inmate cell to ensure that inmates can take care of their bodily needs with a modicum of decency (see Annual Report 2015, p. 176 et seq.).

**Dornbirn satellite facility** In August 2016, the NPM also criticised the lack of structural partitioning of the toilet facilities in cells with multiple inmates at the Dornbirn satellite facility of Feldkirch correctional institution. Inmate cells were equipped with a bunk bed for two prisoners, and the toilets were only partitioned off by a shower curtain. There was no protection against bad odours.

Assurances were given that the necessary renovations would be carried out before 1 January 2017. On that day, a statutory amendment took effect, which requires structurally partitioned toilet facilities in cells for multiple inmates and separated toilets (curtain, barrier) in single cells.

**Promise not kept** However, the follow-up visits made in November 2016 and July 2017 showed that there was no implementation of any structural or other separation of the toilet facilities from the rest of the holding cell at the satellite facility at the Innsbruck Regional Court. Some of the inmate cells held more than one person. This is a clear violation of the statutory provision in force since 1 January 2017.

**Renovation still unrealised** The NPM does not understand why no solution has been found after two and a half years. It remains to be seen when the construction work to separate the toilet facilities from the rest of the inmate cell and the installation of a ventilation system, which was promised by the Federal Ministry, will be implemented.

**Conversion into single cells** The Dornbirn satellite facility of Feldkirch correctional institution did not provide a structural partition of the toilet facilities from the rest of the inmate cell due to budgetary constraints. However, to ensure that the placement of inmates is in accordance with the law, the affected inmate cells may now only be occupied by a single prison inmate.

- ▶ ***Inmate cells (including single cells) must have toilet facilities that are separated from the rest of the inmate cell.***
- ▶ ***Inmate cells that house more than one person must have structurally partitioned toilet facilities.***
- ▶ ***Sanitary facilities must be hygienic and designed so that prison inmates can take care of their bodily needs at any time with a modicum of decency.***

## 6.5.11 Positive observations

### 6.5.11.1 Successful resocialisation model - Mautern satellite facility of Stein correctional institution

The commission had a positive impression on its visit to Mautern satellite facility. The employees of the satellite facility demonstrate a high degree of commitment and independent initiative. Due to the manageable size of the facility, individualised, relationship-based work is possible. It was especially gratifying that the prison guards are socially involved and assist with the work. This avoids the use of force and ensures good results in resocialisation. It was also positive that there are joint activities during leisure time, such as a bicycling group, conversation roundtables and dart games.

Committed personnel

The NPM also found a clear, transparent and fair system for loosening prison rules on outings and opportunities for contact. The focus of the facility is on training and employment. The individualised planning for the prisoner's stay and the everyday care contribute to resocialisation.

The NPM also had a very positive image of the ward for inmates with relaxed sentences at Stein correctional institution. The ward is located in the building that houses the Krems correctional institution. The structural fixtures and fittings are modern and functional. Most inmates are in single cells. They live in residential groups and cook for themselves. Every residential group has its own sanitary facilities, which were found to be in very good and clean condition.

Ward for inmates with relaxed sentences at Stein correctional institution

All inmates are employed or in training. They have mobile phones and do not misuse them. After their work is completed, the inmates are not required to return to the ward immediately but are allotted a certain amount of time for shopping and leisure activities. The time frames are established.

The commission gained the impression that the pre-release programme at Stein correctional institution is a successful model for humane imprisonment. The task of resocialisation is being implemented. There was no criticism from a human rights perspective.

- ▶ *Small facilities and working together promote trust between inmates and employees.*
- ▶ *A positive attitude put into practice makes a significant contribution to resocialisation.*
- ▶ *A well-established pre-release programme prepares inmates for life in the outside world. It is an important part of resocialisation.*

### 6.5.11.2 Reduced lock-up times - Dornbirn satellite facility of Feldkirch correctional institution

New locking device on inmate cell doors

The NPM recommended that the Dornbirn satellite facility of Feldkirch correctional institution expand the hours during which inmate cells are open for persons serving relaxed sentences, and do so as soon as possible. Encouragingly, the recommendation was implemented. In addition, new locking devices were installed on the doors of the inmate cells to enable inmates to lock the doors after they leave the inmate cell to protect their property. In addition, floor separations with latticed doors were installed. Since this work was completed, opening times were extended until 5:30 p.m. on workdays – i.e. beyond the end of the day shift, which regularly ends at 3 p.m. On Saturdays, Sundays and holidays, the inmate cells are kept open until 12 p.m.

## 6.6 Police detention centres

### 6.6.1 Introduction

21 visits to police detention centres

In 2017, the commissions made 21 visits to police detention centres, Vordernberg detention centre, the Eisenstadt competence centre and the Zinnergasse family shelter.

The Federal Ministry of the Interior quickly implemented several of the NPM's proposals. However, in some cases, there were delays in resolving some of the problems that had been identified, since the Federal Ministry of the Interior needed a lengthy period of time to conduct its internal investigations. This also applied to cases where the NPM had proposed serious measures, such as structural changes or adjustments to organisational requirements.

### 6.6.2 Working group on conditions of detention in police detention centres

Single cells, detention pending forced return, visits

In its report 2016 (see Annual Report, pp. 204 et seq.), the NPM reported on the measures to implement the NPM's recommendations of May 2016 which had been announced by the Federal Ministry of the Interior. These recommendations were based on the framework conditions for three matters formulated by the working group: 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.

The Federal Ministry of the Interior gave assurances that it wished to realise the agreed-upon standards as soon as possible through decrees or physical



measures. However, the NPM found that the recommendations of May 2016 had not yet been fully implemented in the year under review.

As stated in the report 2016 (see Annual Report 2016, p. 205), the Directive on Workplaces should be adjusted so that the standards for detention in single cells and specially secured cells as well as visiting hours and visiting rules can be implemented. In October 2017, the Federal Ministry of the Interior stated that a draft had been developed. The standards could be included in a decree after internal review by the relevant departments. The Federal Ministry of the Interior promised to issue this decree in the 1<sup>st</sup> quarter of 2018.

Adjustments to the Directive on Workplaces

The report 2016 (see Annual Report 2016, p. 206 et seq.) deals with the extension of lock-up times for persons in detention pending forced return at Hernalser Gürtel police detention centre. The NPM not only criticised the action, which was in violation of the decree, but also the lack of prior notice from the Federal Ministry of the Interior.

Extension of lock-up times

The Federal Ministry regretted this and announced that it would include the requirement to notify the NPM in the decree and republish it. This requirement to notify the NPM is intended to ensure the reporting of lengthy deviations from the agreed-upon standard of open detention. However, no such notification was given during the year under review, and the criticised extension of lock-up times at Hernalser Gürtel police detention centre continued in effect.

Under the standards for designing single cells and specially secured cells (see Annual Report 2014, p. 170), over the long term, security cells in all police detention centres are to be subject to video monitoring with infra-red cameras, which operate independently of any light source. These standards are being implemented very slowly in the view of the NPM. However, the NPM recognises that the Federal Ministry has stated to the working group that it also wants to equip detention rooms in police stations with infra-red cameras in the future.

Infra-red camera in security cell in police stations

In 2017, the working group again devoted itself to developing standards for employment and leisure-time opportunities in police detention centres. It came to the same conclusions already expressed in the NPM Report 2016 (see Annual Report 2016, p. 207 et seq.). Only Thera bands were rejected due to security concerns. The NPM recommended that the Federal Ministry of the Interior implement the standards for employment and leisure-time opportunities and access to information regarding the outside world as quickly as possible.

Employment opportunities

At the same time, the NPM recommended that the Federal Ministry of the Interior also quickly implement the hygiene standards for detention in police detention centres which the working group formulated in 2017. Based on the goals already reported in 2016 (see Annual Report 2016, p. 209 et seq.), these standards encompass the following basic conditions:

Hygiene standards

Generally, inmate cells have to be kept in hygienic condition. Detainees should have access to sanitary facilities (toilets, showers) which are hygienic

and ensure privacy. Therefore, shower facilities (for multiple persons) should be separated by privacy screens. Alternatively, individual use should be facilitated.

The toilets in cells for multiple inmates should, in any case, be completely physically separated from the rest of the inmate cell. This serves to protect privacy while using the toilet and avoids unpleasant smells and noises for fellow prisoners.

The working group agreed that detainees should be able to take frequent showers, at least twice per week. In the future, the opportunity to take daily showers should be available during periods of extreme heat, for maintenance workers, on a doctor's instructions, on the day before a planned forced return and for women during menstruation and menopause. Detainees must be informed of their opportunities to take showers.

Detainees should have access to hygiene articles. Indigent detainees should be provided with hygiene articles, and female prisoners should be provided with hygiene articles, such as sanitary towels and tampons.

In the past, the NPM often complained about the hygienic condition of the textiles distributed to the inmates of Hernalser Gürtel police detention centre, primarily the mattresses, pillows, blankets and sheets. The working group agreed on the following to ensure uniform furnishings for all detainees nationwide: in the future, each detained person is to be issued a blanket, a pillow, either a sheet and a bedspread or two sheets, and a pillowcase. In addition, they are to be given one large and one small towel and a dish cloth, if necessary. The bedding must be changed once per week in the future.

If a bedspread is used, the blankets should be changed every eight weeks; otherwise every four weeks. Textiles should be immediately replaced if they are very dirty or damaged. Protective covers should be used to avoid soiling the mattresses, which – like the bedding – must be cleaned and disinfected. Used mattresses must always be replaced if there is a hygienic need.

The NPM will monitor and report on the implementation of these standards.

#### Telephone contact with the outside world

In 2016 (see Annual Report 2016, p. 207 et seq.), the NPM reported on the preliminary results of its work on standards for telephone contact with the outside world. The working group completed work on the formulation of these standards in 2017.

The working group agreed that detainees should be afforded barrier-free access to a telephone by providing them with mobile service telephones, as needed. It was further agreed that detainees with sensory impairments could use their own technical aids when making phone calls. The NPM intends to make a recommendation on this matter.

During a visit to Hernalser Gürtel police detention centre in November 2016, the commission inspected the specially secured cells. In one cell, it encountered an unclothed detainee who showed signs of dehydration. The man was completely immobilised, being shackled with restraining straps around his waist as well as hand and foot shackles. In addition, his lower body remained unclothed during questioning by the Federal Office for Immigration and Asylum.

Documenting special security measures

The NPM ascertained that the detainee had refused the food and beverages offered to him. He had also refused to put on the disposable clothing offered to him instead of his own clothing when he was placed in the cell. He had previously been deprived of his clothing for security reasons.

However, the NPM found deficiencies in the documentation of these occurrences and the fact that the detainee was shackled, which is why the working group addressed this case. Based on the existing requirements, the working group was able to agree on the formulation of more precise standards with respect to special security measures.

Accordingly, in the future, the reason for placement in a specially secured cell, the commencement, course and conclusion of this measure and the involvement of a doctor must be documented. Any decision to deviate from a medical recommendation regarding the continuance of special security measures must be documented and supported by facts.

If affected persons must be deprived of their clothing, they should be offered disposable clothing when disrobed. The time and place the offer was made, and any rejection of the disposable clothing must be documented. If prisoners spend time outside of the cell, their private parts should be covered with disposable clothing or a blanket.

Offer of disposable clothing

During the execution of any special security measures, detainees should be offered adequate nourishment – including warm food at least once per day – and offered liquids at least three times within a twelve-hour period during the daytime. The times of these offers, the administration of food and any refusals by the detained person should be documented.

The shackling of inmates in padded, specially secured cells should be undertaken with restraint and ended, as necessary, to avoid impairments of health to the extent possible. The effects of such measures must be checked regularly. This is to ensure that shackles are used in exceptional cases and with special consideration of the vulnerable situation of persons held in detention under Section 5b (2) (4) of the Detention Regulation (*Anhalteordnung*).

It should be mentioned that the Federal Ministry of the Interior always stressed that the case of the unclothed inmate at Hernalser Gürtel police detention centre was an isolated incident. However, observations made by the NPM during a visit to the Innsbruck police detention centre indicated that this was

more than just an isolated incident.

Two naked persons in same security cell

In the course of this visit, the commission reviewed documentation of the detention of persons in padded security cells. This revealed that several persons were either completely naked or only wearing underwear during their detention in the cells. There was no proof that they had been offered and refused replacement clothing. Moreover, the commission found that two naked persons were held in a padded cell together for more than six hours.

The NPM pointed out to the Federal Ministry that the detention of two (unclothed) persons in one security cell was contrary to the objectives of Section 5b (2) (4) of the Detention Regulation. According to this rule, a persons may only be held in isolation in a security cell when there is a risk they might harm themselves. It was not possible to make a definitive assessment in this regard at the time of completing this report.

Inadequate documentation of outdoor exercise

During several targeted visits to Hernalser Gürtel police detention centre, the NPM checked whether detainees held in single cells or specially secured (tiled cells included) were offered daily outdoor exercise (one hour of outdoor exercise) as well. However, the commission could not clarify this matter on site based on the current documentation form. The documentation only provided very general reasons for the lack of outdoor exercise (e.g. “not willing to go for a walk”). Therefore, when there were complaints that outdoor exercise was not being offered or provided, the commission frequently could not determine whether the detainees’ reproaches were justified.

Therefore, the working group saw a need to make the current form of documentation more specific. The Federal Ministry gave its assurance that outdoor exercise is being offered to all detainees except for persons in specially secured, padded cells. This exception is understandable since the affected persons are being held in specially secured cells (padded walls or floors) to prevent them from harming themselves or others. Allowing these persons to move about in an unsecured yard would be contrary to the purpose of their detention in such cells. Apart from that, this form of detention may only continue for the period of time that is absolutely necessary.

Therefore, the working group formulated the following requirement for inclusion in the standards for special security measures: in the future, the rejection of outdoor exercise by detainees in level 2 security cells (e.g. tiled cells) must be documented.

Lockable boxes or containers

During visits to Innsbruck, Klagenfurt and St. Pölten police detention centres in 2016, the NPM found that detainees had no possibility to store personal items or clothing in lockable boxes. Due to this criticism by the NPM, the working group found it necessary to develop a uniform solution.

It was of particular importance to the NPM that detainees be provided with lockable boxes or containers to ensure a minimum level of privacy. This

enables detainees to store items in a way that prevents unauthorised access by other persons.

The discussion, which was still ongoing at the time of completing this report, revealed that in some police detention centres, it was not possible to install lockable boxes due to lack of space. The Federal Ministry of the Interior finally promised to examine the technical alternative of smaller lockable containers to determine their feasibility. The NPM will monitor progress and report on this matter.

It should be noted in this regard that the Federal Ministry of the Interior initially stated that it had ordered the installation of boxes in the cells at Innsbruck police detention centre. However, in July 2017, the Federal Ministry revised this intention since the cells lacked the space needed for the boxes that had been delivered. During a follow-up visit, the NPM confirmed this fact and criticised the incomprehensible procedure for obtaining the boxes.

Towards the end of the year under review, the working group addressed the protection of non-smokers as well as smoking during detention (cf. Section 14 of the Detention Regulation). The working group concluded that an absolute prohibition on smoking in police detention centres was not desirable. There was agreement that the measures to protect non-smokers should differ depending on the form of detention (open or closed detention):

Protection of non-smokers

According to the results of the discussions so far, corridors and common rooms in the open detention stations of all police detention centres should be non-smoking zones in the future. Smoking should only be allowed in cells used by prisoners who smoke. The unlocked doors of these cells should be kept closed due to smoke emission.

In the closed detention stations of the police detention centres, there should be a ban on smoking except in cells used by smokers. Such a prohibition is also intended for the visiting rooms of all police detention centres. For both forms of detention, it should be ensured that non-smoking prisoners are only held in detention with other non-smokers, if desired. The NPM will monitor and report on the progress of this discussion.

The standards developed by the working group thus far should be implemented by the Federal Ministry of the Interior as quickly as possible in the form of decrees, amendments to internal guidelines or to the Detention Regulation or by taking physical measures (e.g. structural adaptations).

- ▶ *All police detention centres must have a sufficient number of inmate cells that are suitable for single detention in accordance with Section 5 or 5b (2) (4) of the Detention Regulation.*
- ▶ *The initial medical examination of prisoners held in specially secured cells must be conducted as soon as possible.*
- ▶ *Specially secured cells should allow the entrance of natural light, and all single cells must have natural and mechanical ventilation.*
- ▶ *All single cells must have an alarm button, which can be activated at the inmate cell.*
- ▶ *Single cells under Section 5 of the Detention Regulation must be equipped with a sink, a supply of hot and cold water, a sit-down toilet, a bed and a table with seating.*
- ▶ *Tiled security cells must have a (squat) toilet with flushing function, a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating).*
- ▶ *The technical surveillance of specially secured inmate cells should be carried out using video surveillance that is independent of any light source and protects the prisoner's privacy.*
- ▶ *Padded or rubberised inmate cells should be subject to constant personal surveillance, tiled security cells should be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance.*
- ▶ *The reason, commencement and end of detention in a single cell and the attendance of a doctor during detention in a specially secured cell must be documented.*
- ▶ *Persons in detention pending forced return must be transferred to the open detention station at the police detention centre within 48 hours of admission. There should only be exceptions to open detention in cases agreed upon with the NPM. The cell doors in open detention should be continuously open from 8 a.m. to 9 p.m.*
- ▶ *Hunger-strikers in detention pending forced return should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention station.*
- ▶ *Section 5a of the Detention Regulation should be amended to codify and clarify the principles for detention pending forced return in open detention stations.*
- ▶ *The Federal Ministry of the Interior must ensure that all detainees can receive 30-minute visits at least twice per week. Weekend visits should also be made possible.*
- ▶ *Unless there are certain security concerns or unless prisoners in court custody are involved, visits with detainees should be in the form of table visits. Measures should be taken to ensure that table visits are not disturbed – including by structural conditions.*
- ▶ *Detainees should be permitted physical contact with visitors in the form of non-sexual touching. A separate room with a table should be provided for visits with relatives who are minors.*
- ▶ *All detainees should be granted access to the outside world by providing radios and TV sets in communal rooms and offering (foreign-language) print media.*
- ▶ *Except for detainees in specially secured cells, detained persons should be able to use their own personal radio and TV set in their cells.*

- ▶ *It should be ensured that detainees are offered at least one hour of daily outdoor exercise. The interior and exterior areas of the police detention centre should be equipped for this purpose.*
- ▶ *An adequate supply of functioning (sports) equipment and board games should be provided, and detainees should be allowed to use leisure-time opportunities offered externally.*
- ▶ *It must be ensured that detainees have access to hygienic sanitary facilities. Privacy must be ensured through structural or organisational measures.*
- ▶ *Toilets in cells for multiple inmates must be designed so that they are completely separate from the rest of the inmate cell. The mattresses and textiles issued to detainees must be clean.*
- ▶ *Detainees should be able to shower at least twice per week – and to shower daily under special circumstances. Detainees must be informed of their opportunity to shower.*
- ▶ *All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation.*

### 6.6.3 Working group on suicide prevention

In 2017, the working group continued to formulate specific standards for suicide prevention in police detention. In 2016 (see Annual Report 2016, p. 210 et seq.), the NPM reported on results with respect to the following matters: training of staff, recognising when there is a risk of suicide and actions to take when there is a risk of suicide.

Experts from the Federal Ministry of the Interior's psychological service participated in two of the five meetings held to date. Options for the staff of the Federal Ministry in terms of mental hygiene and reflection (e.g. through peer support or psychological supervision) and the effectiveness of these measures were discussed in detail at these meetings.

With special consideration of the CPT guidelines on dealing with suicide-prone persons [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 38], the working group devoted itself to the formulation of basic conditions in the following areas during the year under review:

The working group agreed that, after a suicide (attempt), staff should initiate life-saving emergency measures and the rest of the rescue chain (emergency call, first aid). Fellow inmates should be relocated as quickly as possible. Relocation to a single detention cell should be avoided since the suicide (attempt) may have shocked or traumatised the persons affected by it. Fellow inmates and witnesses to the incident must be promptly treated in accordance with crisis intervention criteria. All persons, including police officers, should immediately be offered counselling.

Procedure after a  
suicide (attempt)

If there is a death, the place where the body was found should be immediately closed off and left unaltered. The police and the public prosecutors' office should be informed right away, and the police should secure the place where the body was found until the coroner's commission arrives.

**On-site reflection** After a suicide attempt or suicide, an internal reflection with experts (from outside the police station) must be quickly initiated. Police officers and medical staff who were affected by the suicide should be invited to the reflection.

**Case analysis** In the future, the police department's Office of Quality and Knowledge Management must make a case analysis after every suicide or (thwarted) suicide attempt. This analysis should examine the medical, psychological and organisational aspects of the case in a standardised manner. The employees of the affected police station should be involved as should outside experts, if necessary. The goal of the analysis is to obtain a learning experience to optimise future prevention work.

The final item in the standards for suicide prevention formulated by the working group was a guideline for documenting indicators of suicide risk. Accordingly, information that raises the suspicion that a person presents a danger to himself/herself must be suitably documented. It is irrelevant whether this information comes from internal or external sources.

In the future, every police officer should be required to document this information and pass it on. The police officer will also be required to ensure that the necessary (emergency) measures are initiated. This includes a medical assessment of the suspected suicide risk, suitable surveillance and the prevention of access to dangerous objects.

The working group agreed to attach a multi-page "list of indicators", which was prepared by an NPM psychiatric expert, to the text of the adopted standards as an appendix. The list contains illness-related, personal and situational factors for suicidal tendencies in detainees. The knowledge of these factors should aid in identifying the danger of suicide.

The NPM will recommend that the Federal Ministry of the Interior implements the suicide prevention standards it has developed as quickly as possible.

**Flow of information among Ministries** The working group also addressed possible measures to ensure the flow of information between the Federal Ministry of Justice (now the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice) and the Federal Ministry of the Interior. The working group agreed that information should be exchanged through a standardised, electronic process in the future. The working group will formulate an appropriate recommendation to avoid gaps in the information on suicide-prone detainees.

In addition, the working group will address the following matters: medical evaluation of threatened suicides, NPM suggestions to change the form



entitled “Police doctor’s assessment of the detainee’s soundness of mind” (“Zurechnungsfähigkeit Polizeiamtsärztliches Gutachten”), dealing with substance-impaired persons and the discussion of fitness to undergo detention.

- ▶ *All police officers should be trained to recognise suicidal behaviour and risk factors at an early stage and take suicide prevention measures.*
- ▶ *If a detained person is suspected of being suicide-prone, this should be documented. Information should be provided to decision-makers, and an assessment should be quickly made by a (specialised) doctor.*
- ▶ *If a danger of suicide is identified, organisational measures should be taken to prevent access by the detained person to dangerous objects.*
- ▶ *After a suicide (attempt), life-saving emergency measures should be taken and the rest of the rescue chain should be initiated. Crisis intervention measures should be carried out quickly with fellow prisoners.*
- ▶ *After a suicide (attempt), there should be reflection on the events within a short period of time within the facility, and police and medical personnel should be invited.*
- ▶ *Organisational guidelines should be issued to ensure that a standardised case analysis is made after every suicide or (thwarted) suicide attempt, to optimise prevention work.*

#### 6.6.4 Fire prevention in police detention

As the result of a deadly fire at Villach police detention centre in 2015, the NPM saw a need to establish uniform nationwide requirements for fire safety systems in police detention centres (see Annual Report 2015, p. 199 et seq.). In 2016, the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) at the Federal Ministry of the Interior decided to establish a technical group to discuss measures to improve preventive and protective fire safety (see Annual Report 2016, p. 213). This technical group began operating in April 2017 and formulated a recommendation paper in the course of three meetings.

The technical group stressed the need to ensure that fire prevention at police detention centres is at the highest possible level and at the current state of the art. This includes both preventive fire safety (organisational, technical and structural fire prevention) and protective fire safety (fire extinguishing aids, staff behaviour). To this end, the scope of the Technical Guidelines for Fire Prevention N 160/11 on “Structural and technical fire protection in correctional institutions” should be extended to include police detention rooms. Long-term improvement of fire safety should be achieved through new construction or renovation.

Optimisation of fire prevention

Before discussing specific recommendations, the technical group found that about 120 of the approximately 370 inmate cells within the Federal Ministry of the Interior's area of responsibility are located in detention centres or district or city police lock-ups. Only these inmate cells are intended for the long-term detention of persons. Detentions in the other rooms are only for the short term. This includes the detention rooms in police stations and the rooms in police stations where asylum seekers are detained in accordance with the Procedures Act of the Federal Office for Immigration and Asylum (*BFA-Verfahrensgesetz*); i.e. special units for incoming refugees.

It was agreed that a high degree of observation and enhanced organisational and personnel-related fire prevention measures shall be ensured in police stations and in special units for incoming refugees. In addition, smoking is prohibited in these detention rooms. Therefore, the technical group refrained from recommending measures to improve technical or structural fire prevention in these short-term detention places. As a consequence, the future Technical Guidelines for Fire Prevention should only relate to police detention centres and district or city police lock-ups.

After the adapted version of the Technical Guidelines for Fire Prevention takes effect, the Workplace Guidelines of the Federal Ministry of the Interior should be appropriately supplemented. Decrees and guidelines relating to the prison system should provide that long-term detention in rooms that do not comply with the recommended supplement to the Technical Guidelines for Fire Prevention should be avoided.

Overall strategy for organisational fire prevention

The technical group formulated several proposals to improve organisational and protective fire safety – which relate to all detention rooms. The technical group recommended that the Federal Ministry of the Interior develop an overall fire prevention strategy with target agreements and skills profiles for personnel.

Training of personnel

Training should enable police officers to recognise suicidal behaviour and take steps to de-escalate the situation if there is aggressive behaviour. In addition, fire prevention officers should receive basic theoretical training in fire prevention, and the other staff should participate in a fire-fighting drill at least once per year in the future. Detention rooms should be regularly inspected by the fire department, and there should be training in the area of body searches. The technical group also proposed that, in the future, respirators and exploration equipment should only be used in conjunction with appropriate training and preliminary medical examinations. This is to prevent staff from gaining the false impression that the use of this equipment is without risk.

The technical group also discussed the options for timely, reliable reporting of fire and for extinguishing fire in inmate cells. It was noted that the use of fire alarms in inmate cells was unsuccessful in the past due to frequent attempts at manipulating them on the part of detained persons. The installation of

fire alarms in smoking rooms also turned out to be unsuitable in practice. For these reasons, the technical group did not recommend the installation of fire alarms in all inmate cells.

However, the technical group recommended the installation of heat detectors in smoking rooms in the future if there is a need for detection systems despite the observation of these rooms by the staff. This recommendation seeks the greatest possible degree of risk minimisation.

Heat detectors in smoking rooms

The technical group recommended that the Federal Ministry of the Interior look for suitable fire alarm systems (smoke or heat detectors), which correspond to the current state of the art. If new systems are found, they should first be used in rooms for long-term detention and then in all detention rooms – with due consideration to the financial aspects. If this product research does not obtain any usable results, the Federal Ministry should initiate a scientific research project to obtain progress in this area. A glance over the border could be worthwhile: the German NPM indicated that fire prevention is not a problem in police detention centres in Germany since fire alarms have been installed in the ventilation systems, or vandalism-resistant fire prevention systems have been installed on the ceiling.

Moreover, in the future, all detention rooms operated by the Federal Ministry of the Interior will only be equipped with fire-retardant mattresses/bedding of the best possible standard.

In view of the high cost of retrofitting, the technical group refrained from recommending the use of permanently installed smoke extraction equipments. However, the technical group pointed out that the Technical Guidelines for Fire Prevention require the installation of exhaust systems in corridors and stairwells. In addition, the technical group recommended that mobile smoke extraction equipment or pressure aerators only be used in organisational areas where there are properly trained fire prevention groups.

(Mobile) smoke extraction equipment

The technical group submitted its recommendation paper to the Dialogue Committee on Civil Society at the Federal Ministry of the Interior in autumn 2017. In response to an inquiry from the NPM, the Federal Ministry stated that it has already ordered the relevant unit to implement these recommendations. The NPM will monitor further progress.

- ▶ *The level of fire prevention in police detention must be adjusted to at least meet the standards for correctional institutions.*
- ▶ *The Federal Ministry of the Interior should develop an overall strategy for a uniform national design for preventive and protective fire safety and issue appropriate standards.*

### 6.6.5 Deficits at Vordernberg detention centre

The NPM found numerous deficiencies when it visited Vordernberg detention centre in July 2016. As already stated in the last report (see Annual Report 2016, p. 216 et seq.), the NPM confronted the Federal Ministry of the Interior with the deficiencies it found. The Federal Ministry required over six months to respond despite regular reminders from the NPM. Since the response had not been received, the planned follow-up visit to the detention centre was delayed.

**Deficiencies still exist** The Federal Ministry of the Interior could not rebut all the NPM's points of criticism. One such criticism related to holding a detainee in a specially secured cell: the Federal Ministry justified this measure by the risk that the detainee would abscond but denied that there was any risk of self-inflicted injury. The NPM referred the Federal Ministry to the requirements for such measures under Section 5b (2) (4) of the Detention Regulation (*Anhalteordnung*). In another statement, the Federal Ministry conceded that it lacked a more benign option for holding the prisoner in secure detention in May 2016. The primary concern was that the doors of normal single cells were not sufficiently escape-proof.

The Federal Ministry of the Interior promised improvements to eliminate the deficiencies. The Federal Ministry intends to expand the very limited employment opportunities and change daily structure. In addition, the Federal Ministry announced the introduction of electronic patient documentation. Moreover, the Ministry said that an expansion of the outpatient areas was planned, so it would be possible to administer medications in the living areas. However, the Federal Ministry saw no need to allocate greater space in which to hold repatriation counselling sessions. It justified this by stating that these sessions took place in the living area.

**Follow-up visit in September 2017** The commission visited the detention centre again in September 2017 to verify that the announced measures had been implemented. It determined that neither daily structure nor employment opportunities had improved. The commission again determined that there was a need for more space to hold repatriation counselling sessions. It was found that the visiting room of the detention centre is being used for these counselling sessions. Therefore, the room cannot be used for visits from relatives at these times.

The spatial concept in the outpatient area of the detention centre and the medical and psychiatric care of prisoners were again problematical. The qualified nursing staff still seemed to be working under intense time pressure and had deficits in the knowledge of foreign languages. Contrary to the announcement of the Federal Ministry of the Interior, electronic patient documentation had not been established in the outpatient clinic. As with the last visit, there were qualitative deficiencies with respect to medical treatment. This primarily related to the administration of unsuitable compounds to substance-impaired (opioid-dependent) persons or the temporary discontinuation of medications.

The commission reviewed the detention of persons in a detention area at the closed detention station established in May 2017 and found problems as well: apparently, prisoners were primarily transferred to this area for disciplinary purposes. In addition, every hunger-striking detainee was held in this area for a certain period. The NPM asked the Federal Ministry of the Interior to issue a statement regarding this follow-up visit. It had not been received at the time of completing this report.

New area for closed detention

During another follow-up visit in November 2017, the commission primarily observed deficiencies in the medical care of substance-impaired detainees. The NPM asked the Federal Ministry of the Interior to announce measures to ensure adequate medical care to the affected persons. The NPM again recommended that patient documentation be maintained in electronic form. It was found that there were gaps and incorrect information in the handwritten documentation. For example, the staff did not notice that the results of more than 20 chest X-rays for diagnosing tuberculosis were missing.

Follow-up visit in November 2017

In addition to other organisational deficiencies, the NPM criticised the fact that guards were present at all medical examinations. Criticism was also directed at the small food portions and the continued lack of employment opportunities. Moreover, the NPM again expressed its concerns regarding the handling of closed detention at the detention centre. The Federal Ministry of the Interior also failed to make a statement with respect to this follow-up visit to date.

In the report 2016 (see Annual Report 2016, p. 217), the NPM reported on the visit to Vordernberg detention centre by the Committee on Migration, Refugees and Disabled Persons of the Parliamentary Assembly of the Council of Europe (PACE) in November 2016. The PACE delegation saw a need to increase the number of guards and improve access to information on the reasons for detention. This mainly related to the detainees' right to legal counselling. The delegation proposed that the design of the start screen on the information terminal, which is currently only in two languages, be changed.

Visit to Vordernberg detention centre by PACE and APT

In March 2017, the Federal Ministry of the Interior stated that it had ordered the transfer of ten additional police officers to the detention centre and also ordered technical improvements to the information terminal. The Federal Ministry rejected the criticism that information on legal counselling opportunities was unclear. It also explained that detainees receive a comprehensive informational brochure regarding their rights at admission. The NPM verified that legal counselling services are described in detail in that brochure. The PACE delegation was erroneously provided with a document that differed from this brochure.

- ▶ *The Federal Ministry of the Interior must ensure that all persons held in detention centres receive an adequate level of curative medical treatment based on state-of-the-art science.*
- ▶ *The medical and nursing staff of the detention centre must be able to access psychiatric expertise at any time.*
- ▶ *The existing spatial and staffing concept in the outpatient area of the detention centre should be adapted. Patient documentation in the outpatient area should be maintained in electronic form.*
- ▶ *The private organisations utilised in the detention centre should be furnished with sufficiently large rooms to provide their services without being disturbed.*
- ▶ *The detainees at the detention centre should have more varied employment opportunities.*
- ▶ *Detainees at the detention centre must not be held in security cells longer than necessary, and such detention must be in accordance with the principle of proportionality.*
- ▶ *Persons in detention pending forced return should only be held in the closed detention station of the detention centre in the cases agreed upon with the NPM.*
- ▶ *Hunger-strikers should only be held in isolation on the advice of a doctor and only for legitimate security and health reasons.*

### 6.6.6 Holding asylum seekers in closed detention

Unsuitable place for family accommodation

During a visit to Wels police detention centre in May 2016, the commission encountered eleven asylum seekers (some of whom were minors) in three locked cells. The members of a seven-person family were assigned to two adjacent cells. Another four-person family, which was held in the same cell, had only three beds. The doors to these cells were locked 23 hours per day. There was no active offer of a shower. The children, some of whom were very young, had no toys or other items which were suitable for children to keep them occupied.

The NPM took these observations as cause to point out to the Federal Ministry of the Interior that the human dignity of prisoners must be respected and that they should be detained as benignly as possible. The NPM gave special emphasis to the fact that all asylum seekers were not being held in freely accessible, spatially separated areas of the police detention centre.

In February 2017, the Federal Ministry of the Interior stated that the police detention centre building would have to be expanded to detain foreign nationals in conformity with the respective legal requirements (see Section 40 (2) of the Procedures Act for the Federal Office for Immigration and Asylum). Therefore, to ensure the most benign form of detention possible, the affected persons were assigned to adjacent cells. Moreover, the affected persons could

communicate with each other through the open tray slots in the cell doors. The relevant police department has ordered measures to be taken to sensitise police detention centre personnel to the situation.

In March 2017, the Federal Ministry of the Interior notified the NPM that in the future, it intends to use Wels police detention centre exclusively for the detention of asylum seekers after the relevant adaptations have been made.

- ▶ *Asylum seekers should be detained in open detention stations at police detention centres under the most benign conditions possible in accordance with Section 5a of the Detention Regulation.*
- ▶ *Families of asylum seekers must always be held in detention together. Children must be provided with suitable toys and items to occupy themselves.*
- ▶ *Detained asylum seekers must be actively offered showers upon admission to the police detention centre.*

### 6.6.7 Inadequate documentation of detentions

During a visit to Steyr police detention centre, the NPM found deficiencies in the documentation of detentions. For the most part, the electronic documentation lacked notes regarding detention in padded security cells. In addition, the form entitled "Detention log II" ("*Anhalteprotokoll II*") had no entries and no signature of the detainee. The purpose of the form is to inform detainees of their rights and confirm that they have been informed of their rights by their signatures. Therefore, the NPM asked the Federal Ministry of the Interior to deal with these deficiencies in documentation.

No proof that detainees were informed of their rights

The Federal Ministry conceded that an incorrect cell assignment had inadvertently been entered in the electronic documentation. The Ministry's explanation for the blank Detention log II was that the prisoner had been uncooperative and aggressive when admitted. However, the Federal Ministry admitted that this fact should have been documented on the form. Therefore, an appropriate police station training session was conducted.

During a visit to Hernalser Gürtel police detention centre, a detainee complained that he did not know why he had been transferred to a single cell. The commission was unable to derive any clear information regarding the transfer from the accompanying document. It only contained notes regarding the cell assignment, which had been revised by hand, and a crossed-out date. The NPM asked the Federal Ministry of the Interior to inform personnel as to the necessary care in documenting transfers.

Ambiguous documentation regarding transfers

The Federal Ministry of the Interior stated that the desired transfer to single detention has been properly registered in the electronic documentation. However, the Federal Ministry took the NPM's criticism of the content of the accompanying document as a reason to provide focused training to police detention centre personnel.

► *Detentions in police detention centres must be fully and comprehensibly documented.*

### 6.6.8 Positive observation

Bludenz police  
detention centre

One example of best practice is the conduct of the commander of Bludenz police detention centre with respect to his subordinates: during a fire caused by a detainee, an officer rescued the severely injured prisoner. The commander feared that the officer had suffered psychological trauma and asked peer support to contact the affected person. Since unprocessed traumatic events can interfere with a person's ability to work, the rapid initiation of psychological assistance counters this danger. This can avoid negative effects from interactions between personnel and detainees.

Vienna police  
detention centre

The NPM can also report two positive observations at Hernalser Gürtel police detention centre: one relates to the efforts of the police officers to survey the wishes of detainees. Persons in detention pending forced return can deposit their written wishes into a mailbox. However, many of them are illiterate. In view of the staff's workload, it is encouraging that the staff endeavour to assist detainees in filling out their wish lists on a daily basis.

Second, during a meeting with the commission at the end of November 2017, the Police Department of Vienna promised to change its personnel structure at the management level. As part of a new, centralised management structure, a group of commanders should be established by June 2018. These employees, who are to be entrusted with all matters, should also be available on the weekends. The primary goal of the structural changes is to improve the traceability of the security measures taken and counter the deficiencies in the documentation of such measures found by the NPM in 2017.



## 6.7 Police stations

### 6.7.1 Introduction

The commissions visited 63 police stations in the year under review. As in previous years, the focus of the visiting delegation was on the proper documentation of measures that restrict freedom as well as on the structure and furnishings of the stations and departments.

The NPM paid more attention to adequate staffing at police stations in the year under review. The main points of criticism were the low proportion of women law enforcement officers and the general understaffing of police stations and departments.

In August 2017, the NPM recommended the Federal Ministry of the Interior to install light switches in police station detention rooms (see chapter 6.7.2). In 2016, the NPM already addressed the issue of the lack of discretion during examinations by public health officers in police stations and the permissibility of locating detention rooms in the basement of police stations (see Annual Report 2016, p. 219 and pp. 224 et seq.). Recommendations on both topics were sent to the Federal Ministry of the Interior (see chapter 6.7.3 and 6.7.4).

Structural  
recommendation  
by NPM

On the question of whether police stations have to provide customer sanitary facilities, the NPM requested an assessment from the Human Rights Advisory Council in November 2017 (see chapter 6.7.5). There was no concluding statement by the Human Rights Advisory Council available at the time of completing this report.

As in previous years, the commissions observed that detained persons have to wait a considerable length of time in police stations before being examined. The NPM will continue to track which measures will be taken by the Federal Ministry of the Interior (see Annual Report 2016, pp. 220 et seq.). The Federal Ministry named Vorarlberg and Burgenland as good examples for providing support in rural areas. Through an agreement with the office of the regional government of Burgenland, the Police Department of Burgenland can conclude contracts with doctors also in those regions in which the police department itself is not the first instance security authority. In this way, a service is also available at night and at the weekends. The Federal Ministry has instructed the Police Departments of Lower Austria, Upper Austria, Styria, Carinthia, Salzburg and Tyrol to approach the respective offices of the regional governments. The Federal Ministry does, however, not expect a nationwide solution in the short term due to the legal separation of competencies.

Long waiting times for  
examination by (public)  
health officers

Vienna was less problematic to date due to the larger number of public health officers. Towards the end of the year, one commission detected deficiencies after visiting a police station. The NPM will follow up on this.

## 6.7.2 Light switches in detention rooms at police stations

During several monitoring and control visits in police stations, the NPM observed that detention rooms did not dispose of light switches that can be reached by the detainees. They thus have no control over the lighting – even though they can be detained for up to 48 hours in these cells. They have to rely on the law enforcement officers to fulfil their needs.

In principle, the NPM assumes that the competent police officers make an effort to fulfil the needs of the detained persons. However, the NPM believes that it must also be considered that the control of the light implies the possibility of abusing power.

Worse treatment than  
prison inmates

Prison inmates are entitled to reading lamps that can be switched on and off. For this reason, the NPM has difficulty to understand, from a human rights points of view, why detainees who are merely suspected of having committed a punishable deed are subjected to greater restriction during detention. The CPT standards [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 15, margin No. 47] also recommend the appropriate lighting of police cells that is bright enough to be able to read, outside of sleeping times.

The Human Rights Advisory Council, which is involved in the monitoring proceedings, made a statement recommending the provision of individual reading lamps in addition to the general room lighting.

The NPM recommended the Federal Ministry of the Interior to install light switches that the detainees can operate from inside the detention rooms as a standard. However, as those affected can be agitated after being arrested and taken to a police station, it should also be possible to deactivate the light switches from the outside in emergency situations.

Federal Ministry rejects  
implementation

In a statement, the Federal Ministry of the Interior rejected this recommendation. The Ministry argued that the existing regulations suffice to guarantee adequate lighting. Furthermore, the Federal Ministry holds the view that not only the short duration of the detention in a police station is an argument against implementing the recommendation, but also suicide prevention (increased risk potential through power outlets).

The NPM regrets the stance taken by the Federal Ministry, but needless to say stands by its recommendation.

► ***Detention rooms in police stations must be equipped with light switches that can be operated from the inside, but can also be deactivated from the outside for safety reasons. The Directive on Workplaces must be altered accordingly.***

### 6.7.3 Lack of discretion during examinations by (public) health officers

During visits to several police stations in Vienna, the NPM observed that examinations of detained persons by public health officers mostly took place in the presence of law enforcement officers. The privacy of the persons being examined was thus not protected.

When confronted with this criticism, the Federal Ministry of the Interior informed the NPM that examinations of detainees are conducted in anterooms to the detention area or in cells that cannot be looked into from the outside or are not publicly accessible. The absence of law enforcement officers is thus guaranteed. The involvement of police officers in examinations is only permitted for safety reasons.

The NPM stipulates – in accordance with the regulations of the CPT [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 13, margin No. 42] – that all medical examinations and treatments of persons in police custody must take place without law enforcement officers as a matter of principle. Safety aspects can, however, require the presence of a law enforcement officer during a medical examination or treatment in isolated cases.

The Human Rights Advisory Council made a statement in June 2017. Every suitable separate room can be used for an examination according to the position of the Human Rights Advisory Council. If there is no room available, a mobile privacy screen will suffice. The Human Rights Advisory Council endorsed the position of the NPM that the presence of a law enforcement officer during an examination has to be documented in the detention log.

The NPM recommended the Federal Ministry of the Interior to adjust the applicable guidelines for the medical services of police doctors: medical examinations and treatments of persons in police custody must be conducted alone with the doctor as a matter of principle. Law enforcement officers may only be called in for safety reasons. Those affected should only be presented to the doctor of the law enforcement body that carried out the arrest in exceptional cases. In the case of indecent exposure, the called in law enforcement officer must be of the same gender as the detained person. Law enforcement officers called in for safety reasons must remain out of earshot and, if possible, out of sight.

Police involvement only for safety reasons

The NPM also recommended the Federal Ministry of the Interior to provide separate examination rooms where possible, but in any case to take technical measures to guarantee a discreet medical examination (e.g. headphones, privacy screen). Where police stations are being built or converted, examination rooms with an emergency call system should be set up. The basis for the detention documentation has to be enhanced: the presence of a law enforcement officer during the medical examination and treatment, the name

Enhancement of detention documentation

and the reason for the presence of the called in law enforcement officer, as well as the information on the measures taken to protect the privacy of the detained person should be documented.

Federal Ministry will implement most recommendations

The Federal Ministry of the Interior promised to revise the guidelines for police medical service as recommended by the NPM. With regard to law enforcement officers called in for safety reasons, the Federal Ministry believes that these should remain close to the doctor. The Federal Ministry refused dedicated examination rooms for efficiency reasons but agreed to all of the necessary measures to protect privacy and discretion. The Federal Ministry will ensure that, in future, the involvement of a law enforcement officer during an examination is documented in a comprehensible manner. The Federal Ministry only rejected the recommendation of proof of whether the involvement was requested by a medical professional or on the initiative of the police force.

- ▶ *Medical examinations and treatments of persons in police custody must be carried out alone with the doctor as a matter of principle.*
- ▶ *Law enforcement officers may only be called in to medical examinations in police custody for safety reasons, and they should not have made the arrest.*
- ▶ *In the case of indecent exposure during medical examinations in police custody, the law enforcement officer called in must be of the same gender as the detained person.*
- ▶ *In any case, law enforcement officers that are called in for safety reasons in police custody have to remain out of earshot and, if possible, out of sight.*
- ▶ *Insofar as possible, separate examination rooms should be provided for police custody. In any case, technical measures must be taken to guarantee a discreet medical examination.*
- ▶ *When police stations are being built or converted, examination rooms with an emergency call system should be set up.*
- ▶ *In police custody, the presence of a law enforcement officer during the medical examination and treatment, the name and the reason for the presence of the called in law enforcement officer as well as information on which measures were taken to protect privacy must be documented in the detention log.*

#### 6.7.4 Basement detention rooms at police stations

As stated in last year's report, the NPM approached the Human Rights Advisory Council to clarify whether police detention rooms in basements are permissible (see Annual Report 2016, p. 224 et seq.)

Basement detention rooms as phase-out model only under certain conditions

In its statement, the Human Rights Advisory Council stipulated that the location of a detention room in the basement of a police station alone is not critical. It is far more important that attention is paid to complying with all

human rights standards: sufficient lighting and ventilation, compliance with fire safety regulations as well as the ability to make direct contact and quick reaction in the event of an incident. The Human Rights Advisory Council agreed with the NPM that detention rooms should not be located in the basement of new and converted police stations.

The Human Rights Advisory Council endorsed the view of the NPM that basement detention rooms located outside of the police station or department (e.g. in an adjacent building or separated by a floor that does not belong to the police station) do not comply with the applicable regulations.

Basement detention rooms must be directly linked to police station

A follow-up visit revealed that 26 detention rooms in basements did not comply with the human rights criteria. The Federal Ministry of the Interior conceded in its statement that only one impermissible detention room had been closed.

The NPM requested the Federal Ministry of the Interior to examine compliance with the organisational fire safety regulations within three months. The Federal Ministry was also asked to communicate where the impermissible basement detention rooms are located and to present a schedule for their closure. At the time of completing this report there was no definitive result.

- ▶ *Existing basement detention rooms in police stations must have sufficient lighting and ventilation, be compliant with the fire safety regulations and guarantee the ability to make direct contact and a quick reaction in the event of an incident.*
- ▶ *Existing detention rooms in the basement of police stations have to be directly linked to the police station or department.*
- ▶ *Detention rooms should not be located in the basement of new and converted detention rooms.*

### 6.7.5 Barrier-free sanitary facilities for visitors

During several visits, one commission criticised the lack of barrier-free toilets for visitors in police stations. This is exacerbated by the fact that there are often no other buildings (local authorities, restaurants) with barrier-free toilets in close proximity to police stations in exposed locations or rural areas.

With respect to the visit by the commission to Neustift in Stubaital police station in January 2017, the Federal Ministry of the Interior stated that it is not possible to provide a separate “guest toilet” due to the construction of the police station. The Federal Ministry of the Interior additionally pointed out on the occasion of the visit to Wattens police station in April 2017 that the Directive on Workplaces does not stipulate a binding obligation to build sanitary facilities for visitors in police stations. Item 3.1.2. of the directive

No obligation to have a „guest toilet“

merely stipulates that customer sanitary facilities must be adapted to the needs of persons with disabilities.

Police stations are often highly frequented places (e.g. when pressing charges, during interrogation and questioning) in which those affected can expect to wait for some time. In the view of the NPM, practical experience shows that problems arise in police stations with low staffing levels where there is often only one toilet available and it is not barrier-free.

Engagement of Human Rights Advisory Council

The NPM approached the Human Rights Advisory Council with the question as to whether there must be a barrier-free toilet available to third parties in police stations. A statement from the Human Rights Advisory Council was not available at the time of completing this report.

### 6.7.6 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.

Comprehensible information on rights

As in previous years (see most recently Annual Report 2016, p. 221), the NPM once again points out this year that detained persons have certain information and notification rights. If these rights are not protected, their constitutionally guaranteed right to personal freedom is violated. Public security officers have to inform detainees of their rights and document this. By signing the detention log, 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 in the log.

Special measures, such as handcuffing a detainee and removing the handcuffs, must be fully documented in a comprehensible manner, e.g. if the detainee is handcuffed for a lengthy period of time.

In 2017, the commissions again found deficiencies in the documentation of detentions and informed the heads of the police stations and departments of the same. The NPM criticised the inadequate documentation of removing handcuffs and handing out information sheets. Appearances prior to interrogation were not properly documented. The Federal Ministry of the Interior arranged training and awareness measures in the criticised cases.

Complete documentation in main file at police station handling the case

One commission initially assumed that detention logs were inadequately written in several police stations. Their observations were based on folders that they had inspected at the police stations. The Federal Ministry of the Interior clarified that the complete documentation of a detention is always kept in the main file of the department handling the case and can be inspected there.

Master folders provide a summary of all detentions in a police station. These also contain logs of temporary detentions – by no means exhaustive – from other police stations or departments. Detentions outside of the normally responsible police station or department are necessary if these do not have their own detention room. As complete documentation is maintained in the main folder in the police station or department handling the case, the NPM does not see this simplification of administration critically.

In 2016, the Federal Ministry of the Interior already promised a new edition of the “*Verwahrungsbuch*” (“detention book”) form (see Annual Report 2016, p. 222). A decree was issued in July 2017 according to which all police stations with usable detention rooms are obliged to maintain the detention book. The entries that have to be made in the detention book were also clarified with the decree.

Uniform detention book implemented

► *Detentions in police stations must be fully documented in a comprehensible manner.*

### 6.7.7 Inadequate personnel levels at police stations

In the previous reporting period, the NPM already criticised the observed shortage of personnel at police stations and the resultant workload for the law enforcement officers through overtime and night shifts (see Annual 2016, p. 222 et seq.)

The NPM criticised that a quarter of the permanent positions at the Bludenz motorway police station were not filled and that there was no promise on the part of the Federal Ministry of the Interior to fill them. At Wattens police station, a fifth of the permanent positions remained vacant for a period of three months. Two permanent positions were subsequently filled. Fortunately, the Federal Ministry followed the recommendation of the NPM to ease the pressure for the personnel at Kirchberg police station by adding an alpine law enforcement officer.

Personnel shortages result in high workload

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 rejected the recommended cover for persons on leave with the argument that the permanent position system of the Federal Government does not indicate any excess human resource capacity.

Information on the shortage of personnel in the police force is to be collected in all *Laender* within the framework of a structural analysis. A result is not yet available. Currently available knowledge, however, indicates that the Federal Ministry of the Interior is making efforts to increase the number of public security officers.

Low number of policewomen

The commissions also recorded the number of women law enforcement officers in the police stations and departments visited in 2017. In so doing, they observed that, for example, no policewomen were employed at Sillian police station. At other police stations, in particular in exposed rural areas, the number of women law enforcement officers was low. The Federal Ministry of the Interior assured that, if required, policewomen from the nearest police stations or departments are called in.

Increasing the proportion of women working in law enforcement is a matter of concern to the NPM for two reasons. If a policewoman has to be called to another police station because a woman is being detained there, this extends the detention time. A gender balance in the police force is also desirable with a view to protecting the victim in cases of domestic violence.

Proportion of women in law enforcement should increase

The Federal Ministry of the Interior conceded in its statement that the proportion of women law enforcement officers in Austria is currently around 14%. It also stated, however, that work is being done to increase the proportion of women. Due to its lecturing activities in the police force, the NPM can confirm that the proportion of women attendees in police school classes is between 30% and 50%.

- ▶ *The actual number of law enforcement officers working at the police stations should be equal to the planned number. Understaffing results in stress and overload, both of which also have a negative impact on the detainees.*
- ▶ *There should be a gender balance between women and men law enforcement officers at police stations. The proportion of women working in law enforcement should be increased.*

### 6.7.8 Inadequate equipment at police stations

Inadequate furnishings and equipment observed by the commissions during their visits is usually discussed with the head of the station during a final meeting. Improvements are often implemented on site without delay. Only if a solution cannot be reached in this way does the NPM approach the Federal Ministry of the Interior.

In a detention room at Nickelsdorf police station, a shower consisting of a metal frame and Plexiglas screens was a safety hazard. In 2017 the NPM criticised



that fact, but the detention room was not refurbished immediately in spite of the fact that there has already been a suicide. At first, the Federal Ministry of the Interior did not see a safety hazard, however, then it promised to close the detention room. At Pappenheimgasse police station, the NPM criticised that the emergency call bell was concealed behind the padding in the secure detention room. This deficiency was rectified immediately by adding a label.

The NPM also criticised missing or inadequate barrier-free toilets, the hygienic conditions in the secure area of a police station, the lack of a standby room, an unsecured window that can be reached from the detention room, inadequately stored service weapons, an insufficiently lit detention room in the basement of a police station, a missing security checkpoint as well as defective call bells in detention rooms. Fortunately, the Federal Ministry of the Interior rectified the deficiencies without delay.

Many equipment-related deficits

In contrast, the lack of barrier-free accessibility is a criticism that generally cannot be rectified quickly or at all. The Federal Ministry of the Interior drew up a staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities (*Bundes-Behindertengleichstellungsgesetz*) indicating by when which police station should have barrier-free furnishings and equipment. In around 300 police stations, which are not included in the staged plan, barrier-free accessibility is technically infeasible. These stations will have to be moved if no alternative solution can be found by the end of 2019. The NPM insists again that the police stations are equipped and furnished to barrier-free standards as quickly as possible.

In one case, a commission observed that a police station was erroneously labelled as barrier-free. The Federal Ministry of the Interior inspected the staged plan and promised to have a ramp built to make the building more easily accessible. In another case, the Federal Ministry promised to remove a threshold that was too high in the entrance area of a police station.

NPM recommendations were taken up

- ▶ *Detention rooms must be equipped and furnished in a way that they cannot be vandalised. Fittings and components that can cause injury or be used as fixing points for strangulation must be avoided.*
- ▶ *Alarm buttons in detention rooms must be sufficiently marked so that detained persons can contact the guards.*
- ▶ *Police stations must be hygienic and have personnel safety systems. Detention rooms must be sufficiently lit.*
- ▶ *Police stations should be barrier-free. The existing staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities must be complied with. Barriers must be removed immediately in urgent cases.*

### 6.7.9 Calling in a biased interpreter

During a visit to Fieberbrunn police station, the commission observed that from the beginning of February 2016 to the beginning of May 2016 six restraining orders were issued to residents of the federal support facility Tyrol close by. The same employee of the Bürglkopf support facility acted as an interpreter every time. In one case, this employee was not only used to help in translating but was also questioned as a witness. The deputy local police commander stated that this employee was only asked for assistance for low threshold offences and mere restraining orders. A sworn interpreter is called in for interrogation in relation to criminal offences.

Support staff  
not impartial

The NPM considers it problematic from a human rights point of view when the staff of a support facility are called in to assist in translating an official act. Support staff in federal support facilities are often confidants of the refugees. In violent incidents in the facilities, they are often questioned as witnesses, may have pressed charges or were even a victim themselves. For this reason, this person's impartiality is questionable. The NPM recommends using professional interpreters in future regardless of the purpose of the official act.

The Federal Ministry of the Interior stated that support staff who can speak the relevant language are only deployed for police work when there is imminent danger. The Federal Ministry took the criticism as an opportunity to inform the staff in the support facilities in the *Laender* of the possible impartiality. From the NPM's point of view, the use of a video interpreting system in police stations could be of help.

Expansion of video  
interpreting system  
desirable

In another case, the commission proposed introducing a video interpreting system for detained persons from other countries in police stations. It must be mentioned first that a video interpreting system is currently being tested for medical examinations at selected police detention centres. The Federal Ministry of the Interior informed the NPM that it sees the proposal positively but that

nothing can be decided until after the test operation has been evaluated. The NPM will continue to follow up on this topic.

- ▶ *Law enforcement officers should not call in the support staff of federal support facilities as interpreters to official acts. If required, professional interpreters must be deployed.*

### 6.7.10 Misuse of detention room as smoking area

During a visit to Enns police station, the commission observed that a detention room of the station was used as a smoking room for the staff. The NPM notes that this is not conducive to ensuring the non-smoker protection of the detained persons.

Protection of non-smokers must be observed

In a statement, the Federal Ministry of the Interior explained that the inappropriate use of the detention room was stopped immediately after the visit.

- ▶ *Non-smoker protection must be complied with in all police stations. Detention rooms may not be used as smoking rooms for staff.*

### 6.7.11 Positive observations

The commissions document their observations after every visit in a visit report. They regularly perceive improvements and positive aspects and communicate these at the concluding meetings. It was important to the NPM to inform the Federal Ministry of the Interior as the supreme body about positive impressions in some cases. The Federal Ministry and the affected police stations appreciated this kind of constructive cooperation.

Hollabrunn police station stood out in a very positive way during a visit by a commission in May 2017. Specially trained law enforcement officers offer all of those involved in violent incidents opportunities to talk and information. The detention rooms are clean and very well equipped. The detention book is maintained correctly and in a comprehensible manner.

Dialogue in cases of violence in the family

On its visit to Wagramer Strasse police station in January 2017, the commission praised the good cooperation and competence of the management team, having a woman as head, as well as comprehensible and correct detention documentation, the acceptance of peer support through the staff and the factual way in which restraining orders are issued.

**Good cooperation** The commissions observed good cooperation with the NPM on many visits in this year under review. The law enforcement officers of Mittersill police station who despite having their hands full on a major operation still received the commission in a friendly manner and were eager to provide information.

**Harmonious working atmosphere** On some visits, the harmonious working atmosphere, well equipped and clean detention rooms, pleasantly designed police stations and the complete documentation of detentions made a positive impression on the commissions.

During the visit to Hermann-Bahr-Strasse police station, the commission praised the practice of quickly separating the arrested person from the law enforcement officers who had arrested them. One commission acknowledged during the visit to Garsten police station that the COBRA special unit was called in to a potentially dangerous official act. One commission also deemed as positive that Hohenbergstrasse police station has its own examination rooms for examinations performed by public health officers.

## 6.8 Coercive acts

### 6.8.1 Introduction

**44 observations** In the year under review 2017, the commissions observed a total of 44 acts of direct administrative power and coercive measures. These included ten (forced) returns and 34 demonstrations, football matches, raids, events, inspections regarding basic reception conditions and other major police operations.

As in previous years, there was scarcely any criticism of police operations at football matches and targeted campaigns. This development has been continuing for years and is seen positively by the NPM.

In 2017, demonstrations were less frequently grounds for criticism than in previous years. This is largely attributable to the fact that the police relied more on de-escalation measures. In particular, the demonstrations against the Vienna Academics Ball 2017 went smoothly. However, police announcements during a demonstration were still barely audible.

Contact meetings prior to (forced) returns have also been successful in most cases. However, forced returns of children gave grounds for criticism.

**Obligation to notify NPM** In several cases, the NPM was not informed of upcoming operations even though there was an obligation to do so. The NPM clarified these cases with the Federal Ministry of the Interior and made reference to the regulations set forth in the notification decree of the Ministry. The NPM expressed the wish that the Federal Ministry inform the NPM in future of all operations governed by the notification decree without exception.

### 6.8.2 NPM participates in returns by air

In 2017, members of the commissions participated in forced returns by air once again. On 2 March, members of the commissions accompanied a forced return to Moscow and on 10 May 2017 to Lagos in Nigeria.

No problems during forced returns by air

The forced return by air went smoothly in both cases. The cooperation between the NPM and the Federal Office for Immigration and Asylum as well as the Schwechat city police squad was also very good.

### 6.8.3 No notice of police actions to NPM

Despite a decree enacted by the Federal Ministry of the Interior that regulates the obligation of the Ministry to inform the NPM (“notification decree”), the same was not duly notified in several cases.

The NPM criticised that the commission only learned that the football game between WSG Wattens and Wacker Innsbruck on 21 April 2017 was a high-risk game after taking the initiative and asking. The Federal Ministry of the Interior justified its action by claiming that it only learned of a planned fan march just before the kick-off. The risk potential thus only became evident later on. This is why the NPM was not notified.

No notification about Tyrolean football derby

The NPM observed that due to the emotional nature of a Tyrolean derby football game, these events are always risk games. As a consequence, the Federal Ministry of the Interior took measures to improve the awareness of those responsible and other organisational measures to avoid deficiencies such as these in the future.

In another case, the Federal Ministry of the Interior apologised for missing to give notification of the clearing of the demonstration camp at the river Mur on 3 July 2017. This was justified with the workload required for a major event that was running in parallel.

Clearance of the Mur camp

There were different interpretations of the term “notification decree” regarding the police operation at the *Narzissenfest*, a large and well-known flower festival held in Bad Aussee on 28 May 2017.

*Narzissenfest* in Bad Aussee

A NPM delegation observed this event without the Federal Ministry of the Interior notifying the NPM of the police operation in advance. In doing so, the commission witnessed that anti-terror units were called in and anti-terror measures implemented.

According to the Federal Ministry of the Interior, there was no notification because the event was classified as peaceful by the police. The anti-terror units and anti-terror measures were necessary due to the violent incidences that had taken place recently at comparable peaceful events in neighbouring countries.

This argument was inconsistent for the NPM because no event can be classified as peaceful if riots or acts of terror, even if only in an abstract sense, can be expected. For this reason, the NPM suggested that in future with regard to the notification of the NPM less the occasion of an event or its meaning, and more a possible threat should be considered.

- ▶ *The Federal Ministry of the Interior should take greater care to ensure and, where necessary, make those responsible in the Laender police departments aware that the obligation to notify about police operations is complied with. In this way, the NPM can fulfil its legal mandate.*

#### 6.8.4 Observations of demonstrations

No alternative area in the event of escalation

The “People over Borders” demonstration took place at the Brenner Pass on 24 April 2017. The police operation was praised by and large; however, the NPM criticised that there were no alternative or overflow areas. This meant that there would have been major problems in the event of an escalation, as it would not have been possible for the demonstrators to evacuate. The NPM is fully aware of the difficult geographical and infrastructural situation at the Brenner Pass, which is why it could understand the difficulty in planning and executing this operation.

Police announcement inaudible

At the “Borders for a Safe Europe” demonstration and the counterdemonstration which took place in Vienna on 11 June 2016, the NPM criticised as in previous years (see Annual Report 2014, p. 195; Annual Report 2016, p. 230 et seq.) that the police announcements during the demonstration were barely audible.

In this case too, the NPM was fully aware that the police operation posed a considerable challenge because demonstrators actively sought confrontations both with other demonstrators and the police. The observing members of the commissions were unable to hear police announcements requesting the demonstrators to leave a location. The consequence was a very intrusive use of pepper spray because many of the demonstrators were not able to withdraw quickly enough.

- ▶ *The police force should be provided with technical equipment that enables announcements to be heard and understood by demonstrators. It should thus be possible for the demonstrators to follow orders by the police.*

### 6.8.5 (Forced) returns

As in previous years (see Annual Report 2015, p. 211), the NPM criticised that insufficient consideration is given to the wellbeing of children when determining the time of (forced) returns.

Negative impact on children's wellbeing

The NPM therefore criticised a return to Poland that was carried out at 1:30 a.m. The group of persons to be returned included several minors, some of whom were small children and babies. The Federal Ministry of the Interior explained that the Polish authorities had requested the arrival in Poland between 9 a.m. and 10 a.m. The NPM emphasised that in this case the Federal Ministry should have agreed a later transfer of those being returned.

For several years now the NPM has been criticising that the separation of families is accepted during (forced) returns (see Annual Report 2015, p. 211 et seq.; Annual Report 2014, p. 191).

It became evident in one case that children were to be separated from their mother. The mother could not be deported to Armenia on the planned official date due to health reasons. The authorities subsequently deported the two minor children accompanied by their father. The forced return of the mother took place three days later after she had recovered. The NPM criticised that the authorities did not wait for the mother to recover and the family was thus separated unnecessarily.

Separation of families

Moreover, the mother was the sole legal guardian of the children meaning that they were deported to Armenia with their father who had no parental custody for them. The NPM criticised this course of action. In the opinion of the NPM, a breach of the custody regulation can represent a violation of the children's wellbeing. The authorities did not check the family background which meant that the children were exposed to potential danger.

Violation of parental custody rights

The NPM shares the view of the Federal Ministry of the Interior that every (forced) return must be subject to a case-by-case assessment. The wellbeing of the children and the effect on family life must always be taken into consideration at (forced) returns. In case of doubt, pursuant to Article 8 ECHR the protection of the children and family life is to be given priority over the interests of the state in bringing a family out of the country.

While observing a contact meeting, the commission discovered that there was no interpreter present during the medical examination by public health officers to ascertain whether a woman was fit to fly. And this even though she apparently only knew a few words of German and the authorities were aware of a mental disorder. It was subsequently not possible to clarify whether it was actually necessary to call in an interpreter in this case.

Video interpreter at examination by public health officers

The NPM emphasised that it is very important that people understand each other, in particular when dealing with persons who have mental issues or are

suffering from post-traumatic disorders. It is usually very difficult for persons with mental disorders to speak about their illness or health condition. In case of doubt, an interpreter or – if this is not possible – a video interpreter should be deployed.

Video interpreting is an adequate means of ensuring that people understand each other even for examinations or interrogation that has been arranged at short notice.

- ▶ *The wellbeing and needs of children, especially small children, must be taken into consideration when setting the time for (forced) returns.*
- ▶ *It should not be allowed to return or deport children without the parent who is their legal guardian.*
- ▶ *Families should not be separated during (forced) returns even if one of the parents is not fit for travel or cannot be found. If one of the parents goes into hiding in order to evade the official act, the authorities should first wait and exhaust all possibilities of finding all of the members of the family.*

### 6.8.6 Targeted campaigns

The NPM criticised the lack of a legal basis for an inspection regarding basic reception conditions. A delegation of the NPM observed that a representative from the Federal Ministry of the Interior, but no representative from the *Land* took part in an inspection of refugee housing belonging to the *Land* Tyrol.

Inspections regarding basic reception conditions without legal basis

Section 9a of the Federal Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*) authorises the Federal Ministry of the Interior to only take part in such inspections inside the area of responsibility of the *Laender* if the *Land* authorities take action and the Federal Ministry of the Interior asks to be involved. In the case in question however, there was no inspection by the *Land* Tyrol as no representatives from the authorities took part. In this respect, the participation of a representative from the Federal Ministry of the Interior was not permissible.

Lack of policewomen in targeted campaigns

The Police Department of Tyrol carried out targeted Aliens Police inspections in Innsbruck. These included checks on women in the area of sex work and prostitution. In two cases the NPM criticised that there were no policewomen in the operations team.

The Federal Ministry of the Interior advised that prior to the official acts only postal deliveries and ID controls, but no body searches were planned. The NPM stated that in this case the Police Department of Tyrol quite obviously did plan official acts in the area of street prostitution.



In its Report 2015 (see Annual Report 2015, p. 215), the NPM already criticised that no policewomen took part in controls in the area of sex work and prostitution. Women in particular are affected in this area. They can be potential victims of human trafficking. It is easier for these women to trust policewomen, and these can better counter insecurity.

Potential victims of human trafficking

► *Policewomen should always be involved in police official acts in the area of sex work and prostitution.*

### 6.8.7 Positive observations

As in previous years, many police operations were positive in 2017.

The deployment of the police force at the Rolling Stones concert at the Red Bull Ring on 16 September 2017 was praised as a cautiously planned and correctly executed major operation. The NPM informed the Federal Ministry of the Interior about the poor planning on the part of the event organiser and the inadequacies of their security personnel which were the subject of discussion, and asked about the efficacy of the cooperation. In this respect, no failings on the part of the police were ascertainable. Private event organisers and their security personnel are not subject to the NPM mandate.

Professional operation at Rolling Stones concert

The “Joint action day” campaign in Graz on human trafficking on 18 May 2017 was also rated positively. This was a pan-European targeted campaign organised by the police on the topic of human trafficking.

In many cases the police force contributed to a smooth operation at demonstrations by applying de-escalating measures, e.g. by deploying an adequate number of officers, not wearing helmets, accompanying the demonstration in a loose formation or in the background.

De-escalation operations at demonstrations

The demonstration against the Vienna Academics Ball which resulted in riots and damage to property in 2014 went smoothly. The police behaved professionally and in a de-escalating manner.

The police demonstrated great flexibility at the Identitarian Movement demonstration at Kahlenberg on 9 September 2017. They escorted the public service bus from Kahlenberg into the city in order to enable uninvolved day-trippers to depart from Kahlenberg. A change of route at short notice prevented the Identitarian Movement from meeting counter-demonstrators.

In two cases, the NPM observed professionally executed Aliens Police inspections with relevance to basic reception conditions. The way in which the officers dealt with the affected persons was appreciative and respectful. They

handed affected persons information sheets that explained the reason for the inspection in their respective native language.

Positive observations  
at forced returns

The NPM observed contact meetings within the framework of pending forced returns at the Zinnergasse family shelter. The meetings were held professionally. In one special case, the daily allowance from the authorities for a mother with two minor children was raised without hesitation.

At a football match in the Allianz Stadium in Vienna, the NPM found it problematic that the fan groups were not sufficiently separated both inside and outside the stadium. The Federal Ministry of the Interior informed that this perception was shared also by the forces on site. As a result, the local police and the person responsible for security with the event organiser discussed ways of increasing safety around the stadium.

Separation  
of fan groups

The NPM observed a strategic separation of fan groups at several subsequent football games. The NPM appreciated this development. All measures were taken to ensure a coordinated fan march before the game, during admission and after the end of the game. It could thus be avoided that the risk groups meet each other. The number of officers on site was also considered appropriate in most cases.

The NPM noticed structural defects in the building while observing a football game at the Allianz Stadium in Vienna. The NPM informed the Federal Ministry of the Interior; however, there is no connection with the mandate to observe coercive acts. Nonetheless, the security authorities should find suitable solutions together with the event organisers and the Municipal authority of Vienna.

The cooperation between the members of the commissions and the security forces continued to function well in 2017. Any questions that arose could be clarified during the operation or in a final meeting.

## 7 Recommendations of the Austrian National Preventive Mechanism (NPM)

### 7.1 Retirement and nursing homes

#### Living Conditions

Retirement and nursing homes are not an adequate living environment for young persons with disabilities. (2013). Persons with mental illnesses must be cared for in compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD) in low-threshold and local care settings. Misplacements in nursing homes must be reversed and stopped. (2017)

Unusual mealtimes and early bedtimes are an expression of structural violence and should be avoided. Evening activities for residents with dementia who have insomnia and are restless are necessary. (2013, 2015)

The wishes of the residents should be taken into consideration when mealtimes are scheduled; 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)

Access to the outdoors once a day must be ensured, 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)

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. (2016)

#### Access to information within institutions and facilities

It must be guaranteed that residents are informed of their rights, and that relatives and trusted persons know these rights. (2017)

#### Complaint management

Professional complaint management is an important preventive mechanism for avoiding conflict. (2017)

Residents should be supported in submitting verbal, written or anonymous complaints. (2017)

Complaints should be followed up on without delay. Misunderstandings and unfulfilled wishes must be clarified, the lack of information rectified, and solvable problems should also be addressed quickly. (2017)

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#### Educational and occupational opportunities

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)

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#### Measures that 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 examine themselves self-critically on a regular basis. (2014)

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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 as far as substance, space, time and personnel are concerned. (2014)

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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. (2016)

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Restrictions of freedom by way of medication are subject to control by the courts and must be reported by the 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, 2016)

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#### Health care

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 change. (2015)

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Fall incidents must be carefully analysed, centrally documented and evaluated. (2015)

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)

It must be ensured that persons in facilities for the elderly can freely choose their doctors. (2014)

Care by specialists must be ensured without restrictions. (2014)

Specialist medical and nursing care for persons suffering from gerontopsychiatric illnesses, who are mostly very elderly residents, must be guaranteed. Exchange about cases between specialist doctors and nursing staff must be arranged. (2016)

Specific needs-based care concepts must be established for treating of persons with chronic psychiatric diseases. Individual support measures that facilitate full reintegration should be part of the rehabilitative treatment concept. (2017)

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 medication unobtrusively with food without obtaining informed consent from the persons affected. (2014)

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, 2017)

Administering medicines is fundamentally the job of doctors and can be delegated to qualified nursing staff, provided that the amount, dose, type and time of administration is noted in written form in the patients' charts by the doctors authorised to issue prescriptions. (2014)

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. (2016)

In particular, prescribing benzodiazepines and antipsychotics without corresponding indication or without regular evaluation of whether another prescription is necessary should stop. (2017)

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)

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. (2016)

Non-medication-based measures to minimise sleep disorders should be used systematically and documented. (2015)

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. (2016)

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Pain assessments must be a part of every nursing management plan. (2016)

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 long-term inpatient care. (2014)

Every seriously and terminally ill person has a right to the comprehensive medical, nursing, psychosocial and spiritual care and support that is commensurate with their individual life situation and hospice-palliative care needs. (2017)

The nationwide implementation of an equal access to hospice and palliative care in nursing homes has to be sensitive to the personal and cultural values, beliefs and rituals in order to facilitate dying with dignity. (2017)

Care dialogues should be established in all facilities. Residents and their trusted persons should be supported in making decisions that affect the final phase of their life. This requires space and time for passing on comprehensible information related to predictions as well as treatment and care options. (2017)

## Personnel

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. (2016)

High staff turnover should be perceived by home operators and supervisory authorities as an alarming indication of inadequate nursing. (2016)

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)

An important task of management is to promote the acceptance of supervision by staff and to support reflection on work within the facility. (2016)

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 mental hygiene and helps to prevent burnout, bullying/harassment and violence. (2013)

Violence prevention concepts must be elaborated in all facilities. The commitment to care free of violence must be established in guidelines. (2016)

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. (2016)

More specific education of doctors with regard to treatment of elderly patients with medication is necessary. (2014)

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. (2016)

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)

A changed morbidity spectrum requires the interlocking of primary medical and nursing care. The collaboration between the general practitioner's office and nursing specialists should comprise joint case planning, effective communication and mutual understanding. (2017)

## 7.2 Hospitals and psychiatric clinics

### Location

Local care of the patients must be ensured as part of the regionalisation of psychiatry. (2017)

Time-consuming transports must be avoided by setting up decentralised accommodation areas for patients in acute situations. (2017)

Strengthening and the regionalisation of the structures for outpatient and day-care clinic child and adolescent psychiatry are urgently required. (2017)

### 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 illnesses must be expanded in order to prevent effects that require hospitalisation. (2014)

The bed capacities in child and adolescent psychiatry must be increased quickly in order to facilitate adequate care for children and adolescents. (2016, 2017)

The architecture of health care institutions has an effect on the recovery process and on the occurrence of violence. Suitable architectural conditions must thus be provided to ensure treatment quality and avoid violence. (2016)

Suitable architectural conditions must be guaranteed in psychiatric wards in particular. It is unacceptable that the modernisation of psychiatric wards often has lower priority than the modernisation of other wards. (2016)

In the field of psychiatry, refurbishment measures and new construction are urgently required and must be initiated as soon as possible in order to guarantee contemporary care. (2017)

### Living conditions

Children and adolescents 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)

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. (2016)

Non-residential facilities for taking care of persons with psychiatric diseases and for gerontopsychiatric patients must be increased in order to avoid hospital stays that are no longer medically indicated. (2015, 2017)

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)

A comprehensive preventive concept is required in order to avoid sexual assault in medical facilities. (2017)

The ban on wearing private clothes is a violation of personal rights, and therefore the patients' representatives must be informed immediately. (2016)

Transfers of patients requiring placement must be avoided where possible and must be accompanied by psychiatrically trained personnel. (2016)

### Right to family and privacy

Therapeutic meetings should take place in designated rooms in the interest of protecting the personal space of the patients. (2017)

A designated single room must be set up for applying restraints. (2017)

### 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 approaches 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)



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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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Measures that restrict freedom must be applied as gently as possible. This also includes holding follow-up meetings with the patients after the end of the measure. (2017)

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Closely meshed personal care with very frequent verbal contact and sufficient staffing must be provided in order to avoid or reduce the use of coercive measures. (2017)

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The application of measures that restrict freedom due to advance or reserve doctors' prescriptions must stop because this results in the illegal delegation of the relevant mandatory authority to write prescriptions to the nursing staff. (2017)

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The application of measures that restrict freedom must be fully documented in a comprehensible way. (2017)

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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. Restraints can be used only with 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 the cases when 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 (*Unterbringungsgesetz*) 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 ranges 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)

When the use of net beds is discontinued, alternatives to measures restricting freedom must be considered and realised. (2014)

The setting up of central registers to record measures that restrict freedom in psychiatric hospitals should be set down by law. (2016, 2017)

Medication-based restrictions of freedom can also be applied in psychiatric hospitals and must be reported pursuant to the Hospitalisation of Mentally Ill Persons Act. (2017)

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. (2016)

Measures that restrict freedom must be submitted and confirmed immediately, including on public holidays and weekends. (2016)

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. (2016)

One-point restraints must be stopped due to the risk of strangulation. (2016)

#### Security measures

The deployment of a security company for the purposes of care must be avoided in general. (2016)

The area of activity of the staff of the security companies in medical facilities must be clearly regulated in guidelines. (2016)

The holding of mentally ill persons 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 exclusively to the nursing staff under the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*). Given the lack of any statutory basis, private security companies appointed by medical facilities are not allowed to implement nursing measures and to participate in the application of restraints. (2014)

#### Health care

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)

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. (2016)

The prescription of PRN medication must be precise and in accordance with the legal requirements. (2017)

#### Personnel

Staff-related, organisational and patient-related strategies must be intertwined in violence protection. Security services should never be deployed in the border area to nursing and care. Preference should be given to alternative measures (e.g. crisis teams) in as far as possible. (2016, 2017)

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 doctors 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)

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. (2016)

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. (2016)

Sexual harassment must be combatted with further education and training of the personnel on the topics of culture, tradition, closeness and distance. Patients should receive information material on possible contacts during admission to hospital. Easily accessible advisory services should be extended. (2016)

Video interpreting services should be expanded in hospitals in order to accommodate the intercultural care of patients. (2016)

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. (2016)

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. (2016)

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. (2016)

Flexible personnel planning systems must be implemented in medical facilities in order to facilitate fast reaction to concrete conditions and existing requirements. (2017)

Attention must be given to an appreciative approach when caring for persons with mental illnesses in order to avoid a feeling of powerlessness and degradation. (2017)

Training capacity must be stepped up to meet increasing demand and in light of the expansion of services in the child and adolescent psychiatry area. (2017)

The number of office-based medical specialists for child and adolescent psychiatry who have a contract with public health insurance offices should be increased in all *Laender* in light of the rising nationwide demand. (2017)

The care mandate of the psychosomatic sections of paediatric wards should be clearly defined by separating it from treatment reserved for child and adolescent psychiatric wards (2017)

All staff of the medical facility with patient contact should take part in de-escalation training programmes in the interest of comprehensive violence protection. (2017)

#### Returns and management of release

The authority of persons having powers of representation must be carefully examined as part of discharge management. (2017)

## 7.3 Child and youth welfare facilities

#### Infrastructural fixtures and fittings

Facilities operated by child and youth welfare organisations must be fully accessible. (2014)

Lockable containers (boxes) for the private property of minors should be part of the minimum provisions in facilities in which children and adolescents live. (2015)

Individual privacy must be enabled for minors as well. While staff should be able to open doors, it should also be possible for minors to lock them from the inside. (2015)

## Living conditions

The structures in homes hamper work in accordance with the current 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 therefore replace large homes. (2014)

In all *Laender*, children and adolescents should not be cared for in large facilities, but rather in small, family-like residential groups. The number of crisis de-escalation places must be commensurate with the actual requirement. It is recommended that the maximum permitted group size be reduced to ten minors. (2016, 2017)

As competent authorities for child and youth welfare and protection, the *Laender* must ensure that restructuring processes do not come to a standstill before completion. (2017)

Changes need to be made to basic conditions of children and adolescents’ environment which create opportunities for sexual violence. (2015)

The differentiation between children and adolescents 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 therefore also entitled to care that is appropriate to their needs and is 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)

The child’s wellbeing must be the main focus in supporting unaccompanied minor refugees. The financing of the care facilities for unaccompanied minor refugees and the standards of reception conditions under the Basic Provision Agreement must be aligned with those of the socio-pedagogic facilities. (2017)

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)

Unaccompanied minor refugees should be accommodated exclusively in residential groups. (2016)

Special care places for multiply and severely traumatised minor refugees must be created. (2016)

The NPM recommends that all unaccompanied minor refugees be promptly taken into custody at federal support facilities and transferred to *Land* accommodation which fulfils the reception conditions under the Basic Provision Agreement. (2015)

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)

All *Laender* must fulfil their care responsibilities themselves by way of providing suitable facilities, in order to avoid breakdowns of relationships that do not support the welfare of the children. (2014)

Concepts which involve crisis management to avoid breaking relationships should be adopted. (2016)

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)

Compliance with official requirements must be closely monitored in problem facilities. (2016)

Further harmonisation of the *Laender* minimum standards in the socio-pedagogical care of children and adolescents should be pursued on a nationwide level. (2017)

The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors. (2017)

Violence prevention and sex education concepts should be a condition for granting permits for socio-pedagogical facilities in all *Laender*. The implementation of these concepts must be monitored by the technical supervision of the *Laender*. (2017)

The number of socio-therapeutic care places must be increased substantially. (2017)

Crisis de-escalation places must be expanded to meet the requirements. Crisis centres must be created for children and adolescents suffering from psychiatric or post-traumatic stress disorders. (2017)

Models with time-out shared accommodation must be developed. (2016)

#### Access to information within the family

House and group rules must be developed in a participatory process with the minors. (2014)

The NPM recommends “house councils”, 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. (2016, 2017)

Records must be made in these meetings, and decisions taken in a participatory manner must be implemented. (2016)

#### Measures that restrict freedom

Child and youth welfare facilities must deal with the conditions that the Nursing and Residential Homes Residence Act (*Heimaufenthalts-gesetz*) requires for the permissible restriction of freedom, and they should actively seek cooperation with the representatives of the residents. (2017)

### Right to family and privacy

As competent authorities for child and youth welfare and protection, the *Laender* have to provide a needs-based expansion of the care structures. The proportion of out-of-home minors from other *Laender* must be kept as low as possible. (2017)

Placement of minors should be in close proximity to the parents' residence unless this is inadvisable for pedagogical reasons. Out-of-home placement at a great distance from the place of residence of the family of origin must be avoided. The aim is to protect the opportunity to visit and stay in contact in the interest of the children's wellbeing. (2014, 2017)

The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors. (2017)

### Educational and occupational opportunities

The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

Performance-related daily rates must be introduced and regularly adjusted. (2016)

Support for young adults must be provided for the entire duration of their education. (2016)

Care of refugees of legal age in training must be intensified. (2016)

An Austria-wide master plan is called for in order to ensure the extensive provision of offers for language learning, in particular for minor refugees. (2016)

The NPM demands a legal entitlement to support after reaching the legal age. (2017)

Measures for young adults should be approved for the entire duration of their education. (2017)

The training and education opportunities for minor asylum seekers who are no longer of school age should be improved throughout the country. (2017)

### Signs of torture, mistreatment, abuse, neglect and degrading treatment

Upbringing that is free of violence must be fully ensured for all minors. (2014)

The imposition of group punishment is inadmissible. (2013)

Pedagogical consequences as a reaction to disruptive or abnormal behaviour may not be excessive or humiliating. (2013)

Degrading punishments as pedagogical measures in child and youth welfare facilities are prohibited pursuant to Article 3 of ECHR. (2015, 2017)

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)

Sanctions must be directly associated with the rule violation. (2017)

Rule violations must be handled individually. (2015)

Models for redress need to be established, as an alternative to sanction systems. (2015)

## Health care

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)

Doctors must provide concrete instructions and prescriptions. (2015)

When administering prescription medication such as psychotropic medication, close attention must be paid to side-effects and interactions. (2015)

## Personnel

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. (2016)

An improvement in working conditions must be implemented in order to fill all of the vacant positions. (2016)

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. Causes of fluctuation must be prevented. (2016, 2017)

The NPM demands that only well-trained staff should work in child and youth welfare facilities. (2017)

Uniform training standards and quality standards in child and youth welfare must be created for all of Austria. (2017)

Both laws governing occupations and professions and also the training of social pedagogues should be standardised Austria-wide (agreement under Section 15 a of the Austrian Federal Constitution). (2014, 2017)

In addition to basic training, socio-pedagogic staff must have special competences 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)

Training in the legal requirements laid down in the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*) is required. (2017)

Assistance opportunities must be individualised, including within the framework of full residential care in facilities. (2014)

Scientific-based plans by the *Laender* to assist children and adolescents must include care deficits and measures to remedy them. (2014)

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 adolescents to get help, to insist on their right to physical and sexual self-determination and to critically question gender role stereotypes. (2014)



Sex education concepts must be devised and implemented in all child and youth welfare facilities. (2015)

The NPM calls for the adoption of a sex education concept as a condition for granting permits. (2016)

Recurring mandatory advanced training of the staff on the topic of sex education is necessary in all facilities. (2016, 2017)

The legal entitlement to assistance of young adults should be embedded in legislation and case management surrounding the termination of care should be improved. (2014)

Capacities for caring for children and adolescents with mental illnesses should be increased accordingly in line with regular needs assessments. The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

Special attention must be given to the need to treat traumatisation and psycho-social knock-on effects in unaccompanied minor refugees. Qualified staff must be trained in recognising abnormalities and symptoms so that they can quickly initiate help measures. (2017)

## 7.4 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)

Cost cuts may not be allowed to result in persons with mental illness being moved to other institutions against their will. (2017)

### Living conditions

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. (2016)

Needs and wishes of those affected must have priority. (2016)

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)

It is recommended that communication possibilities adapted to individual needs be opened to persons who have no ability to speak or who have impaired speech by means of Augmentative and Alternative Communication (AAC). (2016)

If an operator organisation offers a residential place as well as daily 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)

The NPM repeats the recommendation that the scope of the Equal Opportunities Acts be extended to include the housing of persons with mental illnesses, but also of persons with substance use disorders. (2017)

Promotion of equal opportunities for participation by persons with mental illnesses or disabilities is particularly important nationwide. (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)

Augmentative and Alternative Communication contributes to prevention of violence. To guarantee this, knowledge of the methods, relevant training and sufficient resources are required. (2016)

Facilities must take special care that persons with disabilities or a mental illness are not exposed to degrading treatment. (2016)

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 towards 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 to 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 made more difficult when residents are transferred to homes that are further away. (2014)

The NPM calls for the establishment of emergency plans for persons with disabilities among refugees as provided for under the UN CRPD. (2015)

The inclusion of persons with disabilities must be considered as a basic principle in all budget planning. (2017)

Examples of good practice should serve as models for the operators of institutions and facilities. (2017)

### Right to family and privacy

Persons with disabilities must be guaranteed sufficient privacy in all institutions and facilities. (2017)

Sex concepts should be mandatorily created and implemented by all operators of institutions and facilities. Persons with disabilities should be guaranteed the right to receive sex education and information in accordance with the right to sexual self-determination. (2017)

### Educational and occupational opportunities

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)

In order to enable the affected persons to live a more independent life, they have to be prepared as well as possible and supported accordingly. (2017)

### Complaint management

In all institutions and facilities persons with disabilities must have an adequate opportunity to submit complaints. (2013)

The conclusion of care home agreements in written form is absolutely essential for persons with disabilities according to applicable law. Agreements must be simply and comprehensibly worded. The persons involved must be able to understand and follow the content and ascertain which rights and duties are thereby established. (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)

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)

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)

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)

#### Signs of torture, mistreatment, abuse, neglect and degrading treatment

As a result of the size of the facilities, individual needs and wishes are addressed in a less optimal way. Increased efforts to drive de-institutionalisation forward are necessary. Comprehensive overall concepts are lacking and must be developed. (2014)

Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner. The authorities must draft quality standards for victim support in institutions and facilities. These should then serve the operators as guidelines for their work. (2015, 2017)

Clients with a high potential for violence should only be admitted to an institution if it is prepared for dealing with potential risks. (2017)

Regulations under Federal and *Laender* laws should stipulate a formulated de-escalation concept as the condition for granting permits for institutions and facilities for persons with disabilities. (2017)

#### Health care

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)

Health promotion through therapy offers must be based on professionally recognised concepts, which allow the highest possible level of self-determination in all areas. (2016)

Assistive technologies (e.g. apps for communicating with doctors in sign language) should be developed further and made available Austria-wide. (2015)

Psychotropic medication therapies require comprehensible pedagogical, psychological and psychiatric diagnostics and reasoned indication. Facilities must take care that therapy objectives are explained and executed in a comprehensible way and are evaluated regularly. (2016)

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. (2016)

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 adolescents 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.

Knowledge about pain diagnoses and the treatment of persons with disabilities must be enhanced for both the care staff and the medical staff. (2017)

Stable relationships between the staff and the persons being cared for are necessary to be able to perceive when these are in pain. High fluctuation rates and staff shortages have thus to be avoided. (2017)

The use of supported communication when required is urgently necessary as communication barriers have to be removed, in particular in relation to the diagnosis of pain. (2017)

Those suffering from addiction must have free and quick access to treatment programmes. Needs-based, top quality treatment programmes based on scientific standards must thus be guaranteed in the inpatient and in outpatient sector. (2017)

Comorbid disorders and illnesses have to be an integrative component of such treatment programmes in after-care facilities. (2017)

Relapses must be seen as a part of substance use disorders that is inherent in crises and require an in-depth multidisciplinary therapeutic approach. (2017)

Professional action-oriented expertise on assessing and predicting suicidal tendencies must be applied before therapy is (involuntary) discontinued. Evidence must be provided that the affected person has been informed of the increased mortality risk caused by discontinuing therapy. (2017)

After-care facilities for persons suffering from addiction must implement standardised crisis and discharge management with functioning interfaces to better quality care services in hospitals. (2017)

## 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)

The condition for effective violence prevention is the relevant training of the staff. This should be mandatory in institutions for persons with disabilities. (2017)

Operators of institutions should remove legal uncertainties on the part of staff in relation to the sexual self-determination of persons with disabilities through training and guidelines. (2017)

## 7.5 Correctional institutions

### Infrastructural fixtures and fittings

Structural adaptations to ensure that correctional institutions are equipped to accommodate persons with disabilities should be carried out for the detention of mentally ill offenders. (2014, 2016)

Measures should be taken urgently to remedy the, at times, completely inadequate material conditions and the, at times, inhumane living conditions of persons being held in detention (e.g. at Göllersdorf correctional institution). Mentally ill offenders should only be detained in specially designed therapeutic centres. (2017)

All inmate cells, including 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, 2017)

All cells for multiple inmates should be equipped with lockable lockers. (2014, 2016)

Specially secured cells must have suitable places to sit or recline. (2015) If they are not in use due to their equipment and furnishings, they must be removed from the cell layout plan. (2014)

The structure of a special medical facility must meet the standards for a regular medical facility. (2015)

Suitable visiting rooms must be ensured for visits with children, which should take place in a friendly atmosphere. (2017)

Furnishing a three-person inmate cell with two bunk beds should be avoided due to the possible overcrowding of the cell. (2014)

### Living conditions

The possibility of daily time outdoors of at least one hour for adults and two hours for juveniles must be provided. (2014) This must be a net period available to inmates. The time spent leading inmates to and from the outdoor area may not be included in calculating time spent outdoors. If daily time spent outdoors is cancelled due to bad weather, alternative opportunities for exercise should be offered (e.g. in a gymnasium). (2017)

Detainees should be offered 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 up to 23 hours per day are intolerable. (2016) 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. (2015)

It should be ensured that inmates are provided with sufficient individual living space in their cells. To prevent crowded conditions of detention, the maximum capacity of inmate cells and of a correctional institution must be reviewed from time to time and reduced, if necessary. (2017)

Detainees awaiting trial should be held separately from convicted prisoners. (2017) Based on the presumption of innocence, provisional detainees held in provisional detention should be separated from court-sentenced prisoners with mental health care needs. (2017)

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. (2016) To the extent possible, the religion of the inmates should be taken into consideration with regard to the selection of food. (2013)

The prices of consumer goods in the institution's supermarkets or kiosks must not be higher than those in the surrounding supermarkets. (2015)

In order to protect non-smokers, it must be ensured that non-smokers are protected against the health-endangering effects of tobacco smoke as far as possible. Smoking and non-smoking inmates must be housed separately from each other. Under no circumstances may small children be exposed to smoke. (2016, 2017)

The minimum standards for women in prisons set forth in a decree of the Federal Ministry for the Constitution, Reforms, Deregulation and Justice must be implemented as soon as possible. (2016)

The low number of female adolescents in custody cannot justify worse detention conditions. (2016) Female inmates may not be discriminated against based on gender. (2016)

Persons with mental impairments and detainees in need of care should receive professional support in cleaning their dining and living areas. (2016)

#### Right to family and privacy

Body searches involving disrobement must not be carried out in the presence of fellow inmates. They should be carried out in two stages so that the person being searched need not be fully disrobed. The cause and nature of a body search involving disrobement must be documented in writing. (2015, 2017)

Health-related data of inmates must not be posted on the inmate cell doors. (2017)

The doors of the doctor's office must be kept closed during medical consultations and examinations to ensure privacy and confidentiality. (2017) Medical confidentiality must be ensured in prisons to the same extent as in the outside world. (2017)

Measures must be taken to ensure that no media representatives are present during searches of inmate cells and body searches. (2017)

#### Contact with the outside

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, in particular in juvenile sections, the early evening on at least one working day or on weekends. (2015, 2016)

The opportunity to use Internet telephony and video services for visits should be introduced nationwide as soon as possible. (2015, 2016)

Forensic ward/psychiatric institutions: Whether a restriction on visits by minors is necessary should be examined on a case-by-case basis. (2017)

### Educational and occupational opportunities

Every detainee should carry out useful work or participate in meaningful activities. The employment rate should be increased. (2015, 2016) Workshops must be expanded as soon as possible. (2015) Companies providing occupational opportunities at correctional institutions should be continuously open. Work opportunities should also be expanded for detainees awaiting trial. (2017)

In addition to education and occupational or other training, involvement in sports should also be an important part of the programme of activities for young inmates. (2016)

Inmates should not have to choose between work and the rights to which they are entitled, such as outdoor exercise. (2014)

The expansion of occupational opportunities for women must be promoted, including in court prisons. The possibility for the joint performance of work by women and men should be expanded. (2014, 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)

There may be no discrimination against addicted persons with respect to their access to work and educational offerings due to their illness. (2017)

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 this applies to a large number of inmates. (2013)

### 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 provide decision-makers with a background for establishing a uniform ruling practice. (2014)

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) The house rules must be made available to inmates not only in German but also in a language that they understand. (2015)

Inmates are not to be involved to provide translation services. When there are communication problems, trained interpreters should be utilised. (2016) The video interpreting system should be made available as soon as possible Austria-wide for all specialist departments and for the areas of admission and the administrative penalty unit in all facilities for the detention of mentally ill offenders. If the video interpreting system is available, it should be used. (2016, 2017)

Information notices must be revised as soon as possible if there is a change in the law. (2014)



### Complaints management

The establishment of a complaint register must be vigorously pursued. (2014, 2015)

### Measures that restrict freedom

Task force trainings may not cause longer lock-up times. (2014)

Forensic ward/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. A form on “Restrictions on the freedom of movement”, recommended by the NPM, must be prepared. (2014)

All persons who are restrained or isolated against their will in a public medical facility should have the opportunity to be represented. (2017)

### Security measures

The ordering of urine tests should be noted in a register in order to ensure a traceability of random urine tests. (2013)

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)

If the Federal Ministry for the Constitution, Reforms, Deregulation and Justice assigns a person in detention to a public psychiatric facility, the Ministry is responsible for deficits in their infrastructure. If the Ministry cannot ensure that these deficits are remedied, the persons affected must be housed in a facility run by the Federal Ministry itself. (2014)

Mentally ill offenders (in particular if they are restrained or isolated) should have the same legal protection or have the opportunity to be represented as provided under the Hospitalisation of Mentally Ill Persons Act . (2017)

The straps on strap beds should always be covered so they are not visible to patients. (2017)

### Health care

Inmates are entitled to the same level of medical care and nursing as persons at liberty in hospitals and nursing homes. (2014, 2015)

There must be an adequate number of medical and nursing staff to provide medical and nursing treatment under conditions that are comparable to those of patients who are at liberty. (2017). It is necessary to hire additional medical personnel, particular for the purpose of psychiatric care, in numerous correctional institutions. (2015, 2016) The need for nursing staff must be regularly assessed and adjusted. (2017)

The key figures in the medical area, which have been lacking for years, must be determined as soon as possible. (2017)

Inmates with a substance use disorder have a right to have their special treatment, care and counselling needs taken into account. (2017)

Infirmery staff should wear a clearly visible tag stating their name or function. (2017)

In case there are communication problems in the medical area, trained interpreters should be utilised. The video interpreting systems should be made available in all infirmaries and used without exception. (2014, 2015, 2016, 2017) Forensic wards/psychiatric institutions: A video interpreting system should also be established in public hospitals. (2017)

Preventive examinations are part of standard medical care. (2014)

Regular visits, in particular, should help prevent the physical and emotional neglect of long-time inmates. (2014, 2015)

Nursing staff should give unrequested support to patients who need care and who may not be able to maintain adequate bodily hygiene on their own. (2016)

Only trained health care and nursing personnel should provide services in infirmaries and doctor's offices. They may not perform any supervisory functions. Prison guards may only be utilised as an exception by request of the doctor and due to a risk assessment. (2016)

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)

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. (2016)

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)

Newly arrived inmates must be subject to a medical examination by a doctor (health examination upon arrival) within 24 hours of their admission, or also in the event of a transfer (e.g. due to a change of prisons or a change of classification). (2016)

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, it should also include a full-body inspection including disrobement alongside a health examination upon arrival. Inmates should be expressly informed of the option of a blood test. The refusal by an inmate to take a blood test should be documented in the Electronic Patient Record Module. (2016, 2017)

Inmates who suffer from a (pre-existing) psychiatric disease should be sent to a specialist in psychiatry shortly after their admission to the correctional institution and receive psychiatric support through regular contacts. (2016)

In order to ensure effective suicide prevention, inmates who have been coded red in the VISCI system must be sent to the psychological and psychiatric service as soon as possible, and (medical) findings and therapy proposals must be prepared. (2016)

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Psychiatric and psychological care is part of health care and, as such, must be ensured by the institutions in pre-trial detention and in detention of mentally ill offenders. (2014) For adolescents and young adults, the psychiatric and psychological care must be provided by specialists in child and adolescent psychiatry, and must in particular involve the implementation or definition of the indications for substitution treatment. (2016)

Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from the other prison inmates. Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification. (2017)

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. (2016) Video monitoring does not rule out suicide by the persons at risk during an unobserved moment. (2014)

Individual offers of therapy for persons in detention must be provided along corresponding spaces. Therapy must commence promptly after admission. A standstill which lasts for months is unacceptable. (2017)

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. (2016)

Before providing placebo medication, steps must be taken to ensure that the consent of the individual in question is obtained. (2015)

## Personnel

An autonomous pool of employees should be available to the juvenile sections. These employees should have completed the training programme on “Detention of juvenile offenders as a field of work”. They should be available in sufficient numbers for night work and accompany juvenile inmates when they are taken outside. (2014, 2016)

Unless there are specific concerns in an individual situation, prison guards have to wear civilian clothing when taking juveniles outside. (2015, 2016)

Having to deal with suicides often leads to stress disorders long afterwards. This should be minimised through measures taken by the employer. The administration of the judiciary must make every effort to ensure that seeking psychotherapeutic care is not viewed as a weakness. (2014)

Law enforcement officers must be motivated to regularly utilise psychological supervision. (2017)

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. (2016)

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 people are hung in staff rooms. (2014)

### Returns and releases

There must be more follow-up-care places throughout Austria. (2013) In this regard, the creation of follow-up-care places for juveniles and persons with multiple diagnoses must be a priority, particularly in the western *Laender*. To better match up supply and demand, allocation management must be optimised with respect to after-care facilities. (2017)

The *Laender* should offer supervised housing to persons who cannot return to an independent lifestyle due to age or poor health. (2017)

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## 7.6 Barracks

### Infrastructural fixtures and fittings

When barracks are converted or when new barracks are built, military detention areas should be equipped with separate sanitary facilities in future. (2014)

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## 7.7 Police stations

### Infrastructural fixtures and fittings

An endeavour should be made to fully partition the toilet area – even for short-term detentions – for new construction, new rentals and converted buildings. (2015)

Detention areas in police stations 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. (2016)

Alarm buttons in detention rooms in police stations must be adequately labelled, so that detained persons can contact the guards. (2015, 2017)

Police stations must be hygienic, well-kept and equipped with functioning heating systems. (2014, 2015, 2016)

Police stations must have their own staff protection systems. (2016)

Police stations and police detention centres must have toilet facilities for female personnel. (2015)

Inmates in police stations must be given daily access to restroom sinks with warm water connections. (2014)

A permanently activated call bell system must be provided in police stations so that persons in police custody can always contact the guards. (2014, 2016)

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Police stations should be barrier-free. The existing staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities (*Bundes-Behindertengleichstellungsgesetz*) must be complied with. The approximately 300 police stations not contained in this plan must be relocated by 31 December 2019, or another organisational solution must be found. Barriers must be removed immediately in urgent cases. (2015, 2016, 2017)

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Detention rooms in police stations must be equipped with light switches that can be operated from the inside, but can also be deactivated from the outside for safety reasons. The Directive on Workplace must be altered accordingly. (2016, 2017)

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When police stations are being built or converted, examination rooms with an emergency call system should be set up. (2017)

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Existing basement detention rooms in police stations must have sufficient lighting and ventilation, be compliant with the fire safety regulations and guarantee the ability to make direct contact and a quick reaction in the event of an incident. They must be linked to the police stations. (2017)

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Detention rooms should not be located in the basement of new and converted detention rooms. (2017)

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Detention rooms in police stations must be equipped and furnished in a way that they cannot be vandalised. Fittings and components that can cause injury or be used as fixing points for strangulation must be avoided. (2017)

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Police stations must be hygienic and have personnel safety systems. Detention rooms must be sufficiently lit. (2017)

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All police detention centres must have a sufficient number of inmate cells that are suitable for single detention in accordance with Section 5 or 5b (2) (4) of the Detention Regulation (*Anhalteordnung*). (2017)

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All single cells must have an alarm button, which can be activated in the inmate cell. (2017)

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Each inmate cell must be equipped with an electrical outlet, which is switchable from the 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)

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Tiled security cells must have a (squat) toilet with flushing function, a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating). (2017)

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Single cells under Section 5 of the Detention Regulation must be equipped with a sink, a supply of hot and cold water, a sit-down toilet, a bed and a table with seating. (2017)

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The technical surveillance of specially secured inmate cells should be carried out using video surveillance that is independent of any light source and protects the prisoner's privacy. (2017)

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Police detention centres must be cleaned regularly and at proper intervals. It must be ensured that detainees have access to hygienic sanitary facilities. The mattresses and textiles issued to detainees must be clean. Privacy must be ensured through structural or organisational measures. The showers must be checked regularly (particularly the direction in which the shower water sprays) and repaired, if necessary (replacement of shower heads). (2014, 2017)

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Toilets in cells for multiple inmates must be designed so that they are completely separate from the rest of the inmate cell. 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. Cells for multiple inmates without (fully) walled-in toilet areas may not house more than one inmate until they have been renovated. (2014, 2015, 2016, 2017)

The level of fire prevention in police detention must be adjusted to at least meet the standards for correctional institutions. The Federal Ministry of the Interior should develop an overall strategy for a uniform national design for preventive and protective fire safety and issue appropriate standards. (2015, 2016, 2017)

Sufficiently large rooms should be made available to private organisations (legal advice and repatriation counselling) to ensure that they can provide their services without being disturbed. (2017)

### Living conditions

Persons detained in police stations must also be offered vegetarian meals. (2016)

Social areas must be created for inmates serving an administrative penalty in police detention centres. (2014)

All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation. (2017)

Persons in detention pending forced return must be transferred to the open detention station at the police detention centre within 48 hours of admission. There should only be exceptions to open detention in cases agreed upon with the NPM. The cell doors in open detention should be continuously open from 8 a.m. to 9 p.m. Section 5a of the Detention Regulation should be amended to codify and clarify the principles for detention pending forced return in open detention stations. (2017)

It should be ensured that detainees are offered at least one hour of daily outdoor exercise. The interior and exterior areas of the police detention centre should be equipped for this purpose. (2017)

Detainees should be able to shower at least twice per week – and to shower daily under special circumstances. Detainees must be informed of their opportunity to shower. (2017)

The detainees at the (police) detention centres should have more varied employment opportunities. (2017)

Asylum seekers should be detained in open detention stations at police detention centres under the most benign conditions possible in accordance with Section 5a of the Detention Regulation. (2017)

Families of asylum seekers must always be held in detention together. Children must be provided with toys and items to occupy themselves, which are suitable for children. (2017)

Detained asylum seekers must be actively offered showers upon admission to the police detention centre. (2017)

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### Contact with the outside

The Federal Ministry of the Interior must ensure that all detainees in police detention centres can receive 30-minute visits at least twice per week. Weekend visits should also be made possible. (2017)

Unless there are certain security concerns or unless prisoners in court custody are involved, visits with detainees at police detention centres should be in the form of table visits. Measures should be taken to ensure that table visits are not disturbed – including by structural conditions. (2017)

Detainees should be permitted physical contact with visitors in the form of non-sexual touching. A separate room with a table should be provided for visits with relatives who are minors. (2017)

An adequate supply of functioning (sports) equipment and board games should be provided, and detainees should be allowed to use leisure-time opportunities offered externally. (2017)

### 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)

Law enforcement officers should not call in the support staff of federal support facilities as interpreters to official acts. If required, professional interpreters must be deployed. (2017)

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)

All detainees in police detention centres should be granted access to the outside world by providing radios and TV sets in communal rooms and offering (foreign-language) print media. (2017)

Except for detainees in specially secured cells, detained persons should be able to use their own personal radio and TV set in their cells. (2017)

### 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)

Detention at police stations must be seamlessly documented to ensure that the deprivation of liberty is verifiable. Under the Detention Regulation, the reason for placing an inmate in a specially secured cell must be documented in each individual case. To improve the process, a uniform detention book should be used nationwide. (2014, 2015, 2016, 2017)

The duration of any deprivation of liberty should be limited to what is absolutely necessary. Detentions by the police may not be extended because doctors cannot be reached within a reasonable period of time. Therefore, the Federal Ministry of the Interior has to take appropriate organisational measures. (2016)

Padded or rubberised inmate cells in police detention centres should be subject to constant personal surveillance, tiled security cells should be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance. (2017)

The reason, commencement and end of detention in a single cell and the attendance of a doctor during detention in a specially secured cell must be documented. (2017)

Detainees at the (police) detention centres must be held in specially secured cells for as short a period is possible, and such detention must be in accordance with the principle of proportionality. (2017)

Persons in detention pending forced return should only be held in the closed detention station of the detention centre in the cases agreed upon with the NPM. (2017)

Hunger-strikers should only be held in isolation on the advice of a doctor and only for legitimate security and health reasons. (2017)

#### Health care

A clear definition of the term “fitness to undergo detention” should be provided in the Detention Regulation. (2015)

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)

A precise verbal exchange with the person being examined is necessary. An interpreter must be called in, if necessary. (2015)

Police doctors must have access to psychiatric expertise at all times, regardless of the day of the week and the time of day. (2015)

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. (2016)

It is necessary to adopt a guideline setting out criteria for the provision of adequate health care to inebriated, substance-impaired or mentally ill persons and persons who are a danger to themselves. (2014, 2015)

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)

Before ending detention, police doctors 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)

An interpreter or a bilingual person must be deployed when conducting a medical examination of a non-German-speaking detainee. (2014)

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)

Medical examinations must be verifiably documented without any contradictions. (2013)

Medications may only be administered by trained personnel under a doctor's supervision. (2013)



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The initial medical examination of prisoners held in specially secured cells in police detention centres must be conducted as soon as possible. (2017)

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Hunger-strikers in detention pending forced return should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention station. (2017)

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If a detained person is suspected of being suicide-prone, this should be documented. Information should be provided to decision-makers, and an assessment should be quickly made by a (specialised) doctor. (2017)

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If a danger of suicide is identified, organisational measures should be taken to prevent access by the detained person to dangerous objects. (2017)

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After a suicide (attempt), life-saving emergency measures be initiated and therest of the rescue chain activated. Crisis intervention measures should be carried out quickly with fellow prisoners. (2017)

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Organisational guidelines should be issued to ensure that, after every suicide or (thwarted) suicide attempt, a standardised case analysis is made to optimise prevention work. (2017)

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The Federal Ministry of the Interior must ensure that all persons held in detention centres receive an adequate level of curative medical treatment based on state-of-the-art science. (2017)

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The medical and nursing staff of the detention centre must be able to access psychiatric expertise at any time. (2017)

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The existing spatial and staffing concept in the outpatient area of the detention centre should be adapted. Patient documentation in the outpatient area should be maintained in electronic form. (2017)

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Medical examinations and treatments of persons in police stations must be carried out alone with the doctor as a matter of principle. Law enforcement officers may only be called in to medical examinations in police custody for safety reasons, and they should not have made the arrest. (2017)

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In police stations, the presence of a law enforcement officer during the medical examination and treatment, the name and the reason for the presence of the called in law enforcement officer as well as information on which measures were taken to protect privacy must be documented in the detention log. (2017)

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In the case of disrobement during medical examinations in police stations, the law enforcement officer called in must be of the same gender as the detained person. (2017)

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In any case, law enforcement officers that are called in for safety reasons in police stations have to remain out of earshot and, if possible, out of sight. (2017)

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Insofar as possible, separate examination rooms should be provided for police stations. In any case, technical measures must be taken to guarantee a discreet medical examination. (2017)

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Non-smoker protection must be complied with in all police stations. Detention rooms may not be used as smoking rooms for staff. (2017)

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## Personnel

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. (2016)

All activities engaged in and measures taken by private security personnel at 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)

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. (2016)

All police officers should be trained to recognise suicidal behaviour and risk factors in prisoners at an early stage and take suicide prevention measures. (2017)

After a suicide (attempt), there should be reflection on the events within a short period of time in the facility, and police and medical personnel should be invited. (2017)

The actual number of law enforcement officers working at the police stations should be equal to the planned number. Understaffing results in stress and overload, both of which also have a negative impact on the detainees. (2017)

There should be a gender balance between male and female law enforcement officers at police stations. The proportion of women working in law enforcement should be increased. (2017)

## 7.8 Returns and release of detainees

Families should not be separated during (forced) returns even if one of the parents is not fit for travel or cannot be found. If one of the parents goes into hiding in order to evade the official act, the authorities should first wait and exhaust all possibilities of finding all of the members of the family. (2014, 2015, 2017)

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, especially small children, during (forced) returns. Flights should be scheduled at times that enable children to maintain their ordinary sleeping rhythm. (2015, 2017)

It should not be allowed to return or deport children without the parent who is their legal guardian. (2017)

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 voluntarily return to their home countries. (2015)

In the case of pregnant women, (forced) return procedures should not take place in the period between eight weeks prior to the expected term and eight weeks after childbirth. (2017)

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. Mothers must be able to breastfeed their 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)

The functions of the return counsellor and those of the professional interpreter must be strictly separated during forced returns. (2016)

Police officers must ensure that they take official actions themselves and that they are not taken by interpreters. (2016)

If the medical history sheet on health matters is not understandable, a professional interpreter must be called in to clarify open questions. (2016)

Requests for voluntary departure should always be given priority so that coercive measures can be avoided. (2017)

Release after termination of detention pending forced return and – if intended – placement with a support organisation should be made without delay. (2014)

## 7.9 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)

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. (2016)

The Federal Ministry of the Interior should make those responsible in the *Laender* police departments aware that the obligation for police stations to notify police operations to the NPM must be complied with. In this way, the NPM can fulfil its legal mandate. (2017)

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#### Demonstrations

When the police encircle a crowd, the persons in the crowd must be given clearly audible information. (2014)

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Encirclement should be for as short a time as possible. (2014)

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The police should have appropriate technical equipment to make understandable announcements to demonstrators which should give them an opportunity to comply with police orders. (2016, 2017)

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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. (2016)

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Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this. (2014)

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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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The special transit area at the 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. (2016)

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#### Local controls

Female officers should always be part of the operations team during monitoring and control activities with respect to prostitution and red light districts. (2015, 2017)

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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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In the course of inspections regarding basic 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. (2016)

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