

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

on the activities of the Austrian
National Preventive Mechanism (NPM)

2022

Protection & Promotion
of Human Rights

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Preface

For more than ten years, the Austrian NPM and its commissions have been monitoring public and private institutions and facilities where the freedom of persons is or can be restricted. The commissions visit psychiatric institutions and facilities, retirement and nursing homes, crisis centres and shared accommodation for children and adolescents, police detention centres, police stations and correctional institutions. Furthermore, the NPM also monitors institutions and facilities for persons with disabilities and observes the police in exercising acts of direct administrative power and coercive measures.

The NPM was entrusted with the statutory mandate to perform this monitoring work effective 1 July 2012. Together with its expert commissions, the AOB constitutes the National Preventive Mechanism (NPM). Six regional commissions and a Federal Commission visit institutions and facilities usually unannounced for the purpose of identifying potential for improvement and implementing the same with the AOB. The commissions also occasionally encounter cases of maladministration that have to be rectified. Regular visits and the recommendation of preventive measures serve to prevent future cases of maladministration.

On 7 June 2022, the NPM's ten years of service were not only duly celebrated in Parliament with representatives from the fields of politics, practice and science, but also reflected on from different perspectives.

This volume summarises the activities of the NPM in the area of such preventive human rights monitoring in 2022. The effects of the COVID-19 pandemic decreased noticeably during this time. In total, the commissions were deployed 481 times in Austria in the year under review. Both the feedback and meetings after the visit to an institution or the observation of a police operation, combined with the ensuing dialogue with those responsible, create awareness of problems and often lead to improvements. However, recommendations cannot be implemented quickly if there is no legal basis or funding.

The AOB thus reiterates its appeal to politicians, Parliament and the Diets to enact laws and provide budgetary funding to create general conditions that safeguard human rights in Austria in the long term.

We would like to thank the NPM commissions for their dedication and the Human Rights Advisory Council for their advice and support. A word of thanks also to all the AOB staff who dedicate themselves to the protection of human rights as part of their everyday work.



Gaby Schwarz



Bernhard Achitz



Walter Rosenkranz

Vienna, March 2023

Table of Contents

Introduction.....	11
1 Overview of the National Preventive Mechanism.....	13
1.1 Mandate.....	13
1.2 Monitoring and control visits in numbers.....	14
1.3 Budget.....	17
1.4 Human resources.....	17
1.4.1 Personnel.....	17
1.4.2 The commissions.....	18
1.4.3 Human Rights Advisory Council.....	18
1.5 International cooperation	19
1.5.1 United Nations.....	19
1.5.2 European Union.....	19
1.5.3 Council of Europe	20
1.5.4 OSCE.....	21
1.5.5 SEE NPM Network.....	21
1.5.6 Network of German-speaking NPMs	22
1.6 Report of the Human Rights Advisory Council.....	22
2 Findings and recommendations.....	25
2.1 Retirement and nursing homes	25
2.1.1 Staff shortages – imminent loss of quality in care	27
2.1.2 Human rights responsibility of supervisory authorities	32
2.1.3 Remote location of nursing homes makes social participation difficult	38
2.1.4 Misplacement of young residents.....	39
2.1.5 Restriction of the freedom of movement in dementia wards.....	41
2.1.6 Implemented recommendations.....	43
2.1.7 Positive observations.....	44
2.2 Hospitals and psychiatric institutions	47
2.2.1 Inadequate non-hospitalised care in (geronto-)psychiatry.....	49
2.2.2 Bed closure due to staff shortages	50
2.2.3 Precarious care situation in child and adolescent psychiatry	51
2.2.4 Application of measures that restrict freedom	53

Table of Contents

2.2.5	Immediate notification of measures that restrict freedom	54
2.2.6	Medication-based measures that restrict freedom	55
2.2.7	Access to the outside	57
2.2.8	Supervision as an instrument for mental hygiene	57
2.2.9	No obligation to wear institutional clothing	58
2.2.10	Positive observations.....	59
2.3	Child and youth welfare facilities	61
2.3.1	Summary of individual observations	61
2.3.2	Implemented recommendations.....	63
2.3.3	Monitoring priority of training and further education for socio-pedagogical staff	65
2.3.4	Positive observations.....	84
2.4	Institutions and facilities for persons with disabilities	85
2.4.1	Staff shortages	87
2.4.2	No human rights without Augmentive and Alternative Communication (AAC).....	89
2.4.3	Inclusive ageing	92
2.4.4	Positive observations.....	94
2.4.5	Legislative equality after NPM criticism	97
2.5	Correctional institutions.....	98
2.5.1	Methods and monitoring priorities.....	99
2.5.2	Dealing with allegations of violence – Salzburg correctional institution.....	100
2.5.3	Observation of monitoring priorities – Federal Ministry of Justice.....	101
2.5.4	Living conditions.....	102
2.5.5	Right to confidentiality and privacy	106
2.5.6	Complaint management	108
2.5.7	Evidence of torture, mistreatment, abuse, neglect and degrading treatment.....	109
2.5.8	Health care	109
2.5.9	Personnel.....	112
2.5.10	Return and release	114
2.5.11	Detention in forensic institutions and follow-up care facilities	115
2.6	Police detention centres	125
2.6.1	COVID-19 in police detention enforcement	125
2.6.2	Implementation of NPM recommendations	129
2.6.3	Further aspects of detention enforcement in police detention centres	135

2.6.4	Substandard fittings and structural deficits in police detention centres	137
2.6.5	Fire protection in police detention centres	139
2.6.6	Insufficient stocks of clothes to change into for destitute detainees..	140
2.6.7	Hygienic deficits in detention enforcement.....	141
2.6.8	Inadequate shopping opportunities and food for detainees	142
2.6.9	Positive observations.....	143
2.7	Police stations.....	145
2.7.1	Monitoring priorities.....	145
2.7.2	Inadequate documentation of detention	148
2.7.3	Deficient structural conditions in police stations	149
2.7.4	Shortage of (police) public medical officers.....	152
2.7.5	No medical examination despite long detention	154
2.7.6	Federal Ministry of the Interior refuses to support investigative proceedings	155
2.7.7	Staff shortage at Hohe Warte police station	156
2.7.8	Positive observations.....	156
2.8	Coercive acts	159
2.8.1	Notification of police operations	159
2.8.2	Demonstrations	160
2.8.3	Football games.....	162
2.8.4	Border controls by the immigration police and border police unit (PUMA)	164
2.8.5	Other positive observations	164
Annex	167

Introduction

This volume of the report provides information on the activities of the National Preventive Mechanism (NPM) in 2022. The effects of the COVID-19 pandemic decreased considerably and the commissions were able to perform their activities without restrictions.

In total, the commissions conducted 481 monitoring activities in the year under review, of which 460 were visits in institutions and facilities and 21 accompanying monitoring of police operations. The monitoring priorities defined together with the commissions were the main focus. But other unplanned topics that emerged besides the monitoring priorities were also important and were addressed.

481 monitoring visits

The nationwide monitoring priorities on visits included "Pain management and palliative care in retirement and nursing homes" (chapter 2.1.), "De-escalation in psychiatric institutions and wards" (chapter 2.2.), "Training and further education of the pedagogical staff in child and youth welfare facilities" (chapter 2.3.3.) and "(Sexual) self-determination of persons with disabilities in institutions and facilities" (chapter 2.4.). Initial results and observations on the investigative focal point "Detention of juvenile offenders" were summarised in a special report "Adolescents in detention" (chapter 2.5.). Preliminary preventive recommendations on the ongoing monitoring priority "Violence among detainees" can be found in chapter 2.5.2. Furthermore, the monitoring priorities "Barrier-free access" as well as the "Proper documentation of detention in the detention book" were the focus of monitoring visits in police stations (chapter 2.7.2.). These monitoring priorities were completed. As the commissions frequently found inadequately marked and broken alarm buttons in police stations in 2022, the NPM once again defined the "Communication and alarm button in detention rooms" as a monitoring priority (most recently 2019/2020) (chapter 2.7.3.). The right to information and notification for detainees in police stations are also being investigated as a monitoring priority. The monitoring priorities in police detention centres (documentation of the examination for the fitness to undergo detention by the public medical officer, implementation of the standards recommended by the "Detention in police detention centres and detention centres" working group) were completed and redefined shortly after the editorial deadline for this report. The monitoring priority "Clothes for prisoners without money" was maintained. New monitoring priority topics are: access to an independent medical doctor and de-escalating handling of prisoners.

Monitoring priorities

In October 2022, the NPM and its commissions held their annual meeting to discuss the experience gathered from the monitoring activities. Among other things, the monitoring priorities, methodology and ensuing results were analysed and discussed. In cooperation with actors brought in from the

Dialogue with the commissions

Medical University of Vienna who simulated the different symptoms, gestures and conversational style of real existing patients, the basics for optimised interviews during commission visits were also conveyed in small groups. This training is intended to learn how to ask for information that is essential for the commission's work and where a flexible approach should be taken to create a conversation that is as pleasant as possible for the person being interviewed.

The results of the monitoring visits are dealt with in detail in this volume of the report. Chapter 1 contains an overview of the NPM with the key data on the mandate and a statistical evaluation of the monitoring visits. In addition to information on the budget and human resources, this section also covers a summary of the most important events in the area of international cooperation, as well as a report by the Human Rights Advisory Council.

Chapter 2 addresses the findings of the monitoring visits. As in previous years, the large number of monitoring visits conducted means that not all results could be documented in this report. The depicted cases focus on situations that require critical evaluation from a human rights perspective and observed maladministration that go beyond individual events, thus indicating systemic deficits. The chapter is structured according to types of institution and facility, as was the case in previous years.

The observations from the monitoring work of the commissions and resulting recommendations are laid out at the end of the relevant chapter of this report. The list of all recommendations made since 2012 is available on the website of the Austrian Ombudsman Board (AOB) at: <https://volksanwaltschaft.gv.at/downloads/af9sm/NPM%20Recommendations%20%282012-2019%29.pdf>.

1 Overview of the National Preventive Mechanism

1.1 Mandate

The AOB has been entrusted with the tasks of protecting and promoting human rights in Austria since 1 July 2012. The legal bases for this mandate are the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the OPCAT Implementation Act (Federal Law Gazette I 1/2012). The AOB was thus set up as the National Preventive Mechanism (NPM). Furthermore, the mandate of the AOB was extended in accordance with the Convention on the Rights of Persons with Disabilities (UN CRPD) to include the monitoring of institutions and facilities for persons with disabilities, as well as the monitoring and concomitantly inspection of official administrative coercive acts.

The AOB fulfils these three areas of responsibility together with its NPM commissions. The commissions are led by recognised experts in the field of human rights and staffed from multiple disciplines and ethnicities. Currently, the NPM has six regional commissions and one Federal Commission for the Penitentiary System and Forensic Institutions.

Seven commissions

The monitoring visits in institutions and facilities conducted by the commissions and the observation of coercive measures are usually unannounced. They are conducted on the basis of a monitoring framework and methodology that was jointly developed by the NPM commissions (https://volksanwaltschaft.gv.at/downloads/1q79s/Prüfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH_20160701.pdf). The commissions draw up reports on their visits, provide their human rights assessments and make recommendations to the AOB on how to proceed. The Human Rights Advisory Council also supports the AOB in an advisory capacity. The members are appointed by the AOB. The Human Rights Advisory Council is headed by a Chairwoman and a deputy Chairman with proven expertise in the area of human rights, and is composed of representatives from civil society, the Federal Ministries and the *Laender*.

**Human Rights
Advisory Council**

The commissions conducted a total of 481 monitoring visits in 2022 (2021: 570). In addition to their monitoring work, the commissions also held twelve round-table meetings with institutions and facilities or senior administrative departments. The number of visits is undoubtedly important in fulfilling the mandate of operating regularly and nationwide. However, visits lasting several days with larger delegations in bigger institutions and facilities can also be useful in attaining more intensive insights.

**Intensive monitoring
and control**

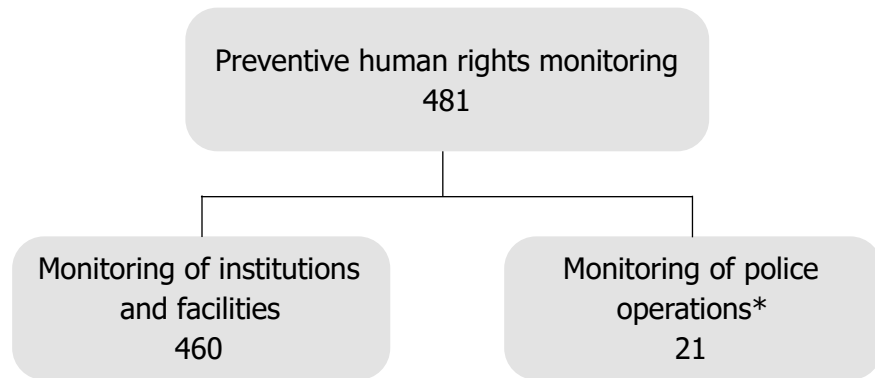
Involvement in police and prison officer training

AOB staff and members of the commissions were also involved in basic police and prison officer training. The NPM and its work are presented in these instruction modules, as the trainees will come into contact with the NPM commissions in their later professional lives. A total of 67 basic police training classes were delivered throughout Austria in 2022. All of the training was in person and took place in the Security Academy (SIAK) training centres in Absam, Eisenstadt, Feldkirch-Gisingen, Graz, Krumpendorf, Linz, Salzburg, St. Pölten, Traiskirchen, Vienna, Wels, and Ybbs. Ten instruction units constituting part of basic prison officer training were held throughout the year partly virtually and partly in person.

1.2 Monitoring and control visits in numbers

The commissions conducted 481 visits throughout Austria in 2022. 96% of the visits were in institutions and facilities, 4% at police operations. The majority of the visits were unannounced. The monitoring visits lasted three hours on average.

Monitoring activities of the commissions in 2022 (absolute numbers)



* these include: forced returns, demonstrations, assemblies

460 monitoring visits in institutions and facilities

The majority of the 460 monitoring visits in institutions and facilities were in what are known as “less traditional places of detention”. These include over 4,000 places such as retirement and nursing homes, child and youth welfare facilities and institutions for persons with disabilities. The commissions conducted 327 monitoring visits in these types of institutions and facilities, of which 135 were in institutions for persons with disabilities.

Many follow-up visits

The total number of visits made is not equal to the number of institutions visited, as many facilities were visited several times. These are known as follow-up visits and are necessary in order to examine whether the identified deficits have been rectified or urgently required improvements have been

made. Correctional institutions and police detention centres, in particular, are monitored several times a year.

Besides the monitoring and control visits in institutions and facilities, the commissions observed 21 police operations in the year under review, in particular at demonstrations and major police operations.

Observations of 21 police operations

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

Twelve round-table meetings

The following table shows how the visits are distributed across the different institutions and police observations in each *Land*.

Number of visits in 2022 in individual <i>Laender</i> according to type of institution									
	pol. stat.	pol. det.	ret. nur.h.	youth	inst. f.dis.	psych. wards	corr. inst.	others	pol. oper.
Vienna	9	2	13	31	33	4	10	4	3
Burgenland	0	1	12	4	2	0	1	2	1
Lower Austria	10	0	18	12	51	4	6	6	0
Upper Austria	13	1	4	10	13	1	1	5	1
Salzburg	10	1	6	4	2	1	2	2	9
Carinthia	3	0	7	10	10	2	1	0	0
Styria	6	3	10	8	17	1	1	1	2
Tyrol	3	1	20	9	6	4	3	1	3
Vorarlberg	1	2	8	6	1	2	2	0	2
TOTAL	55	11	98	94	135	19	27	21	21
<i>unannounced</i>	<i>55</i>	<i>11</i>	<i>98</i>	<i>86</i>	<i>127</i>	<i>18</i>	<i>25</i>	<i>19</i>	<i>7</i>

Legend:

pol.stat. = police stations

pol.det. = police detention centres

ret.nur.h. = retirement and nursing homes

youth = child and youth welfare facilities

inst.f.dis. = institutions and facilities for persons with disabilities

psych.wards = psychiatric wards in hospitals / medical facilities

corr.inst. = correctional institutions

otherst = police departments, Schwechat Airport special transit area, etc.

pol.op. = police operations

The total line displays how often the types of institution were monitored or how often police operations were observed. The varying frequency of visits and observations of police operations corresponds with the different number of institution types on the one hand, and with the size of the population on the other. The following table highlights this aspect and exhibits the total number of monitoring visits per *Land*.

Number of visits	
Land	2022
Vienna	109
Lower Austria	107
Tyrol	50
Upper Austria	49
Styria	49
Salzburg	37
Carinthia	33
Vorarlberg	24
Burgenland	23
TOTAL	481

Deficits identified on around 70% of the monitoring visits

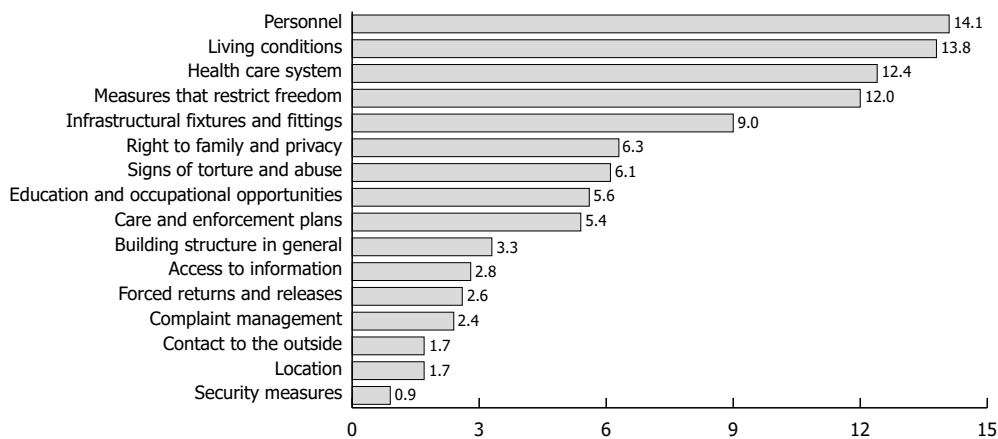
The observations from all 481 monitoring visits are documented in detail in commission reports. The commissions criticised the human rights situation on 336 of the visits to institutions and facilities. There were, however, no grounds for criticism on 145 of the monitoring visits (131 institutions and 14 out of 21 police operations). The commissions thus identified deficits in 70% of the visits.

Proportion of visits in 2022		
type	with criticism	without criticism
visits to institutions and facilities	72 %	28 %
police operations	33 %	67 %
Visits in total	70 %	30 %

The following graph gives an overview of how the criticism is distributed across the individual areas addressed by the commissions on their visits.

It must be noted that several areas are monitored on almost every visit and the criticism thus relates to several areas. The areas do not differ significantly from the previous years. Consideration must also be given to the fact that the areas listed are those with the highest level of intrusion into the human rights of those affected. Accordingly, 14.1% of the criticism was in relation to insufficient human resources. The living conditions were criticised in 13.8% of the cases. These include, for example, sanitary and hygiene standards, food or the choice of leisure activities. Problems with health care were criticised in 12.4% of the cases. Measures that restrict freedom were criticised almost as frequently (12%), followed by criticism of the structural fixtures and fittings (9%), the right to family and privacy (6.3%) as well as signs of maltreatment, abuse, neglect and degrading treatment (6.1%).

Topics of criticism voiced by the commissions
share in %



1.3 Budget

In the year under review 2022, a budget of EUR 1,600,000 was available to the heads and members of the commissions and the members of the Human Rights Advisory Council. Of this amount, around EUR 1,434,000 were budgeted for reimbursements and travel expenses for commission members alone, and around EUR 90,000 for the Human Rights Advisory Council. Around EUR 76,000 were available for workshops, supervision, PPE, other activities of the commissions and the AOB staff active in the OPCAT area.

1.4 Human resources

1.4.1 Personnel

In order to implement the OPCAT mandate, the AOB received additional permanent positions to fulfil the new duties in 2012. The AOB staff entrusted

with NPM responsibilities are legal experts who have experience in the areas of rights of persons with disabilities, children's rights, social rights, police, asylum and the judiciary. The organisational unit "OPCAT Secretariat" coordinates the collaboration with the commissions. It also examines international reports and documents in order to support the NPM with information from similar institutions.

1.4.2 The commissions

Six regional commissions

To perform its duties, the NPM has to deploy at least six multidisciplinary commissions, which are organised according to regional or subject matter aspects. These commissions visit retirement and nursing homes, child and youth welfare facilities, psychiatric institutions and psychiatric wards in medical facilities, institutions and facilities for persons with disabilities and police facilities including the observation of police operations.

Federal Commission for the enforcement of penalties and measures

A Federal Commission visits facilities of the penitentiary system and forensic institutions. The correctional institutions are managed centrally by the general directorate for facilities of the penitentiary system and forensic institutions set up by the Federal Ministry of Justice. The Federal Ministry is also responsible for implementing the recommendations made by the NPM. This centralised responsibility and control of facilities of the penitentiary system and forensic institutions combined with the low number of relevant institutions means that one commission operating on the federal level has a comprehensive overview of the situation. This makes it easy to compare institutions and facilities with each other, which improves the transparency of both best practice examples and deficits.

Every three years invitations to apply for half of the commission head and member positions must be issued and filled after hearings by the Human Rights Advisory Council. The most recent (re)appointments took place in 2021.

1.4.3 Human Rights Advisory Council

The Human Rights Advisory Council supports the AOB in an advisory capacity. It is comprised of representatives from the Federal Ministries, the *Laender* and civil society. The Chairperson must have specific skills and expertise in the area of human rights. All members are appointed by the AOB – based on recommendations from NGOs and ministries. The Human Rights Advisory Council supports the NPM in defining monitoring priorities, establishing the determination of maladministration and providing recommendations, guaranteeing harmonised procedures and monitoring standards as well as the selection of commission members.

1.5 International cooperation

1.5.1 United Nations

An expert from the AOB attended a webinar by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT) on the role of National Preventive Mechanisms (NPMs) in monitoring places where migrants are deprived of their liberty. To cope with the influx of refugees, countries are increasingly making use of administrative detention. This exceptional form of deprivation of liberty also affects particularly vulnerable persons in the group of migrants such as children, women, older persons or persons with disabilities. It thus calls for especially intensive monitoring by independent control mechanisms such as the NPM.

SPT webinar for European NPMs

The NPM was also represented at an online meeting, at which the implementation of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (UN CRPD) was discussed on a national level. Despite universal recognition of the UN CRPD, not all signatories of the Convention have adopted the Optional Protocol yet. Representatives from the UN Committee on the Rights of Persons with Disabilities explained the key role that national human rights institutions (NHRIs) can play in promoting the ratification of the Protocol and its effective implementation.

Implementation of the UN CRPD Optional Protocol

The European Network of NHRIs, ENNHRI, has a UN CRPD working group. The Austrian NPM reports regularly about its work, which is published in the working group newsletter. In its latest report, the NPM provided information on the focus area "(sexual) self-determination of persons with disabilities".

UN CRPD working group of the European NHRI Network

The second edition of the academy and conference series "Human Rights Go Local" was organised by the International Centre for the Promotion of Human Rights at the Local and Regional Levels under the patronage of UNESCO and the UNESCO Chair in Human Rights and Human Security in Graz. Innovative approaches and proven practices for the protection and promotion of human rights on a local level were discussed. The goal of the conference series is to build bridges between institutions, science, civil society and politics and to raise awareness of human rights obligations on the part of decision-makers on local and municipal level.

„Human Rights Go Local“ conference series

1.5.2 European Union

A delegation from Azerbaijan visited the NPM in Vienna as part of the MOBILAZE project financed by the EU. The meetings focused on human rights-based access to the political asylum system and migration management that is compliant with human rights, as well as insights into the tasks, functions, rights and obligations of monitoring mechanisms in asylum, detention and forced return procedures.

Delegation from Azerbaijan in Vienna

An expert from the AOB explained the system in Austria including the responsibilities and the diverse duties of the Austrian NPM, which monitors the complete enforcement of migration and asylum matters and examines whether the official migration services observe human rights and the rights of the migrants.

**Reinforcing
parliamentary
democracies in the
Western Balkan
region**

The NPM also welcomed a delegation of parliamentary employees from six Western Balkan countries (Montenegro, Serbia, North Macedonia, Albania, Bosnia and Herzegovina, Kosovo) as well as representatives from the Austrian Parliament and the "European Fund for the Balkans" (EFB) in Vienna. The visit took place within the framework of a joint seminar by the Austrian Parliament and the EFB and is part of a programme to reinforce parliamentary democracies in the Western Balkan region.

The delegation gained profound insights into the different areas of responsibility and scope of duties of the AOB. Questions surrounding the NPM mandate and the UN CRPD were also addressed. The visitors enquired about best practices and specific possibilities for action and described problems in their countries.

1.5.3 Council of Europe

**NPM Forum
discussed vulnerable
groups in detention**

A joint project of the Council of Europe and the EU is what is known as the European NPM Forum, an interactive peer-to-peer network of NPMs from the EU Member States and the Council of Europe that provides a platform for dialogue. Within the framework of this project, a conference was held dedicated to the treatment of especially vulnerable persons in detention and the particularities of monitoring the detention conditions.

**Older persons and
women in detention**

The group of older persons is the fastest growing group due to the demographic change, and this is also clearly evident in prisons. The care of older prisoners, the infrastructural fixtures and fittings in prisons and the possibility of alternative forms of accommodation were the subject of discussion. Protection against (sexualised) violence, consideration of the family role of women and equal access to work and occupation are essential for women deprived of their liberty.

**Peer-to-peer
dialogue with
Morocco**

A delegation from Morocco visited Vienna as part of a project for the support of the NPM and the strengthening of the role of Parliament in Morocco. During the five-day visit, the organisation and structures of the respective NPMs were first presented, as well as their work areas and their method of operation. An intensive dialogue ensued, in which members of the commissions and the Human Rights Advisory Council took part on behalf of the Austrian NPM. Emphasis was placed on the monitoring methodology, the relevant monitoring priorities and the definition of recommendations. A member of the CPT Committee supplemented the dialogue with constructive

suggestions and proven practices. On a visit to Korneuburg correctional institution, the members of the Moroccan NPM also gained insights into the organisation of the Austrian penal system.

1.5.4 OSCE

In February, Ombudsman Rosenkranz greeted the OSCE Special Representative on Civil Society Engagement, Kyriakos Hadjiyianni, in Vienna. Hadjiyianni has been a member of the House of Representatives in Cyprus and Chairman of the Parliamentary Committee for Refugees and Missing Persons since 2006.

The subject of the meeting was the participation of civil society in the political decision-making process. Ombudsman Rosenkranz emphasised the role of the Human Rights Advisory Council, which also includes representatives from civil society and supports the Austrian NPM as an advisory body. He also explained the role of organisations from civil society in complaint procedures and in the legislative process, as well as legal safeguarding in the Austrian legal system. Special Representative Hadjiyianni noted that NGOs are under considerable pressure in many countries due to accusations of criminalisation.

1.5.5 SEE NPM Network

The Austrian NPM took over the chair of the South-East Europe NPM Network (SEE NPM Network) in the year under review. Representatives of the NPMs from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Kosovo, Montenegro, North Macedonia, Romania, Serbia, Slovenia and representatives from the Council of Europe took part in the two network meetings in Vienna. A special word of thanks in this context goes to the Council of Europe, which provided financial support for these two events.

The first meeting dealt with the topic "Elderly persons and people with disabilities in detention". In this context, topical questions and challenges in the respective countries were discussed and best practices exchanged.

The dialogue ended with drawing up recommendations designed to ensure that the very vulnerable group of older or physically impaired persons in detention receives appropriate care and support programmes. They include demands such as the existence of an appropriate number of trained carers in correctional institutions, the training of detainees – if these are to be involved in care work – and the clear regulation of possible liability in cases of inadequate care in detention. The recommendations were published on the occasion of the International Day in Support of Victims of Torture and are available on the SEE NPM Network website at <https://www.see-npm.net/>.

**Austria chairs
SEE NPM Network**

**Older persons
and persons
with disability in
detention**

Coercive measures on persons with mental illnesses

The second meeting took place in November and dealt with coercive measures in connection with adolescents and adults with mental illnesses and the case of children and adolescents with mental and physical disabilities. The NPMs presented the situation in the respective countries and provided detailed information on the legal bases for the placement and coercive measures. They also discussed the current major challenges in these areas. These include a general shortage of personnel and, in particular, the lack of well-trained staff and infrastructure. Also at this meeting, the participants defined joint recommendations, which are available on the SEE NPM Network website at <https://www.see-npm.net/>.

1.5.6 Network of German-speaking NPMs

Chair of the Network of German-speaking NPMs

Since 2014, the Austrian NPM has been partner of a programme for exchanging experience and ideas between NPMs from German-speaking countries (Germany, Austria, Switzerland – in short, D-A-CH). Within the framework of this D-A-CH network, the Austrian NPM invited the other partners to a mutual exchange of experience and ideas in Vienna in the year under review. Representatives from the NPMs in Luxembourg and Liechtenstein took part for the first time. The focus of the meeting was the observation of police operations, monitoring activities in accommodation for asylum seekers and the observation of forced returns.

The Swiss NPM has also been regularly monitoring retirement and nursing homes since autumn of last year. The colleagues from Switzerland thus welcomed the detailed exchange of experience and ideas on this topic. The head of an NPM visiting commission, Andrea Berzlanovich, spoke about more moderate manifestations of violence that occur unnoticed and are often not immediately perceived as violence by those affected or the perpetrators. This calls for a particularly cautious methodology in the monitoring activities of the NPM.

The monitoring of child and youth welfare facilities was another focal point. High-quality care is becoming increasingly difficult due to a massive shortage of staff and non-existent resources for the education and further training of employees.

1.6 Report of the Human Rights Advisory Council

The Human Rights Advisory Council met five times at plenary meetings in 2022. Due to the pandemic, the meetings could be held in person, online or partly in person and online depending on the infection situation. In addition to these plenary meetings, the Human Rights Advisory Council met in working group meetings and prepared statements on topics in relation to the preventive protection of human rights.

The Human Rights Advisory Council evaluated excerpts from the human rights assessments in the commissions' visit reports and analysed the many resulting problem areas. On this basis, the Human Rights Advisory Council prepared its statements of opinion on the NPM monitoring priorities defined for 2022 and formulated its own recommendations on new monitoring priorities for the commissions.

Monitoring priorities of the commissions

In the year under review, the Human Rights Advisory Council made a statement of opinion on its own initiative on the question of the medical care of administrative detainees. It also addressed in another statement of opinion the observance of human rights of children and adolescents in institutions and facilities during the COVID-19 pandemic. Both statements of opinion were published on the AOB website.

Statements of opinion

The Human Rights Advisory Council exercised its advisory function in a case of maladministration and a recommendation by the NPM to the regional government of Salzburg regarding inadequacy in a Salzburg nursing home, as well as the recommendation of the NPM to the Federal Ministry of the Interior on the introduction of video telephony in police detention.

In addition to the statements of opinion, the working groups of the Human Rights Advisory Council also dealt with the following topics in the year under review:

Other topics

- Criteria for the appointment and removal of the leadership and members of the NPM commissions (particularly in light of international standards)
- Barring orders and prohibition to enter residential child and youth welfare facilities
- Reflection on the excerpts from the visit reports of the commissions
- Evaluation of the completed monitoring priorities of the three AOB business areas
- Mandate and working methods of the Human Rights Advisory Council

In 2022, the Human Rights Advisory Council set up working groups for different types of institution/facility and topics:

- Retirement and nursing homes
- Child and youth welfare facilities
- Institutions and facilities for persons with disabilities
- Psychiatric wards and hospitals
- Correctional institutions
- The police force

The working groups consist of seven to ten members composed of the members and deputy members of the Council. They address topics including the NPM monitoring priorities, analysing excerpts from the visit reports of the commissions, the submissions of the AOB and current topics that are introduced by the members.

In addition, the Council discussed internally whether – similar to Germany, based on a decision by the Federal Constitutional Court – it would be necessary to guarantee a legal framework for non-discriminatory access to medical care in exceptional situations, so that nobody is disadvantaged due to a disability in the allocation of vital, intensive care resources that are not available for everyone.

On the occasion of the tenth anniversary of the NPM in 2022, which was celebrated in Parliament, the Chairwoman of the Human Rights Advisory Council spoke about, among other things, development opportunities in preventive human rights monitoring from the perspective of the body comprised of representatives from ministries, the *Laender* and civil society.

2 Findings and recommendations

2.1 Retirement and nursing homes

Introduction

In 2022, the NPM commissions visited 98 retirement and nursing homes, with the vast majority of the visits being unannounced, as usual. Cooperation on the part of the management and the staff were very good in almost all homes. Comprehensive information and documentation were provided.

98 monitoring visits

The commissions perceived the tense staffing situation and subsequent imminent drop in quality of long-term care as the most urgent structural problem. As in the previous year, they encountered many closed beds or completely closed wards due to the lack of adequately qualified staff across the country (see chapter 2.1.1).

Staff shortages and drop in quality

Some 127,000 nursing and care staff work in hospitals, residential and nursing homes and in mobile care in Austria. Converted to full-time positions, this figure is a little over 100,000 care staff. Over 30% of all employees are older than 50, which means that many will retire within a few years. The care settings are thus not fit for the future. However, improvements in the care area have been failing for decades. There are neither nationwide coordinated requirements forecasts and resulting development plans nor is there an overall strategy for their financing. Reforms that were postponed as often as they were announced have failed to alter the fact that by 2030, over 90,000 persons across all professional groups will need to be hired for the care professions.

The demand for professional care services will continue to increase considerably due to the demographic trend. Under the motto "ageing in place" or "mobile before residential", more affordable and widely available forms of care should therefore be created for older persons. With the help of flexible daily structure care programmes, mobile services, 24-hour care and/or support of relatives, the very elderly with increasing care needs should be able to stay in their own home for as long as possible. However, there is currently no guarantee that care services can be availed of nationwide and in close proximity to the recipient's place of residence. Desperate relatives, unable to cope, who are looking for a suitable place in a home for their parents or grandparents but cannot find one, despite care level 4 or 5, are no longer isolated cases. Increasingly frequent official notices of endangerment to residents and admissions freezes are also – but not only – attributable to the pandemic and the manifestation of endemic deficits in administration. This is exacerbated in some regions by structural deficits because mobile care is not available or not available in the required scope or required quality, or cannot be financed despite payments from state capital resources. Day-care

centres and short-term relief programmes for relatives as well as palliative and hospice care have not been fully developed everywhere. The situation can be alleviated through measures such as the increased involvement of the health care and nursing professions in the acute and basic care of very old persons and the expert support of relatives providing care, particularly of those caring for persons suffering from dementia. Concrete, verifiable dementia plans are urgently required in all Laender. All of these measures should be safeguarded with concrete budgets in care funding.

The right to affordable, good-quality, long-term care shall be enshrined and promoted. The nationwide expansion of residential, semi-residential and home-based care programmes, as well as services in close proximity to the place of residence, should be the top political priority in Austria. Those in need of care, the chronically ill and persons with disabilities need continuity and personal care, which can no longer be provided by hospitals. The development of an efficient primary and community care system is thus of key importance (see principle 18 of the European Pillar of Social Rights and its Action Plan).

2022 care reform package is not sufficient

The 2022 care reform package and funding provided for that purpose are first steps in implementing the long-overdue care reform, however they are in no way sufficient. The regulations for funding the training and internships, among other things, most recently stipulated in the Annual Report 2021 were implemented for the period 2022 to mid-2025 with the Federal Act on Grants to Promote Nursing Training (*Pflegeausbildungszweckzuschussgesetz*) in this package. The Federal Act on Grants to Increase Nursing Staff Pay (*Entgelterhöhungszweckzuschussgesetz*) created a “pay bonus” for nursing and care staff as a sign of recognition and appreciation of the care professions. However, this is only planned for 2022 and 2023. It is doubtful whether a time-limited pay bonus provides sufficient incentive to change to or remain in the care profession. In the view of the NPM, measures such as those to keep older staff in the profession for longer are missing. As documented in the statement of opinion in the review procedure, it is the NPM’s opinion that the 2022 care reform package thus has no long-term perspective and effects too little change to complex structural problems.

Deficits in a home in Salzburg

The serious care deficits in a privately operated home in Salzburg were attributable to causes including but not limited to the staff shortages. The NPM assessed the failure to implement timely, effective measures by the supervisory authorities as a case of maladministration (see chapter 2.1.2).

Start of new monitoring priority

The new monitoring priority “Pain management and palliative care” started in the middle of the year. The commissions have thus been focusing their monitoring of retirement and nursing homes on this topic since July 2022. Some questions regarding assisted suicide pursuant to the Assisted Suicide Act (*Sterbeverfügungsgesetz*) that was introduced on 1 January 2022 were also documented in the data collected. The results of the nationwide

information gathering, which will continue to run until the end of 2023, will be evaluated by the NPM in the next reporting year. They will form the basis for universally applicable recommendations communicated to decision-makers.

2.1.1 Staff shortages – imminent loss of quality in care

Demand for long-term care is on the increase not only in Austria, but in almost all EU Member States. The number of over-65-year-olds in the EU will rise by 41% to 130.1 million in the next 30 years. According to estimates, 33.7 million persons in the EU will need care in 2030; up from 30.8 million in 2019.

33 million persons in need of care in 2030

In addition, care requirements have become more complex in recent years. Longer life expectancy means an increasing number of persons suffering from dementia and multimorbidity, whose care requires both significant expert knowledge and time. The Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*) outlines the core care competencies of the higher civil service for health care and nursing through the independent determination of care demand and the assessment of care dependency, diagnostics, planning, organisation, implementation, monitoring and evaluation of all care measures (care process), as well as prevention, health promotion and advice in the areas of care and care research. The additional effort required is in no way included in working out the staffing ratio, which, despite improvements in some *Laender*, is still outdated.

Care requirements are increasing

The high qualification requirements, difficult working conditions and low financial attractiveness result in the much-discussed staff shortages. For years, the trend has been that caregivers are reducing their working hours to protect their own health from day-to-day overworking, are leaving the profession completely, are not finishing their training or are changing their life plans after completing their training. The pandemic and associated regulations enforced for health institutions and facilities, nursing homes and mobile care have also played their part. Due to permanent staff shortages, the caregivers experience massive personal overload and can only provide the most basic care. This goes against their professional ethos, which can also foster quantitative and qualitative care deficits. Some caregivers cannot work due to sickness, meaning that care gaps occur. Others come to work even though they are sick, which means that the risk of accidents increases and there is a greater danger of making mistakes. Constant time pressure, the increasing number of overtime hours and the inability to plan work and leisure time have a negative impact on mental health and work satisfaction, because the feeling of meaningfulness and pride about one's own work performance are lost.

Significant overworking for care staff

Filling vacant positions is difficult

Owners and operators of institutions and facilities reported to the commissions in all *Laender* that vacancies cannot be filled for months, especially in the area of qualified carers. A home in Upper Austria was missing 1.36 FTEs in the area of qualified caregivers in order to fulfil the minimum staffing ratio. There was also a considerable amount of residual leave in the care team. Four to five care assistant positions and a qualified caregiver position were vacant in a Lower Austrian home. The increased leasing of staff (pool services) is of little help. The management of a home in Vienna reported that often, "the inclusion and trust of the residents is lacking" in these cases. And in some regions, it is not possible to lease sufficient staff. A home in Burgenland, for example, was able to fulfil the staffing ratio by completely stretching the available human resources, however Commission 6 recommended increasing the amount of care for senior residents and ramping up the night shift. Despite all the efforts made, it was not possible to hire additional staff, not even a pool service.

Filling positions that have become vacant is difficult despite the major effort undertaken by many homes to find new employees. For example, internal care assistance training programmes are offered, leave regulations have been improved, accommodation in apartments or rooms is provided, children can be brought to work for a short time, retired caregivers are working part-time again, and there is advertising at human resources fairs and in job listings, close contact with the Public Employment Service Austria (*Arbeitsmarktservice*) and many internship positions. Some homes pay a bonus if employees recruit a new caregiver, and another if that person is still working in the home six months later.

Consequence: admission freezes

The consequence of the staff shortages is closed beds and, in some cases, closed wards. Almost a quarter of the care beds in Styria remained unoccupied at the end of 2022 because there was a lack of personnel. The commissions repeatedly reported admissions freezes. Commission 1, responsible for Tyrol, reported that 30 out of a total of 200 beds of a major home operator were closed and residents had to be transferred to other homes. There are staff shortages in almost all Tyrolean homes, meaning that new admissions even of persons requiring a considerable amount of care are thus not possible. In Carinthia, too, only 41 out of 62 places were occupied due to staff shortages, and in a Lower Austrian home only 228 out of 240 beds were in use. Despite these bed closures and active measures to hire staff, there were still too few caregivers available, with the consequence that Commission 5 had to recommend a further reduction in beds. Commission 5 criticised poor working conditions and the considerable workload in another Lower Austrian home. There were insufficient staff for many residents suffering from dementia. The permanent overload drove many caregivers to resign or reduce their working hours. Due to the critical staff situation, five out of 37 beds were closed in the accommodation visited and admissions were not possible in the temporary care setting. There has

been an admissions freeze for approx. two years in a retirement and nursing home in Salzburg, meaning 25 places cannot be occupied. If more staff become unavailable due to quarantine measures, the psychosocial support of the residents is barely possible.

The consequence of staff shortages in a substantial number of homes is inadequate staffing on the night shift, in particular. In a home in Lower Austria, for example, there were no routine checks on the residents between 10 p.m. and 6 a.m.; there is only a "sleeping" night shift. A resident with care level 7 was unable to use the bell, and side panels were put in place to restrict freedom. In response to the criticism by the NPM, the home stated that this had been an emergency measure. It said that night checks that are adapted to the relevant situation are conducted for residents with higher care levels as a matter of principle. In a Styrian home with 35 places, it was claimed that a second night shift was not possible due to the staffing ratio situation but would be desirable due to the large number of residents with care level 5 to 7 and suffering from dementia. In a Tyrolean home where there is no second night shift either due to the number of beds (35), it is already evident that the majority of falls occur during the night and in the evenings or mornings. This is critical because one caregiver alone has to take care of and lift the residents who have fallen, which involves considerable physical strain and responsibility. Commission 1 encountered barely staffed night shifts in other homes in Tyrol, too. The staff reported that they face challenging and stressful situations, particularly when taking care of serious cases. Additionally required care, such as providing support in the final phase of life, pushes them to their limits. Night shift staffing should be evaluated and adapted in order to ensure consistently adequate care.

Tight staffing of night shifts

Care measures and assistance as well as medical and therapeutic treatments should be such that the mental and physical ability of those in need of care are supported and the quality of life and well-being are maintained or improved. The reality, however, is that the very elderly with orientation and health impairments in homes are rendered inactive and are neither adequately animated nor supported in making decisions about planning their everyday life. The psychosocial neglect of those in need of care ranges from lack of attention and personal contact to conscious isolation.

Psychological neglect

The residents of a home in Tyrol reported that the staff had to "dash around" and did not have enough time to talk to them. In a home in Lower Austria, the residents thought that the staff shortage was noticeable because group activities were not possible, and they had to accept that their needs could not be fulfilled. In two homes in Lower Austria, Commissions 5 and 6 encountered residents, some of whom were cognitively impaired, who remained in the recreation room after eating lunch or – in the case of a resident who was confined to bed – were left there to their own devices without any staff. There are insufficient staff for increased presence in recreation rooms during the day. The management of homes say that they

try very hard to occupy the residents but that the time required for this is then “deducted from care time”. Commission 4 was told in a major Viennese home that the care staff were tired after two years of the pandemic and there is considerable employee turnover. The staff do not have the time to occupy the residents; the focus is on care and mobility “so that they become tired and are distracted”.

If the daily schedule in a nursing home is tightly planned and based primarily on a “warm rather than clean care” philosophy as opposed to nurturing relationships and quality of life, far-reaching negative consequences will follow. Psychosocial neglect often goes hand in hand with care neglect, and occasionally also with measures that deprive those affected of their freedom, especially for persons suffering from dementia. Research into violence shows that those in need of care who have difficulty in expressing themselves are particularly vulnerable and that there is an increased risk that they will be subjected to psychological or physical violence. This often happens without intent.

Neglect and investigations by public prosecutor’s office

The NPM commissions also documented inadequate care in the form of a lack of pain prevention, malnourishment, dehydration, insufficient personal hygiene and/or wound hygiene. A particularly serious case from Salzburg is described in chapter 2.1.2. In another case, the NPM viewed the files of the public prosecutors’ office, which had initiated investigative proceedings on suspicion of manslaughter through gross negligence after several deaths in a Lower Austrian home. Four residents of the home had been admitted to hospital with COVID-19 in a very poor condition, where they later passed away.

Supervisory authority identifies endangerment

The hospital informed the supervisory authorities via official notification of endangerment about the severe dehydration that had manifested itself in standing wrinkles, dry and chapped lips, tongue and mucous membranes, and incrustations around the eyes and mouth. This would have been avoidable with adequate treatment, which could and should have been provided in the nursing home. The technical supervision of the *Land* conducted an unannounced visit to the home immediately. The staff situation was strained, exacerbated by the COVID-19 cluster, which also affected the staff. Some 20 caregivers were not at work, meaning the required staffing during the day was not fulfilled. With two caregivers for 78 beds, the staffing on the night shift complied with the standards set forth by the *Land*, however it was viewed very critically due to the considerable care effort required by many residents with high care levels. The supervisory authority observed a risk to the residents due to insufficient staff presence and lack of knowledge about timely care intervention and measures such as sufficient liquid intake, as well as inadequate medical care. Doctors’ visits and examinations were not conducted *lege artis*. Furthermore, documentation was poor: there were no records of the amount of liquid and food taken orally or the vital signs

of the patients who had displayed severe dehydration in addition to the symptoms.

The affected residents were examined and cared for during this and a further medical inspection. An admissions freeze was imposed via administrative notification. The authority filed a statement of the facts with the public prosecutors' office, which included a medical expert opinion. The proceeding has not been completed yet. The NPM requested additional information from the supervisory authority, according to which the quality of care and support have since improved considerably – safe care has been restored. The admissions freeze has been ended, however with the recommendation not to accept persons with a complex care situation until the caregivers have completed specialised further training. The commission will conduct a follow-up visit.

As a matter of principle, owners and operators of homes shall ensure that sufficient suitable staff are available at all times for the appropriate support and care of the residents. Several *Laender* have been implementing measures accordingly since 2022. For example, the staffing ratio regulations were adjusted and increased in Burgenland; Carinthia implemented financial measures to make the care profession more attractive and amended the Carinthian Homes Regulation (*Kärntner Heimverordnung*), which now includes a mandatory second night shift as of 1 October 2022. Tyrol also made new rules to adjust and improve the nursing and care staffing ratio within the framework of the collective pay agreement. Lower Austria referred to statements of opinion on an ongoing project on duty roster stability. There is a care and support centre in each of the five health regions, which is developing, piloting and evaluating different variables for duty roster stability. These will be made available to all homes after the project has been completed. The Health Agency of Lower Austria (*Niederösterreichische Landesgesundheitsagentur*) is also evaluating the stressful situation on night shifts and is working on a phased plan to alleviate the matter. All of these are steps in the right direction. Further improvements, however, can unfortunately only come about in line with the realities of the employment market. Due to the strained overall staff situation, the NPM too can often only recommend to at least keep the effects of the staff shortages to a minimum – if need be, by not occupying more places.

Measures by
individual *Laender*

- ▶ ***Principle 18 of the European Pillar of Social Rights shall also be implemented in Austria. It guarantees every person the right to non-discriminatory affordable and high-quality long-term care in close proximity to their place of residence.***
- ▶ ***Specialised expertise is indispensable and dependent on supply. The implementation of complex care standards is inconceivable without adequately qualified and motivated personnel.***

- ▶ *The training campaign in the 2022 care reform package is therefore to be commended, but a quality programme should also be initiated.*
- ▶ *Additional structural measures are required for sustainably financed provisions for very old persons and those in need of care based on a harmonised understanding of quality.*

2.1.2 Human rights responsibility of supervisory authorities

Guaranteeing adequate care

The particularly severe observations in a Salzburg home prompted the NPM in 2022 to closely monitor the duties and obligations that fall on the supervisory authorities to guarantee adequate care and the rights of the residents in retirement and nursing homes.

Due to their age and various illnesses, everyday life for many persons living in retirement and nursing homes is characterised by a considerable level of dependence. Falls, bedsores, malnourishment, incontinence and pain are frequent occurrences, increase the dependence on care and reduce quality of life, as well as incurring substantial costs for the health system. The correct application of scientific guidelines and risk assessment mechanisms that can improve the care of those who need it and avoid or reduce the mentioned risk factors is thus all the more important. With this in mind, caregivers should first gather detailed information on the presence of specific care problems such as pain, malnourishment or bedsores (result level), and present implemented preventive and treatment measures (process level) as well as information on different quality indicators (structure level). Working with implemented, omitted, effective or ineffective interventions as well as with the ensuing (positive or negative) results in day-to-day care is indispensable in guaranteeing targeted, quality care.

Adequate nursing and medical care for those who need it in compliance with the scientific standards is also required from a human rights perspective. According to decisions by the European Court of Human Rights and the CPT, the inadequate living conditions of home residents might constitute a breach of the ban on torture, inhuman or degrading punishment or treatment pursuant to Article 3 of the European Convention on Human Rights (ECHR). In concrete terms, circumstances such as poor and qualitatively inferior care, unheated residential buildings, squalid bathrooms and inadequate medical care and nursing have been assessed as breaches of Article 3 of the European Convention on Human Rights. The European Court of Human Rights also deemed cases in which residents died under such conditions in homes as a breach of the right to life pursuant to Article 2 of the European Convention on Human Rights. If the state transfers the provision of health and care services to third parties or private institutions, it is obliged to

regulate and supervise the activities involved in performing this service in order to prevent human rights violations when availing of the provided service, especially where risks to life and health are already evident.

The regulation of the supervision of retirement and nursing homes, the enactment of home laws and the definition of minimum standards in residential care is the responsibility of the *Land* in terms of legislation and enforcement (Section 15 (1) Federal Constitutional Law).

Enactment of home laws is responsibility of the *Land*

The endeavour to regulate the preventive assistance of those in need of care according to the same objectives and principles nationwide resulted in 1993 in the conclusion of the "Agreement between the Federal Government and the *Laender* pursuant to Section 15a Federal Constitutional Law on joint measures [...] for persons in need of care" (Federal Law Gazette No. 866/1993). Certain quality criteria for the area of residential care were defined in this agreement, however most of these are very generic or merely present structural criteria.

Agreement between the *Laender*

In addition, the individual *Laender* laws almost exclusively enshrined only minimum structural requirements that differ considerably from one another, in which concrete care-related quality criteria are either missing entirely or are very generic and require interpretation. For example, some *Laender* have enshrined a legal obligation for "adequate care", however there is as little information on a legal definition for this as there is on a common understanding of the requirements for fulfilling this criterion. The Austrian Court of Audit also criticises that there is no nationwide common understanding of the quality of nursing homes (care standards, indicators for measuring the structural, process and result quality) and of the monitoring activities of the supervisory authorities (type and frequency of the monitoring, transparency of results, supervisory methods and tools, etc.).

No harmonisation of care standards

The negative effects of this failure were particularly evident recently on an unannounced monitoring visit by Commission 2 on 21 April 2022 in a Salzburg home run by an operator who is active throughout Austria. On the one hand, the commission identified a clear shortage of staff, a very high number of employees on (long-term) sick leave and staff overworking. On the other, it observed serious care deficits in the areas of care planning, care reports and the execution of risk assessments (in particular regarding pain, malnourishment and bedsores). Based on these observations, Commission 2 assumed that the (mental and physical) integrity and care of the residents were at risk.

Monitoring visit in Salzburg nursing home

The situation of a cognitively unimpaired underweight resident was particularly critical. She claimed to the commission on the day of the visit that she spent her days lying in bed with constant severe pain in the lower spine area. The commission members then observed her dressings being changed by the responsible qualified caregiver, during which a massive bedsore that also spread to the lower spine bone and a skin pocket the

Acute risk for a resident

size of two hands were exposed. The wound already smelled putrid. The woman was neither offered pain medication nor asked about her current pain level before the dressings were changed. The edges of the wound were not professionally cleaned and there was no daily description of the wound either. For the commission, it was not clear from the care documentation when the sacral bedsore had last been discussed with a doctor.

Commission 2 assessed the woman's situation as life-threatening and arranged an immediate transfer to a medical facility. She passed away shortly afterwards.

Considerable care deficits

The nourishment, pain, bedsore and wound management of the other residents was also inadequate. For example, the pain situation of residents with bedsores was not recorded and the risk of bedsores had not been documented for months. Pain medication was not administered frequently before changing dressings. The way in which malnourishment and undernourishment was dealt with also displayed care deficits and called for urgent action. In the case of several residents, there were no recognisable care diagnoses or actions for implementing dietetic measures despite (unexplained) weight loss.

Call for help from the staff

Employees of the nursing home subsequently contacted Commission 2 on their own initiative and urgently requested support. They said that due to the massive shortage of staff, adequate care of the residents could no longer be guaranteed even though several of those in need of care were in very poor condition.

In addition to the untenable conditions in the visited nursing home, the NPM observed poor quality assurance on the part of the supervisory authority – in this specific case, the regional government of Salzburg – after follow-up investigations.

No intervention by the supervisory authority for homes

In the weeks and months before the commission's visit, the *Land* of Salzburg supervisory authority for homes conducted several monitoring visits, during which they found deficits in the area of documentation and in how pain, malnourishment and bedsores are dealt with, and no initiative to undertake (mandatory) official supervisory measures and rectify the observed deficits. The official supervisory monitoring visits took place almost at the same time as the commission's visit on 21 April 2022, that is, on 5 April 2022 and then again on 3 and 4 May 2022.

Adequate, targeted and timely care

The Salzburg Care Act (*Salzburger Pflegegesetz*) is designed to protect the residents of retirement and nursing homes and stipulates that the operators of care facilities shall guarantee "adequate, targeted and timely care" (Section 3) as a general minimum standard.

The operators of care facilities shall ensure that for each resident, care documentation is maintained that contains the observed care status, care

planning and the care services provided (Section 4 (1) Salzburg Care Act). Furthermore, Section 18 (1) Salzburg Care Act stipulates that a "sufficient number of employed, qualified care staff" shall be available to provide the service.

The supervisory authority shall monitor and ensure that these minimum standards are met. If the supervisory authority observes deficits in the operations of the care facility, it shall first conclude an agreement with the operator on the measures required to rectify the deficits (Section 33 (3) Salzburg Care Act). If such an agreement cannot be concluded within a reasonable period of time or if such an agreement is not properly fulfilled, the supervisory authority shall issue official orders via notification.

After the visit by the commission on 21 April 2022, the AOB initiated investigative proceedings and contacted the regional government of Salzburg to establish why no mandatory official supervisory measures had been undertaken despite the observed deficits.

The regional government of Salzburg explained in its feedback that adequate, targeted and timely care is guaranteed at all times. The substance of the care activity is exclusively incumbent on the care facility and/or the caregivers and cannot be monitored by the supervisory authority. As regards the obligation to guarantee adequate care, the supervisory authority sees its duty exclusively in monitoring the framework conditions but not the quality of the actual care. Only those directly providing the care (care staff, doctors) can guarantee adequate nursing and medical care.

Supervisory authority for homes does not see misconduct

The supervisory authority for homes limits itself to listing (non-binding) recommendations rather than issuing binding official supervisory improvement orders so as to rectify deficits in the area of care (inadequacies in documentation and dealing with bedsores, pain and malnourishment, deficits in defining the care process, the formulation of care objectives and the evaluation of care measures), including those they observed themselves.

On 5 September 2022, the members of the AOB resolved unanimously that the legal opinion of the regional government of Salzburg and the resulting failure to implement timely and effective official supervisory measures constitute a case of maladministration. As stated in the subsequent recommendation of the AOB to the regional government of Salzburg, the failure to implement or the disregard of scientific care standards calls for intervention by the supervisory authority if serious deficits in risk management (such as in the areas of pain, falls, bedsores and malnourishment) cause severe health issues for residents in nursing homes.

The deficits outlined in the nursing home visited in Salzburg led to nationwide media coverage and investigation by the public prosecutors' office of several persons – predominantly the management of the home – on suspicion of the torture and neglect of defenceless persons and bodily harm.

Investigation by the public prosecutor's office and political consequences

The statement of opinion by the regional government of Salzburg received in November 2022 reiterates that the findings from the monitoring visits by the supervisory authority up to May 2022 had provided no evidence of major care deficits and thus gave no grounds for improvement orders on the part of the supervisory authority for homes. There had admittedly been a need for improvement in the care documentation and care planning, however they were not to be assessed as “deficits” in the sense of the Salzburg Care Act. Generally speaking, the supervisory authority only has to monitor the existence of minimum care standards and does not have to guarantee “optimum care”. The regional government of Salzburg upheld its opinion that the supervisory authority for homes acted correctly and within its area of competence at all times.

From the explanations in the statement of opinion, the AOB concludes that its opinion on the obligations of the supervisory authority in rectifying care deficits and guaranteeing adequate care still differs from the opinion of the regional government of Salzburg on this matter.

**Initial concession
by the supervisory
authority**

Nevertheless, the regional government of Salzburg announced an internal audit of the procedures at the supervisory authority for homes as well as a participative process for amending the Salzburg Care Act. These steps are welcomed by the and should be taken as an opportunity to legally specify what is meant by “adequate care”.

**Admission freeze and
bed reduction**

On follow-up visits in summer 2022, the supervisory authority for homes eventually saw that due to the precarious staff situation in the Salzburg home, there was a very high risk that the provision of care services could no longer be guaranteed. As a result, a temporary admissions freeze was imposed along with an initial reduction from 90 to 60 authorised beds, and then to 50 beds. The supervisory authority for homes assured that it is in constant contact with the operator of the nursing home and that there is ongoing monitoring of the staffing and the quality of care in the visited home.

**Recommendation to
Federal Ministry**

The cases in which the members of the AOB jointly identified maladministration also contain the recommendation to the Federal Minister for Social Affairs, Health, Care and Consumer Protection to define nationwide standardised minimum quality criteria in residential care as well as harmonised standards for the activity of the supervisory authority for homes in agreement with the *Laender*. In following these recommendations, the Human Rights Advisory Council has since set up a working group, in which external experts are also involved. The objective here is not to increase pressure on the caregivers but to strengthen their specialist competence for the protection of those being cared for. Not least, it is the responsibility of the state to provide the care profession with the necessary resources and framework conditions regarding qualification, the substance of care processes and adequate remuneration of care work.

Analyses of surveys of the supervisory authorities from several *Laender* actually illustrated in the past that the focus of the supervisory authority for homes is on monitoring minimum structural requirements and that the result of care and the perspectives, satisfaction and quality of life of the residents are rarely examined and analysed (*Niederhametner, "Verletzungen von Menschenrechten vermeiden" (2016), p. 24 f.*)

The Federal Minister agreed with the statements of the AOB, but regarding the definition of (nationwide harmonised) minimum standards, he referred to the significant lack of legal competence of the Federal Government. Nevertheless, he promised to work towards the creation of harmonised standards for supervisory authority monitoring activity within the framework of his legal possibilities. For example, the setting up of a Federal Government–*Laender* target control commission is planned in order to harmonise the services provided and quality assurance in residential care, as a minimum.

The creation of quantitatively adequate and simultaneously high-quality care surely poses one of the greatest challenges of our time in view of the demographic change in Austria and the staff shortages in the care profession.

In the opinion of the NPM, the initial stages of guaranteeing humane and high-quality care and combatting staff shortages should involve a serious discussion on what residential care actually has to provide in the individual areas and what is meant and can be expected by adequate or appropriate care. Similarly, a mechanism that is as standardised as possible for monitoring these criteria and rectifying identified deficits is required.

With this in mind, the NPM considers one of its most important duties to be continuing to advocate for the drafting and definition of nationwide harmonised minimum quality standards in residential care, as well as standardised regulations for the activity of the supervisory authority for homes.

**Harmonised
minimum quality
standard**

Furthermore, the NPM will track the (internal) reappraisal of procedures in the Salzburg supervisory authority for homes as well as the other announced measures, such as the planned amendment of the Salzburg Care Act.

- ▶ ***The Federal Government and the Laender are called upon to agree on harmonised minimum quality criteria in (residential) care as well as official supervisory regulations within the framework of the financial equalisation negotiations.***
- ▶ ***The supervisory authorities of the Laender shall guarantee adequate and humane care in retirement and nursing homes through monitoring and resulting notification of deficits.***
- ▶ ***This includes the implementation of care processes and care planning for the purpose of effectively and preventively minimising frequently occurring risks such as malnourishment, falls, pain and bedsores, as a minimum.***

2.1.3 Remote location of nursing homes makes social participation difficult

Barrier-free accessibility is fundamental for self-determination

Persons with disabilities, as well as older persons and those in need of care have a right to participation in social, cultural and political life. A fundamental element in exercising this right and leading a self-determined life is barrier-free accessibility, the implementation of which Austria committed to by ratifying the UN Convention on the Rights of Persons with Disabilities (UN CRPD). According to this, suitable measures shall be created in order to guarantee persons with disabilities the same access as others to the physical environment, modes of transport, roads, buildings, open spaces, information and communication, as well as other public facilities and services (Article 9 UN CRPD).

The location of retirement and nursing homes is also critical in determining whether and to what extent older persons in need of care can actually participate socially. In an “agreement between the Federal Government and the *Laender* pursuant to Section 15a Federal Constitutional Law on joint measures of the Federal Government and the *Laender* for persons in need of care including annexes”, the Federal Government and the *Laender* thus committed to harmonised quality criteria for the location and the surrounding area of retirement and nursing homes. The agreement pursuant to Section 15a Federal Constitutional Law stipulated that the location of the homes “(must) be integrated in the community as much as possible so that relationships with the environment are maintained”.

Human rights obligation

Furthermore, in a current judgement, the European Court of Human Rights (ECHR) reiterated that the signatories are also bound to take positive actions (ECHR, 8 February 2022, 62250/19, *Jivan v. Romania*) within the framework of respecting private and family life (Article 8 European Convention on Human Rights, ECHR). In concrete terms, this means that the signatories are obliged to take appropriate measures to fully guarantee the social participation of persons with disabilities, as they have a right to autonomy and self-determination.

However, in the case of a retirement and nursing home in Tyrol and Styria respectively, Commission 1 and Commission 3 observed that both the criterion of barrier-free accessibility and the criterion of inclusive location, that is, the possibility to participate in society, were not fulfilled.

Remote nursing home in extreme mountain location

The home visited by Commission 1 in Tyrol is located outside a town with some 10,000 inhabitants and can only be reached via a steep access road. The extreme location of the home on a steep mountain makes it impossible for the residents to go for a walk or spend time outside. The only asphalted areas are for parking and the access road outside the building. Away from these areas, the ground falls away almost vertically into the valley. The access road is also very steep and unsuitable for going out alone in a wheelchair.

In the case of a nursing home in Styria, the Styrian Patients and Nursing Care Ombudsman contacted the AOB and reported that residents who were not mobile on their own could not leave the home or return without help due to the structural conditions. Even with support (pushing the wheelchair), it is not possible to navigate the steep access road in the direction of the town centre.

Leaving the home without help not possible

Commission 3 visited the nursing home in August 2022 to obtain an overview of the situation on-site. The commission was thus ultimately able to confirm that the steep access road to the nursing home actually did present an insurmountable obstacle for persons with mobility problems or those confined to a wheelchair. It was not possible for the affected residents to reach or return from the shops and café on the main street without help, even though the residents had specifically expressed this wish.

The NPM criticised that the criterion of the inclusive location and barrier-free accessibility was not adequately addressed in the approval procedure for the operation of the nursing home. The NPM demanded from the regional government of Styria to fully include the possibility for the residents to participate in social and cultural life in future approval procedures.

Not included in approval procedure

Furthermore, the NPM advocated structural amendments in the nursing home, which the operator of the home refused to implement due to the high cost. Nevertheless, he promised to work on a solution, as well as the planned purchase of an electric wheelchair, with the help of which non-mobile residents can reach the town centre on their own.

- ▶ ***Pursuant to the UN Convention on the Rights of Persons with Disabilities (UN CRPD), it shall be ensured that retirement and nursing homes as well as their surroundings are barrier-free and their location facilitates participation in social life.***
- ▶ ***Supervisory authorities are obliged to observe and guarantee the criteria of barrier-free accessibility and an inclusive location within the framework of the approval procedure of a retirement and nursing home.***

2.1.4 Misplacement of young residents

A retirement and nursing home is not a suitable place in terms of structure and staff for younger persons with care needs. Young and old people have different interests when it comes to daily structure activities – based on both the type and number of activities. Reducing the resident to their care needs falls short and fails to fulfil the standards of the UN Convention on the Rights of Persons with Disabilities (UN CRPD). However, the commissions encountered persons who had been misplaced in several *Laender* in 2022.

For example, Commission 1 interviewed a woman in a Tyrolean home who was just 38 years old and was living there after suffering several strokes,

Admission of a 29-year-old man

and claimed to be “in the wrong place here”. Another home in Tyrol reported that it had repeatedly admitted young persons with severe mental illnesses (schizophrenia, drug addiction, etc.), usually directly from the psychiatric ward. They could only be cared for there for a short period of time. Other suitable residential and care forms are not available or not available in the quantity required. Again and again, the retirement home is thus the last resort for mentally ill and, in some cases, very young persons, such as the recent case of a 29-year-old man suffering from drug addiction. These persons were admitted to prevent them from moving constantly “to and fro” or to avoid homelessness (see chapter 2.2.1. for inadequate outside-of-hospital care of (geronto)psychiatric patients). The *Land* Tyrol announced to the NPM that it would initiate specific proposals for the long-term care of persons of working age in specialised care facilities and plan their implementation within the framework of the Care Structure Plan 2023–2033.

Commission 1 also encountered four relatively young residents (born in 1967 and 1972, for example) on monitoring visits to two homes in Vorarlberg, who, despite diagnoses that require increased care needs, seemed to be misplaced in a retirement and nursing home. The NPM requested the *Land* to provide information on the range of alternative forms of accommodation.

Placement in emergency

Sometimes misplacement in retirement and nursing homes is due to an acute emergency, such as in the case of a 30-year-old man with autism spectrum disorder in a Carinthian home. He urgently needed somewhere to live because of the serious illness of his single mother. Due to the lack of available places in the area of equal opportunity for persons with disabilities, he was admitted to the retirement and nursing home. Both the home and the *Land* are aware that this accommodation is not suitable for him. He often wants to run away and there are reports of conflicts with other residents. After a few months, at least a needs-oriented daily structure could be found for him. The home is in constant contact with the regional government, and a place in a planned residential home for those with autism is anticipated for the end of 2023.

Resident with Down syndrome

In a Viennese senior citizens home, Commission 5 encountered a resident with Down syndrome. She had initially lived in the home with her mother, who has since passed away. She is only 60 years old and now in need of care. Nevertheless, she is misplaced at the facility, as she needs a different type of occupation and leisure activities compared to the other residents. The Vienna Social Fund (*Fonds Soziales Wien*) stated on request by the NPM that the “Assisted living – service for senior citizens with disabilities” is provided in senior citizens homes. This could be availed of if adequate care at home in the form of mobile assistance and care services or partly residential offers (e.g. day-care centres) or/and services from the facilities for persons with disabilities cannot be sufficiently guaranteed. It provides support for persons with disabilities through specially educated and trained staff. However, this

service is not offered in the home in question, meaning that the resident will have to move to another facility. This decision is difficult in many cases, as those affected are already familiar with the surroundings and the staff in the home.

Even if misplacements are understandable in isolated cases and they are acceptable for those affected and their relatives due to personal circumstances, retirement and nursing homes do not provide adequate or disorder-specific care and occupational options for the groups of persons mentioned. Even if the staff are very motivated and make an effort, the medical and nursing care of these residents suffers due to the lack of psychiatric training of the staff, the lack of continuous and adequate psychiatric care, but also the shortage of staff. The NPM thus reiterates its recommendation that misplacements in nursing homes shall be stopped and that care shall be provided in low-threshold care settings close to the local community in compliance with the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

- ▶ ***The placement of younger persons in need of care in retirement and nursing homes shall be stopped.***
- ▶ ***Sufficient suitable forms of accommodation and care structures for these groups of persons shall be provided by the Laender.***

2.1.5 Restriction of the freedom of movement in dementia wards

On monitoring visits in retirement and nursing homes in 2022, the NPM repeatedly observed that structural measures were in place to restrict the freedom of movement of residents in dementia wards.

For example, Commission 1 observed in a Tyrolean nursing home that the lift was out of service in the evening and at night. The commission learned that the lift is stopped every day from around 7.00 p.m. or 8.00 p.m. to 5.00 a.m. or 6.00 a.m. for "safety reasons" in order to prevent the residents in the dementia ward from "running away" or going to other floors. Representative(s) of the residents had not been informed.

Lift stopped in dementia ward

The residents were also prevented from leaving the dementia ward in another Tyrolean nursing home as Commission 1 reported during an unannounced visit on 13 May 2022. Due to the non-standard programming of the lift in the home, it only started moving in the entire building if another button was pressed at the same time as the desired floor button. This was explained on an information sheet, however, the commission assumed that persons suffering from dementia or who are cognitively impaired were not in a position to understand this instruction. Furthermore, foils or pictorial

wallpaper (brick walls, etc.) were stuck to the doors leading to the staircases, making them unrecognisable as doors to persons with cognitive impairments.

Lifts and doors covered with photo scenes

Visits by the commissions to dementia wards regularly indicate that the exits and doors to lifts are covered with different photo scenes (bookshelves, forest, brick wall, etc.) to prevent the persons living there from leaving the ward or the home, or at least to act as a "soft barrier". Commission 4 was recently able to observe covered doors to lifts during a monitoring visit to a Viennese nursing home in April 2022, as did Commission 1 while visiting a nursing home in Vorarlberg in August 2022.

Restriction of the freedom of movement

The operators of retirement and nursing homes are obliged to take precautions and (preventive) measures to protect the life and the mental and physical integrity of the residents. To avert danger to health or life it can thus be necessary as a last resort to restrict the freedom of movement of persons suffering from dementia or who are cognitively impaired. Pursuant to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), such measures shall be reported to the representative(s) of the residents in all cases and shall only be implemented if no less severe measures (in particular, gentler nursing and care measures) are available to avert the danger.

Alternatives to restriction of freedom

Experience shows that the urge to move often associated with dementia can be very well countered with appealingly designed "trails" inside a home or outside without barriers and obstacles (such as locked doors, lifts, etc.). Regular (accompanied) walks promote well-being, combat anxiety and situations of fear and can be an alternative to a general restriction of freedom such as stopping the operation of a lift.

In other care facilities, the NPM observed that a well-considered, consistent colour and orientation system, where all residential areas have different wall colours or patterns and there is a sign with the colour of the residential area on each room door, etc., led to improved orientation and a reduction in anxiety in residents suffering from dementia.

According to the Supreme Court, guiding persons suffering from dementia using a labyrinth that is impossible for them to work out or installing heavy doors that they cannot open constitutes preventing persons from changing their location and is thus a reportable restriction of freedom (Supreme Court 19 November 2009, 4 Ob 149/09d).

Locking entrances to a retirement and nursing home during the day also constitutes an impermissible restriction of freedom (Supreme Court 18 December 2006, 8 Ob 121/06m). The judgement must, in the view of the NPM, also apply to the disabling or non-standard programming of a lift if certain (groups of) persons cannot understand this mechanism.

According to the Supreme Court, locking the entrance or stopping the lift at night – whereby the Supreme Court assumes that the period in question

is from 10.00 p.m. to 6.00 a.m. – constitutes a permissible precautionary measure to prevent residents from entering and leaving the home unmonitored. However, even during the night it must be possible for the residents to leave the home if monitored.

In the case in question, the operator of one of the two Tyrolean homes reacted to the criticism of the NPM, removed the non-standard programming of the lift and contacted the representative(s) of the residents in order to evaluate the situation with the doors covered with foils.

Operator removed non-standard programming of lift

In contrast, the operator of the other Tyrolean home refused to remove the lift stop in the evening and during the night and pointed out that due to the low numbers of staff on the night shift, this would pose a considerable risk to the residents suffering from dementia. Notifying the representative(s) of the residents, which is necessary and required in accordance with the Nursing and Residential Homes Residence Act in order to examine the permissibility and explore any possible less severe measures, was apparently not made.

- ▶ ***Measures such as locking or the non-standard programming of lifts that prevent persons from leaving a dementia ward shall – regardless of the permissibility of their content – as a measure that restricts freedom be reported to the representative(s) of the residents.***
- ▶ ***The operators of homes are called upon to try out and use alternative nursing and care measures (regular walks, designing "trails", installation of orientation systems) before applying measures that restrict freedom.***

2.1.6 Implemented recommendations

In 2022, the recommendations and suggestions from the commissions were implemented again in many areas. First and foremost, the effort applied by homes to attempt to counter staff shortages deserves mentioning (see chapter 2.1.1.). The following examples have been singled out as representative for many: the working hours were changed in a home in Tyrol in order to stabilise the workload during the off-peak hours. Two late shifts and an early shift were set up. A retirement home in Upper Austria was able to increase the deployment of qualified staff. In a Tyrolean home, three new qualified caregivers were hired; the commission no longer observed long waiting times when the emergency bell is pressed and residents were able to spend time outside more frequently. Walks were integrated into the care plans and documented in the care report. Considerable improvements in the personnel situation and in employee satisfaction were evident since the previous visit to a home in Vorarlberg in 2020. Thanks to the newly acquired MoHi (short for "*mobiler Hilfsdienst*", or mobile assistance service), residents can go for a walk every day if they wish. A home in Tyrol followed

Improvements in the personnel area

the recommendation to find substitutes for two employees on maternity leave, meaning more group and leisure activities were possible.

Notifications pursuant to Nursing and Residential Homes Residence Act

Criticism of the type and form of notifications of measures that restrict freedom is almost always followed as the homes evaluate and correct the notifications after the commissions' visits. These are often delayed or incomplete notifications that are then rectified.

Training and activities are being reintroduced

The commissions had the impression that after almost two years of the pandemic, a gradual move back to normality can be seen because the restricted activities and (internal) events are being reintroduced in the homes and restrictions to visiting times were lifted. Many homes also followed the recommendation to undergo further training, particularly in the area of violence prevention and pain management.

Fall management

The commissions noted improvements in fall management in some homes: falls and follow-up support were well documented, the risk of falling was ascertained and care diagnoses on falls with individual planning of measures were available.

Structural improvements

Structural and design-related changes were implemented regularly: for example, lights in the hallway of a home in Vienna were considered too weak for those with poor vision and therefore posed a potential risk of falling. A new lighting system was installed. In a Lower Austrian home, there was no fall protection in the staircases on a visit – bollards with ground sockets were then put in place. The emergency call system was modernised in a home in Tyrol.

Improved hygiene

A home in Carinthia improved many aspects that had been criticised on the first monitoring visit, for example, the hygiene situation in the rooms through the regular deployment of a hygiene specialist. Hygiene deficits were also removed immediately in a home in Salzburg, in which the commission had found dirt in a resident's room.

2.1.7 Positive observations

Above average good living conditions

The NPM had a very positive impression of many homes. The following examples should be noted: a relatively small home in Burgenland had both an impressive design and atmosphere; the living conditions are above average. There was a family atmosphere throughout the facility, and the staff were present and always available for every resident. There was a little zoo (including horses, donkeys, cats and dogs), and dinner is served at 6.00 p.m. in line with the normality principle. The residents have their own duties and function like a therapeutic community. Pain is viewed holistically according to the total pain concept; care planning is continually adapted and evaluated and the documentation is conclusive, transparent and stringent.

The living conditions in a retirement and nursing home in Tyrol visited by Commission 1 were also exemplary. The building is spacious, and thanks to its "figure of eight shape", it is architecturally ideal for disoriented residents. The home has comprehensive barrier-free accessibility including tactile paving and XXL buttons at wheelchair height in the lift. The staff were perceived as extremely dedicated and competent and the occupational programme as diverse and integrative. Furthermore, the home has a professional, structured procedure for the detection and treatment of pain as well as the care and support of persons in the final phase of their lives.

In a small home in Lower Austria, life is based on the needs of the residents: they feel at ease and secure mainly because of constant, dedicated care and occupation. Former employees are integrated as "visiting services", accommodation is available for caregivers, there is an international team and language instruction for foreign employees. Much of the medical care is performed in the presence of a doctor.

**Particularly
dedicated care and
occupation**

A positive observation made on the follow-up visit to another Lower Austrian nursing home was that, in addition to the very good personnel situation, the pleasant atmosphere and the comprehensive training programme for the staff, two pet cats live in the home, a therapy dog is deployed regularly and other animals can be brought into the home as part of the "animal buddies" programme.

„Animal buddies“

In a retirement and nursing home in Vorarlberg, particularly good pain management was evident, which was reflected in the high number of trained "pain nurses". The care documentation, the consultative commissioning of a psychiatrist and the general staff stability, in particular in the area of qualified caregivers, also made a positive impression.

The use of special wheelchairs with an adjustable seat, which are suitable for avoiding measures that restrict freedom, were also considered very innovative. Five residents with very high care needs could thus be mobilised to take part in social activities in a home in Carinthia.

Mobilisation

Staffing the night shift with three caregivers for 65 residents made a positive impression in a home in Vienna. The home is also hospice-certified, and the pain management and use of freedom-restricting measures are very good. In another Viennese home, there is a "visitor apartment" that can be used by visitors who have to travel long distances to visit their relatives. They are allowed to stay in the apartment for two or three days.

**Good staffing of
night shifts and
visitor apartment**

A home in Salzburg has what are termed "SOS" rooms, in which persons with care levels below the threshold for admission to a home but who have urgent care needs can be accommodated. In addition, admission support with house visits is also provided in order to clarify the social necessity and urgency of new admissions.

Customised emergency bell A customised solution was created for a resident suffering from multiple sclerosis in a Tyrolean home: a bell that does not have to be operated by hand but can be blown instead serves as her emergency alarm.

2.2 Hospitals and psychiatric institutions

Introduction

The commissions of the NPM visited 19 medical facilities in 2022. The results of the monitoring priority on the topic of “De-escalation” in psychiatric hospitals and institutions (for details see NPM Report 2021, pp. 49 et seq.) were presented to the public on the basis of statistical and textual evaluation during a press briefing on 29 June 2022.

Presentation on the monitoring priority of de-escalation

On the positive side, there are de-escalation concepts and de-escalation training programmes in an increasing number of psychiatric hospitals and institutions. However, the training is only obligatory for the care staff and, to a lesser extent, for doctors. De-escalation training is usually not provided for the remaining staff.

De-escalation training

In line with targeted violence prevention and the avoidance of freedom-restricting measures, training and ongoing further education in de-escalating measures should thus be obligatory for all staff, at least for those professional groups who have contact with patients in their day-to-day work.

There are serious deficits in the execution of measures that restrict freedom. Restraints continue to be applied in the presence of other patients in some cases and in the hallway due to a lack of space. 1:1 care can neither be provided preventively during a freedom-restricting measure nor for de-escalation purposes. Follow-up meetings are offered but in most cases, there is no standardised guideline to provide orientation for the staff. Restraints are applied by unqualified staff in some cases. Due to a lack of standardised documentation and regular statistical analysis, the basis for the rapid implementation of improvement measures is missing in many institutions and facilities.

Deficits with measures that restrict freedom

The NPM thus reiterates that sufficient human resources that are urgently required for the adequate care of patients shall be guaranteed through organisational measures. In 2022, it was clearly evident that staff shortages seriously impede patient care and many wards even had to be closed.

Staff shortages

The NPM thus plans to continue the monitoring priority and to discuss in detail the recommendations derived from experience to date with the key decision-makers in the Federal Government and the *Laender*. In addition, the performance of an in-depth review is planned for two years' time, during which the implementation of the NPM recommendations will also be evaluated and the view of the affected patients should be given more consideration.

It must be emphasised in this context that the broad media coverage on the recommendations and assessments of the NPM provides significant momentum in raising awareness of the existing problems.

CPT visit In continuing the monitoring priority, aspects resulting from a visit by the CPT have to be considered. The CPT visited the adult psychiatric ward and the child and adolescent psychiatric ward of the Lower Austrian regional hospital in Mauer.

Recommendations by the CPT During the visit, the spatial conditions, the commitment of the staff and the possibility for the patients to go outside were noted positively. However, the CPT emphasised that restraints in all cases should only be applied as a last resort and for the shortest possible time. To support the staff, guidelines for the application of measures that restrict freedom should be implemented, in which these essential conditions for freedom-restricting measures should be explained. In addition, these guidelines should stipulate permanent 1:1 care and follow-up meetings for measures that restrict freedom.

The CPT underlines the significance of recording measures that restrict freedom in registers that are already enshrined in hospital legislation in Austria. Pursuant to Section 38d Hospital and Convalescent Homes Act (Krankenanstalten- und Kuranstaltengesetz), the names of the persons hospitalised, additional restrictions pursuant to the Hospitalisation of Mentally Ill Persons Act (Unterbringungsgesetz), the beginning and end of the hospitalisation and further restrictions, the prescribing doctor and any injuries suffered by the patient or the staff should be visible on a daily basis in the electronic documentation (see NPM Report 2020, p. 46 et seq.). Steps have already been taken in the Laender to implement this legal requirement. However, there is still room for improvement in relation to the central registering of measures that restrict freedom and the statistical evaluation thereof.

In the view of the CPT, it is also urgently necessary that not only mechanical but also medication-based freedom-restricting measures shall be recorded (see chapter 2.2.6.). The NPM will continue to consider the recommendations and suggestions of the CPT as a key benchmark in its monitoring visit activities.

The visit by Commission 3 to Frohnleiten police station recently highlighted the problem that the group of doctors who can initiate an involuntary placement is too restrictive according to the current legal situation (see NPM Report 2019, pp. 44 et seq.). Often there are no doctors available in advance (Section 8 Hospitalisation Act) or there are long wait times. In most cases, police officers therefore transport the mentally ill persons directly to the psychiatric ward of Graz Regional Hospital without a medical examination of whether conditions for hospitalisation are met. This means that protection against impermissible referrals to psychiatric institutions is not adequately guaranteed.

The NPM had already welcomed the reform of hospitalisation legislation in the previous year, which, among other things, stipulates an amendment of Section 8 of the Hospitalisation Act in the form of expanding the group of authorised doctors.

Section 8 (1) Hospitalisation Act (Federal Law Gazette 155/1990 from Federal Law Gazette I 147/2022) that will come into force on 1 July 2023 stipulates that a person “may only be taken to a psychiatric ward against their will or without their consent if a doctor working for the public medical service, a police doctor or a doctor authorised by the Governor examines and certifies that the conditions for such a placement are met”.

Amendment to Hospitalisation Act effects expansion of pool of doctors

The NPM appreciates that its recommendation to create a pool of doctors was thus fully taken into account.

- ▶ ***The continued deficits in applying measures that restrict freedom shall be removed.***
- ▶ ***After a visit, the CPT recommended that guidelines to support the staff should explain in detail the essential conditions for applying freedom-restricting measures.***

2.2.1 Inadequate non-hospitalised care in (geronto-)psychiatry

Also in 2022, the NPM observed that the range of care options for persons with chronic psychiatric illnesses is inadequate. The situation is particularly critical for persons who need gerontopsychiatric care, for example those with advanced dementia.

In the past, the NPM pointed out repeatedly that long-term stays and associated hospitalisation in psychiatric hospitals is primarily attributable to the lack of non-hospitalised care places (see most recently for example the NPM Report 2019, pp. 56 et seq.).

Several examinations by Commission 1 in 2022 demonstrated once again that there are insufficient follow-up care facilities for psychiatric (in particular gerontopsychiatric) patients in Tyrol. The problem, which has been known for years, is currently exacerbated by the fact that the (also prevalent in Tyrol) nursing crisis is causing shortened in-patient stays and premature release. In many areas of long-term care, for example in the Regional Nursing Clinic Tyrol, beds that are basically available cannot be occupied right now. The result is a blatant undersupply of medical and nursing care. There is a risk of harm to the health of persons who urgently need a care place.

Lack of suitable follow-up care facilities in Tyrol

The *Land* Tyrol conceded that due to the tense situation in the nursing area, the general care situation in the available nursing homes is becoming increasingly difficult and that suitable countermeasures are required.

The NPM thus strongly recommends the continued expansion of the range of non-hospitalised care facilities for persons with psychiatric (in particular, gerontopsychiatric) illnesses.

Monitoring of Rankweil Regional Hospital also identified that the non-hospitalised care of persons with severe psychiatric diagnoses also posed major challenges for Vorarlberg. According to the *Land*, several mechanisms

Care deficits in Vorarlberg, too

have been initiated in recent years including a gerontopsychiatric consultative and liaison service for nursing homes and socio-psychiatric intensive care. In spite of everything, it was conceded, however, that the situation in care facilities has worsened due to staff shortages and bed closures. To counter this, it was decided to develop an inter-disciplinary catalogue of measures that range from further education for the staff through an increase in the number of places in nursing homes and the definition of concepts for specialised facilities to the flexibilisation of existing residential concepts and an adjustment of the status quo to the current needs situation.

The NPM welcomes the improvement measures planned by the *Land Vorarlberg* and is looking forward to their rapid implementation.

Lack of non-hospitalised care places in Vienna

During a monitoring visit to the first and second psychiatric wards at Hietzing Hospital in Vienna, Commission 4 also heard reports that many long-term stays of several months and sometimes up to a year are recorded. This is attributable to the insufficient number of suitable residential places with specially trained staff, above all for persons with severe psychiatric diagnoses.

Insufficient socio-psychiatric facilities in Styria

On a monitoring visit by Commission 3 to a child and youth welfare facility in Styria, it was evident that socio-psychiatric facilities in particular for the transition between a socio-psychiatric hospital and a pedagogical facility, to which adolescents can be transferred after an in-patient stay in child and adolescent psychiatric institutions, are missing.

The NPM thus reiterates the recommendation from 2019 that calls for a guarantee that after in-patient psychiatric treatment, patients can be further treated in a non-hospitalised setting in facilities that specialise in treating the respective target group in order to avoid stays in hospitals that are not medically necessary (see NPM Report 2019, p. 57 et seq.).

- ▶ ***The range of non-hospitalised care facilities for persons with psychiatric illnesses, and gerontopsychiatric illnesses in particular, should be further expanded.***
- ▶ ***Parallel to this, additional measures should be planned in order to make the best possible use of existing resources and to adapt them to the current needs of the respective target groups.***

2.2.2 Bed closure due to staff shortages

Shortage of resources attributable to high workload

The working conditions for both medical and nursing staff was already perceived as very stressful in Austria's hospitals in the years prior to the COVID-19 pandemic. The critical conditions have become increasingly harsh through the pandemic. A special study by the Work Climate Index (*Arbeitsklima Index*) 2022 showed that 54.8% of caregivers feel (very) highly stressed by physically demanding work. Four out of ten of those surveyed (42.4%) think about leaving the care profession at least once a

month. Furthermore, the MISSCARE Austria study by the Karl Landsteiner Private University of Health Sciences in Krems published on 2 November 2022 demonstrated that the care of patients in Austria's hospitals can only be inadequate: 84% of the interviewed persons claimed that they have to ration or even omit at least one of the interventions necessary for the care of patients (e.g. emotional support, monitoring of cognitively impaired patients, mobilisation, talking to patients) due to a shortage of resources.

The additional strain caused by COVID-19 brought about a further exacerbation of the situation, so that beds now have to be closed in many *Laender*.

Lack of personnel exacerbated by pandemic

With the help of the monitoring visits conducted in 2022, the NPM was able to confirm what was widely covered in the media. For example, the staff situation in the Department of Psychiatry, Psychotherapy and Psychosomatics at the Innsbruck University Clinic for Psychiatry I (Tyrol) meant that an entire, basically openly run, ward could not be occupied because not enough medical or nursing staff were available. A total of twelve beds were closed at the time of the monitoring visit.

The situation was similar in the Department of Psychiatry and Psychotherapy at the Kardinal Schwarzenberg Hospital in Schwarzach (Salzburg). Due to massive staff shortages in both the medical and nursing areas, the satellite facility St. Veit, which has over 20 beds, was completely closed at the time of the visit by Commission 2.

The mentioned shortages and bed closures mean that adequate psychiatric care is not guaranteed. There is a risk of shortened and thus inadequate treatment and premature releases from hospitals and institutions. Combined with the fact that there are not enough follow-up care places available for patients with psychiatric diagnoses (see chapter 2.2.1.), this gives way to a precarious and inadequate care situation.

Serious care shortfall

In the opinion of the NPM, measures shall be undertaken as soon as possible to accelerate the recruitment of new staff, ensure the care of patients and not to put the health of the existing personnel at risk through overworking.

► ***Suitable measures shall be undertaken to accelerate the recruitment of medical and nursing staff and guarantee appropriate care of patients.***

2.2.3 Precarious care situation in child and adolescent psychiatry

The NPM had already pointed out the inadequate care situation in in-patient child and adolescent psychiatry several times in the past (see most recently NPM Report 2021, p. 46 with other references). The continuing precarious care situation was evident again in almost all *Laender* in 2022.

Care situation still precarious

The shortage of medical specialists in the child and adolescent departments of the Viennese hospitals Hietzing and Floridsdorf continues to have a serious effect on child and adolescent psychiatric care in Vienna. As a result of staff shortages and the partial withdrawal of the Department of Child and Adolescent Psychiatry at Vienna General Hospital from regional care, for a long time it has only been possible to provide acute in-patient and out-patient care. According to the observations of the NPM, longer therapeutic stays were recently only possible in the children's ward C1 at Hietzing Hospital, however not for adolescents. As a result, the medical care of the young patients in the wards cannot be provided to the extent necessary, which results in considerable shortfalls in quality. There is no time for individual treatment, for reliability and continuity in relationships, for explanation and involvement of the patients in treatment decisions and the necessary coordination of individual treatment steps in a multi-professional team.

A statement of opinion from the Vienna Health Association indicated that ongoing recruitment measures are being taken and financial and qualitative incentives put in place to counter the shortage of medical specialists. In January 2022, a collaboration with the Psychosocial Services Vienna was also established to guarantee the necessary specialised medical resources. Bed capacity should be increased through internal transformation of the functional units (e.g. launch of a weekly clinic focusing on a consistent therapy cycles lasting several weeks).

Improvements Several improvements were achieved in different Laender despite the criticism mentioned:

Wels-Gelsenkirchen area For example, the expansion of the care offer in the Wels-Grieskirchen region (Upper Austria) through the creation of a new department for child and adolescent psychiatry and psychotherapeutic medicine is worthy of praise in the view of the NPM.

University Hospital Tulln The NPM also praised the satisfactory medical staff situation in the Department of Child and Adolescent Psychiatry and Psychotherapy at University Hospital Tulln (Lower Austria) at the time of the visit, which, according to the observations of Commission 5, facilitates professional treatment and care and contributes to keeping the level of freedom-restricting measures in the department down. In addition, a home treatment programme was also established that, according to the hospital, has been received very positively and, in the view of the NPM, is an optimal supplement to the in-patient treatment offer.

Organisational development process within the Vienna Health Association During a monitoring visit to the Department of Child and Adolescent Psychiatry at Hietzing Hospital (Vienna), the NPM was informed that an organisational development process was initiated within the Vienna Health Association for the purpose of ensuring child and adolescent psychiatric

care at the location. It was also appreciated that the management of the new internal department is very committed to trying to effect structural improvements.

The ward for transitional psychiatry at Floridsdorf Hospital (Vienna), which opened in 2021, provides a comprehensive and needs-oriented therapeutic programme in the opinion of the NPM. The acute area that was set up there also provides relief for the Department of Child and Adolescent Psychiatry at Hietzing Hospital and the Department of Child and Adolescent Psychiatry at Vienna General Hospital.

Transitional psychiatry at Floridsdorf Hospital

► ***The NPM upholds its recommendation to further expand the treatment capacity for child and adolescent psychiatry in the in-patient and out-patient area.***

2.2.4 Application of measures that restrict freedom

Measures that restrict freedom constitute a severe intrusion into freedom rights and shall thus be classified as the most restrictive measures. They are only permissible if they serve to avert a grave danger (a risk to the life or the physical integrity of a person) or are for medical treatment and care.

According to the standards defined by the CPT (CPT/Inf [2017] 6), care shall be taken that any restraint is not perceived as degrading by the affected person or that this feeling is not reinforced by the way in which the restraint was applied. A room specially designed for this purpose should thus be chosen for the restraint. These rooms should be safe, with appropriate lighting and heating and should have a calming atmosphere. Restrained patients should not be exposed to the gaze of others. Again in 2022, the NPM observed that the mentioned standards are not consistently observed.

CPT standards shall be observed

Observations by Commission 1 show that due to a lack of suitable rooms in the Department of Psychiatry at Kufstein District Hospital (Tyrol), restraints have occasionally had to be applied in the recreation room and thus sometimes in the presence of other patients. However, the *Land* Tyrol stated that considerable progress has since been made in the planning work on the new construction of the hospital and assured that a dedicated room for restraints is to be set up.

Restraints in the presence of third parties

A similar situation was observed in relation to the Department of Psychiatry and Psychotherapy at the Kardinal Schwarzenberg Hospital in Schwarzach. There, restraints are also applied in the recreation rooms and, in some cases, in the hallway due to the cramped conditions. Furthermore, it is not possible to meet the requirement of allowing restrained patients to see the time, as clocks cannot be seen from the place where the restraint is applied.

No suitable rooms

During a monitoring visit by Commission 5 to the Department of Child and Adolescent Psychiatry and Psychotherapy at University Hospital Tulln, it was

Restraint beds in the hallway

observed that a bed for restraints was already prepared in the hallway and was equipped with belts. The monitoring by the NPM indicated that the belts were covered and could not be seen directly, however there is currently no more practical solution than the preparation of a restraint bed in the hallway. A fundamental improvement was promised in this case, too, with the completion of the planned extension (expected at the end of 2024).

Here, the NPM recommends once again observing the standards for restraints developed by the CPT.

- ▶ ***The standards developed by the CPT should be observed when applying restraints.***
- ▶ ***A room that is specially designated for this purpose should be chosen for applying restraints. This room should be safe, have appropriate lighting and heating and have a calming atmosphere. It should also be possible to see the time.***
- ▶ ***Restrained patients should not be exposed to the gaze of others.***

2.2.5 Immediate notification of measures that restrict freedom

Obligation to notify Measures that restrict freedom shall be specially prescribed by the doctor treating the patient, documented in the medical history including the reason and reported immediately in all cases. The placement of patients shall also be reported to the patient advocacy and the competent court immediately. The Supreme Court stipulated that these notifications shall be submitted immediately, that is without any postponement, regardless of whether delays in processing can be expected due to public holidays.

It is of no importance whether the recipient of the notification (court or patient advocacy) receives knowledge of such at the time it is sent as anticipated. For formal reasons, the notification shall be sent such that the punctual time of the same can be unequivocally verified. Simply placing the notification in a PO Box does not suffice. Confirmation of the notification (e.g. by fax) is required.

Enshrined in human rights Care shall also be taken that pursuant to Article 5 (1) European Convention on Human Rights (ECHR) as well as Section 1 (2) and Section 2 (1) Federal Constitutional Law on the Protection of Personal Freedom (*Bundesgesetz über den Schutz der persönlichen Freiheit*), every deprivation of liberty "shall be provided for by law". Hence it can be derived that non-compliance with formal standards constitutes unlawfulness of the deprivation of liberty. Through these constitutional norms it is not only the compliance with simple legal standards that becomes a condition for the constitutionality of the deprivation of liberty.

The formulation “provided for by law” also contains an obligation on the part of legislators to enact corresponding procedural regulations. In this context, it is essential that the procedure has a process-related mechanism that facilitates sufficient explanation of the critical subject matter. The monitoring of formal conditions for permissibility is derived from procedural requirements of the comprehensive verification of the lawfulness of measures that restrict freedom.

However, the reality in medical facilities contradicts these legal standards: no information is forwarded to the patient advocacy or the competent district court at weekends and on public holidays.

Delayed notification

In the view of the NPM, it is desirable that the data exchange between the medical facilities and the courts is simplified in order to be able to comply with the obligation to report placements immediately. The psychiatric hospitals should be integrated into the electronic legal communication system with the courts to guarantee smooth and immediate placement notification.

Integration into the electronic legal communication system

In response to this recommendation, the Federal Ministry of Justice informed the NPM that the medical facilities are not currently obliged to use the electronic legal communication system. However, the Ministry is trying to extend this electronic legal communication system, which has proven its worth for many years, to include the particularly sensitive transmission of health-related data. Talks have already been held to this end with the Vienna Health Association and the *Land* Upper Austria.

An interface is not necessary to use the electronic legal communication system, just registration with a transmitting agency.

Use of the electronic legal communication system would contribute to simplifying the reporting of measures that restrict freedom and facilitate corresponding notification at weekends and on public holidays.

- ▶ ***Placements and freedom-restricting measures shall also be reported immediately at weekends and public holidays.***
- ▶ ***To simplify the reporting process, the medical facilities should be integrated into the electronic legal communication system with the courts.***

2.2.6 Medication-based measures that restrict freedom

During a recent visit, the CPT emphasised that agitated or violent patients who are exposed to medication-based measures should in principle be entitled to the same protective measures as patients who undergo other forms of freedom-restricting measures. The CPT thus recommended

Medication-based restrictions of freedom shall also be reported

medication-based measures that restrict freedom in psychiatric hospitals and departments should also be reported and stored in central registers for freedom-restricting measures.

Even if the regulation in Section 33 Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) is primarily aimed at mechanical/physical and electronic restrictive measures, restriction of freedom of movement can also be assumed in certain circumstances where pharmacological influence is given. This is the case if the purpose of the medication is to directly and intentionally suppress the urge to move.

Supreme Court affirms obligation to notify

In this context, the Supreme Court explains that it is not relevant whether a restriction is applied through physical coercive measures or through pharmacological influence for the purpose of restricting the freedom of movement. Medication-based immobilisation against the will of the patient can thus also constitute a restriction of the freedom of movement pursuant to Sections 2 and 33 Hospitalisation Act.

Differences in practice

However, the reporting practice of the medical facilities varies. For example, some departments report medication-based restrictions of freedom in accordance with Section 33 Hospitalisation Act; sometimes there is merely random notification of "forced medication". In total, some 3,000 reports of remedial treatment are transmitted to the Network for Patient Advocacy every year so it cannot be assumed that the reporting practice is perfect. Some doctors are still of the opinion that medication as part of treatment can never be considered a restriction of freedom. One reason for this is that a relevant assessment is difficult in acute psychiatry because neither the dose nor the type of medication alone suffice to form an adequate and conclusive basis.

Guidelines necessary

The NPM is of the opinion that despite these difficulties in practice, the notification of medication-based restrictions of freedom shall be guaranteed regardless of whether medication-based treatments pursuant to the Hospitalisation Act are also subject to court controls under certain conditions. The corresponding notification regarding medication-based restrictions of freedom is also important inasmuch as pursuant to Section 38d Hospital and Convalescent Homes Act, additional restrictions pursuant to Section 33 (3) shall be recorded in electronic registers. In this context, it is necessary that possible medication-based restrictions of freedom are also addressed in guidelines in psychiatric hospitals and an obligation to notify pursuant to the Hospitalisation Act is put beyond dispute.

- ▶ ***Medication-based restrictions of freedom shall also be reported completely and without delay in psychiatric hospitals and recorded in dedicated registers for measures that restrict freedom.***
- ▶ ***A corresponding obligation to notify should be explicitly included in guidelines for freedom-restricting measures.***

2.2.7 Access to the outside

Pursuant to Section 34a Hospitalisation Act, hospitalised patients have the right to go outside for at least an hour every day. This right can only be restricted in exceptional cases for reasons of the risk of harm to the patient or third parties.

Right to access to the outside

According to the rulings of the Supreme Court, patients must be able to have an unhindered view of the sky above when going outside and they should have enough space to adequately move freely. Just allowing fresh air in through bars and the "apparent access to the outside" do not suffice. For example, a terrace that is enclosed by walls and bars with a closed roof is thus inadequate.

Specification by the Supreme Court

The Supreme Court also clarified that a restriction of access to the outside is considered a restriction of a fundamental right and cannot be justified by a shortage of personnel or financial cover. Operators of medical facilities are thus responsible for ensuring that sufficient staff are available to guarantee the mandatory accompanying of hospitalised patients in exercising their right to go outside in the fresh air. However, in 2022, the NPM observed that there are no such (accessible) areas in some psychiatric hospitals. Commission 1 thus noted that access to the outside is not guaranteed in the Department of Psychiatry, Psychotherapy and Psychosomatics at the Innsbruck University Clinic for Psychiatry I because the two closed wards are located on the first and third floors. The staff are doing their best to facilitate outside walks accompanied by caregivers, however, it should be possible for patients to go outside without help.

Access to the outside without help shall be guaranteed

Furthermore, dementia gardens for the patients of gerontopsychiatric departments should be set up. The creation of such outside surroundings with appropriate plants and flowers can have a positive impact on the impaired memory function and sensory perception of those affected.

Creation of dementia gardens

- ▶ ***Psychiatric hospitals must enable hospitalised patients to go outside every day.***
- ▶ ***The patients should be able to go outside as independently as possible.***
- ▶ ***Special dementia gardens should be created for gerontopsychiatric patients.***

2.2.8 Supervision as an instrument for mental hygiene

It is now undisputed in the professional sphere of the helping professions, including psychiatric hospitals, that regular supervision is important for maintaining and improving the ability to work. Supervision is a recognised instrument of mental hygiene and for the prevention of burnout, mobbing and violence. These issues are common to every team due to the excessive

stress in terms of a constant confrontation with severe diagnoses. Ongoing mental hygiene in the form of supervision is essential for maintaining the mental health of the employees and thus also of persons who have to meet all of the requirements of behaviour that is conformant with human rights in providing their daily service to patients.

Overload affects working environment

Stress situations that are not dealt with continue to affect subsequent work and can, if the workload increases, cause premature overload or further mental problems. Symptoms such as insomnia, emotional lethargy, irritability, anxiety and aggressive behaviour are typical for inadequately processed stress situations. The impact of such impairments for the individual(s) but also for those (working) close to them are obvious.

Benefits shall be communicated

It is the duty of management to motivate their team and, where necessary, oblige them to avail of supervision. The staff are often unclear or harbour prejudice about what supervision is supposed to accomplish. With regard to the scientific standard, the management thus has an obligation to provide advance information about this service.

Standardised offer necessary

Supervision was not or was insufficiently provided at many institutions and facilities. In addition, the staff were not made aware of the benefits of supervision. The NPM therefore recommends offering regular, standardised supervision and informing the employees in all professions of its benefits.

The ward for transitional psychiatry at Floridsdorf Hospital deserves a positive mention. The interdisciplinary team development process initiated there is supported by an external supervisor in the team. Furthermore, an individual supervision option for each professional group is prepared and actively promoted.

- ▶ ***Supervision as a recognised instrument for mental hygiene should be actively provided in a standardised form in all psychiatric hospitals and departments.***
- ▶ ***Employees should be informed about the benefits of supervision in a suitable way.***

2.2.9 No obligation to wear institutional clothing

Commission 2 observed that patients in the Department of Psychiatry and Psychotherapy II at the Christian Doppler Clinic (Salzburg) had to wear institutional clothing (standard pyjamas) in most cases.

Normality principle requires day clothes and nightwear

The NPM reiterates that in accordance with the normality principle, wearing day clothes should be a matter of course even in psychiatric hospitals or departments. In the area of (geronto)psychiatry in particular, a structured daily routine, which is achieved through changing from day clothes into nightwear, among other things, is important. In this way, a therapeutic setting that approximates natural living conditions can be created.

The CPT standards (CPT/Inf/E [2002] 1 – Rev. 2006, German, p. 54, margin no. 34) also emphasise that forcing persons to constantly wear pyjamas and nightshirts is detrimental to strengthening the personality or self-confidence. The individualisation of clothing should thus be part of therapeutic care.

Against this background, the NPM recommends once again enabling patients to wear private clothes (adapted to the time of day).

Right to private clothes

- ▶ ***Wearing private clothes is a patient's right.***
- ▶ ***Constantly wearing institutional clothing is only permissible in isolated justified cases.***

2.2.10 Positive observations

Structural measures were implemented in the first and second psychiatric ward at Hietzing Hospital (Vienna), as recommended during the previous visits by Commission 4. The walls were painted with a more pleasant colour in the risk areas and in the admissions area. In addition, the sound insulation was improved and lighting with less glare chosen. Clocks were installed in the risk rooms to allow patients to be able to see the time.

Structural recommendations implemented

In the Department of Psychiatry and Psychotherapy II at the Christian Doppler Clinic (Salzburg), a project was initiated to implement scientific findings in care in practice. In addition, Commission 2 observed that the cases of polypharmacy in patients in gerontopsychiatry was substantially reduced.

Implementation of scientific findings in care

A permanent watch pool was installed in the Department of Psychiatry at Kufstein District Hospital (Tyrol) upon recommendation by the NPM.

Permanent watch pool

Commission 3 was pleased to report that several points of criticism identified on the previous monitoring visit in 2021 have since been addressed at De La Tour Hospital – Treatment Centre for Addiction-Related Illnesses Klagenfurt (Carinthia). For example, a standardised de-escalation concept was established and training provided. Improvements in the area of medication management have also been implemented, as has the installation of an electronic documentation system.

De-escalation training

In the Department of Psychiatry and Psychotherapy at the Kardinal Schwarzenberg Hospital in Schwarzach (Salzburg), different concepts (e.g. for delirium and suicide prevention) were developed and brought to the attention of staff.

Prevention concepts

During a monitoring visit to the Department of Child and Adolescent Psychiatry at University Hospital Tulln (Lower Austria), the NPM was informed that an extension was planned and the new rooms can probably

More space

be taken into operation at the end of 2024. A longstanding demand of the NPM to improve the prevailing cramped conditions and remove the existing restrictions (e.g. overcrowding of rooms) has thus been met.

**Permanent watches
reduce measures
that restrict freedom**

In spring 2021, no plans to introduce a permanent watch had been communicated by Vienna General Hospital to Commission 4. After a successful pilot phase for cognitively impaired patients lasting several months, the watch was established in 2022 with students and volunteers who seemed to be suitable. With their presence, the watch is designed to reduce stress during the night, recognise emergencies in good time and minimise the risk of self-harm without having to resort to measures that restrict freedom. According to information from Vienna General Hospital, this provides relief not only for the permanent staff; in 2022, it helped to reduce the number of freedom-restricting measures by 35%.

2.3 Child and youth welfare facilities

Introduction

In 2022, the NPM commissions visited 94 child and youth welfare facilities. The staff shortages that pose major challenges for many facilities were particularly noticeable. As filling a position that becomes vacant now takes much longer than it used to, the other team members have to work more shifts, which exacerbates the already very difficult working conditions considerably. The result is overworking, burnout and increased staff turnover.

Staff shortages cause problems

Due to the tense personnel situation in Austria, some *Laender* started to introduce legally problematic employment models and to lower the qualification requirements. The NPM considers all of these developments extremely critical, as the result of the monitoring priority "Training and further education of the pedagogical staff", explained in detail in chapter 2.3.3., indicates that now only about half of the persons working in the facilities have socio-pedagogical or social work training.

The results of the monitoring priority were presented at the end of November 2022 and made available to the experts by Ombudsman Bernhard Achitz and Gerald Herowitsch-Trinkl from the Association of Austrian Child and Youth Welfare Facilities (*Dachverband Österreichischer Kinder- und Jugendhilfeeinrichtungen*). The Austrian Professional Association for Social Work subsequently expressed its gratitude for highlighting the resulting deficits in training and requested that the AOB continue advocating the creation of a law governing the profession for social pedagogues and stress the importance of observing children's rights. The absence of this causes permanent stress and overworking of the specialised staff – and in many cases, also leads to health problems or what is referred to as "escaping the industry".

Efforts to enact a nationwide standard law governing the profession

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection emphasised to the AOB that without a change to the Federal Constitution, neither the Federal Government nor the *Laender* could enact such a law governing the profession on its own. As planned in the 2020–2024 Governmental Programme, the department is trying to find a nationwide solution in cooperation with the *Laender* (2020-0.134.989 (VA/BD-JF/A-1)).

2.3.1 Summary of individual observations

The crisis centres in the City of Vienna were particularly affected by staff turnover in 2022. This is the consequence of the overcrowding that has been prevalent for many years. Rather than eight children, as defined in the concept, Commissions 4 and 5 sometimes encountered up to 14 children in the crisis centres. An increase in permanent positions, as has been

Particularly high staff turnover in crisis centres

demanding by the NPM for a long time, had not been implemented. The low staffing ratio meant that crisis de-escalation was no longer possible in some cases. Some crisis centres even had to close at times, as it was not possible to maintain operations with the remaining staff.

To solve the personnel problem, the Vienna child and youth welfare services resorted to deploying persons who were still in training as assistants in crisis centres on the basis of a service contract. In shared accommodation, too, the option was created to employ persons who have not yet completed their training on the basis of a service contract in order to obtain additional resources for double-staffing in the afternoon, which has long been demanded by the NPM. This constitutes a circumnavigation of employment contracts (pseudo self-employment). Furthermore, it should be remembered that persons still in training are particularly affected by overworking and burnout, and many leave the residential child and youth welfare services before they complete their training.

Lowering the qualification standards

Other *Laender* also reacted to the staff shortages by lowering their qualification standards. With an amendment to the Children's and Youth Assistance Act (*Kinder- und Jugendhilfegesetz*), Lower Austria expanded the professional groups that are allowed to work as specialists in child and youth welfare. In Salzburg, where until now the only persons allowed to work were those who had completed their training lasting a minimum of three years in the areas of social work, social pedagogy, pedagogy, educational sciences, psychotherapy or psychology, prerequisites were also relaxed in an amendment to the Children's and Youth Assistance Act. In Vorarlberg, the facilities themselves decide whether a person is suitable as a specialist without having fulfilled the formal education standards, and the facilities assume liability.

Admission freezes due to staff shortages

Due to the strained personnel situation, admissions freezes in residential groups were necessary in 2022. It was thus increasingly difficult for the competent authorities for child and youth welfare and protection to find suitable socio-therapeutic and socio-psychiatric places. If the number of available socio-pedagogic places falls too, this will inevitably cause a shortage of supply. Styria, which is particularly hard hit, announced in autumn 2022 that the budget for child and youth welfare will be increased. In this regard, it was also decided to reduce the highest permissible number of care places in child and youth residential groups from 13 to nine, which is in line with a longstanding demand of the NPM.

New type of group in Lower Austria

Lower Austria created a new type of group with another amendment to the Child and Youth Welfare Facilities Regulation (*Kinder- und Jugendhilfeeinrichtungsverordnung*), which can be tailored to the needs of individual cases. The removal of the socio-therapeutic residential groups as part of the standard cost model had caused a massive shortage of

accommodation places for minors who cannot be cared for in socially inclusive groups because they need smaller groups and more individual care. It is hoped that this additional offer will enable all Lower Austrian minors to receive customised care once again. In Vienna, the lack of care places meant that the crisis centres have to keep the minors until a place in shared accommodation becomes available. The already tense situation in the crisis centres is thus further exacerbated.

In 2022, the commissions also reported nationwide on the major difficulties experienced by adolescents when they come of age. Not all adolescents are adequately prepared for independent life at 18. Although those adolescents without an apprenticeship or education in particular need further support, an extension of care for this group is extremely difficult. There is thus the risk that socio-pedagogical work performed and successes achieved over years are undone and obstacles are built that impede the occupational integration of young adults.

Problems when coming of age

Within the framework of a regional children and adolescent expert conference in 2022, it was decided to task the ARGE child and youth welfare services with the establishment of a working group. With the involvement of the competent Federal Ministries, the group should present a recommendation for nationwide harmonised regulations for aid for "care leavers". Harmonisation of the conditions for continued care are urgently necessary, as the procedure for authorising aid for young adults differs not only according to the Land but also the responsible District Authority.

Nationwide harmonised regulations required

In connection with its monitoring visit in several socio-pedagogical residential groups in Upper Austria, Commission 2 drew attention to particular difficulties for young adults with cognitive impairments. They are within the scope of the Upper Austrian Equal Opportunities Act (*Chancengleichheitsgesetz*) but do not fit into a "classic residential group for persons with disabilities". Two adolescent residents of a residential group in a facility, in which they were cared for until their 18th birthday, were prepared specifically for life on the streets. Providing support into homelessness is, however, in no way conformant with human rights and shows that innovative residential and care forms have to be developed for young adults with cognitive impairments. A solution could ultimately be found for the two Upper Austrians.

Preparation for life on the street

2.3.2 Implemented recommendations

Many operators of facilities again reacted quickly to recommendations and criticism by the commissions. Many shared accommodation facilities replaced the locking systems of doors that could not be locked from the inside or opened from the outside without help. Due to criticism of the lack of privacy in a bathroom that could be entered from both sides, the locking cylinder was replaced. Lockable containers or safes for personal belongings were put

Criticism of lack of privacy

in place. Damage to the fittings and rooms was identified in some shared accommodation, which was rectified quickly. Mould was removed from the bathroom in one shared accommodation. A professional cleaning company was commissioned for basic cleaning every three months after criticism by the commission of a facility where the residents are responsible for cleaning their bedrooms and bathroom themselves. Kitchens were repeatedly found locked. After criticism of this, promises were made to leave them open in the future to enable access to fruit, snacks and drinks.

Deficits in medication storage

Medication management gave grounds for criticism on many monitoring visits. There were often no doctors' prescriptions or the administered dose differed from the prescription. Medication from former residents is frequently found in shared accommodation, which should really have been disposed of. It is still evident that lockable medication cupboards in the office are not locked, thus leaving medication accessible to minors. After the criticism of medication storage, one operator decided to ensure correct storage of medication by installing combination locks. There are also often shortcomings in relation to the documentation of the dispensing of medication. In most cases, the recommendations by the commissions were followed and the dispensing of medication will be documented in writing in the future.

Uncertainty regarding Nursing and Residential Homes Residence Act

Uncertainty among pedagogical staff still exists in connection with measures that restrict freedom. The recommendation to contact the representative(s) of the residents was followed in most cases. Notification of the representative(s) of the residents concerning PRN medication was often omitted but corrected upon the recommendation of the commissions. The Vienna municipal department MA 11 organised training to increase the awareness of residential group staff in the area of freedom-restricting measures upon recommendation by the commission. The staff were also provided with information in connection with medication-based measures that restrict freedom.

There are also knowledge gaps in the FICE quality standards for residential child and youth welfare. The recommendation to initiate training programmes and make one person responsible for the implementation was followed.

After obtaining clarification from the Chamber of Labour, the *Land* Upper Austria asked an operator who planned shifts of 32 hours, which exceeds the maximum number of hours permissible in collective bargaining agreements, to organise their working hours and roster planning in conformance with the law. The operator promised that they planned to change this in all of their facilities. Upon recommendation by Commission 3, a crisis facility in Carinthia evaluated the human resources.

Participation mechanisms applied

Many facilities set up children's teams as participation mechanisms in the past three years. However, the monitoring visits showed that the intervals in some groups are becoming increasingly long and the children's teams

thus fail to take effect. The shared accommodation where this was criticised promised to let the teams take place regularly again.

Meanwhile, the Federal Government announced the need to adjust the maximum cost rates for the reception conditions under the Basic Provision Agreement for unaccompanied minor refugees and asylum seekers, and promised the development of a transparent real cost model to cover all of the Land basic provision expenses. In November 2022, however, some 1,200 unaccompanied minor refugees and asylum seekers were in major centres of the Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*). Some of them had been waiting for seven months for transfer to the Land basic provision, in which insufficient new places were made available for unaccompanied minor refugees and asylum seekers. This complies with neither the European requirements nor the national provisions covered by constitutional law. As in 2015, the NPM upholds its demand for an action plan for unaccompanied minor refugees and asylum seekers. Their child and adolescent right to accommodation, priority processing of their asylum cases, provision of therapy as well as education and leisure time should thus be adequately guaranteed.

Daily rate for unaccompanied minor refugees and asylum seekers should be increased

2.3.3 Monitoring priority of training and further education for socio-pedagogical staff

Preliminary remarks

In 2020, the NPM agreed on a monitoring priority for child and youth welfare facilities, which was designed to focus on the level of training and qualification of the employees. To this end, a comprehensive data collection catalogue was created within the framework of an internal process lasting several months and with the involvement of experts from all commissions. The supervisory authorities of the *Laender* were informed about the NPM topic in spring 2021.

Joint development of new monitoring priority

Between 1 April 2021 and 30 September 2022, the commissions monitored the level of training and qualification of the staff on all visits to child and youth welfare facilities nationwide. The purpose of the monitoring priority was to document the training level in the facilities, thereby facilitating the comparison of the different standards throughout Austria. At the same time, the priority highlights whether the qualifications of the employees meet the specific conditions in the visited residential groups and whether the operator enables the employees to take part in adequate education and further training programmes. Depending on the composition of the group, the situation there and the resulting challenges for the staff can change constantly. The age of the minors, their behavioural disorders and the resulting diagnoses affect the requirements placed on the staff.

Level of qualification is surveyed

**Professionalism
encompasses
different dimensions**

The professionalism of the specialists working in a facility is the basic condition for ensuring that children and adolescents in residential care can receive the best possible support in their development. Professionalism encompasses different dimensions. These include, on the one hand, solid training that provides the best possible preparation for the specifics of the field of duties and requirements in child and youth welfare, imparts the required specialist, methodical and didactical knowledge and entails dealing with theories and concepts of social pedagogy. As there is no law governing the profession for social pedagogues in Austria and no nationwide standardised training, that is to say, different professions in the *Laender* are allowed to work as specialists in child and youth welfare, the level of training in the facilities varies greatly. In addition to theoretical knowledge, implementation competence that is gained and reinforced to a large extent through practical experience is required to be able to work professionally. It is essential for all specialists that, besides training and further education, adequate team reflection and supervision are available.

Preventive aim of the prioritisation

**Inadequate training
increases the risk of
overload**

The better the staff are prepared during their training for the requirements in the care of children and adolescents, the fewer difficulties they will have in practice. The particularities of the individual children or the group have to be reacted to in training and further education in order to equip the caregiver in the best possible way. If they are not trained accordingly or even perform the job before their training begins, it is highly likely that they will suffer from overload. This overload increases the risk of burnout considerably, which in turn causes increased staff turnover in the facility. There is thus a direct connection between poorly trained staff, who are also not supported with necessary training and further education, and the break in relationships that is extremely harmful to the children's development. However, the top priority of child and youth welfare is to prevent such breaks and other trauma.

**Overload leads
to human rights
violations**

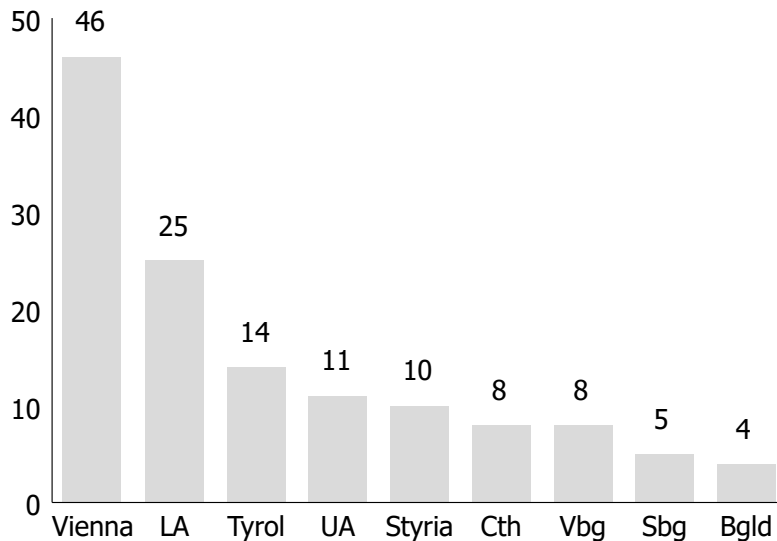
There is also a connection between the overload of inadequately or untrained staff and the risk of human rights violations. Generally speaking, top priority should be given to the best possible care and support for children and their well-being. Section 2 Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) stipulates that every child that is permanently or temporarily removed from their family surroundings has a right to protection and support from the state. In addition, Article 8 European Convention on Human Rights (ECHR) protects the right to both family life and privacy. This covers the right to self-determination over one's body and the protection of physical integrity. Article 19 Convention on the Rights of the Child (CRC) also stipulates the implementation of preventive measures to prevent violence and sexual assault on children and adolescents.

Conducting visits based on monitoring priority

The six regional commissions of the NPM conducted 131 monitoring visits to child and youth welfare facilities throughout Austria within 18 months. The visited facilities were distributed across the individual *Laender* as follows:

131 visits throughout Austria

Visited facilities by *Laender*



Legend:

LA = Lower Austria

UA = Upper Austria

Cth = Carinthia

Vbg = Vorarlberg

Sbg = Salzburg

Bgld = Burgenland

In the course of their visiting activities, the commissions used the data collection sheet to determine whether the facilities ensure that their qualifications meet the specific requirements of the residential group when hiring staff. Special attention was given to the induction training phase for new employees. They also examined whether sufficient and adequate training and further education is facilitated so that the staff are equipped to deal with the constantly changing pedagogical challenges. Furthermore, they assessed whether sufficient opportunities for reflection in the form of team meetings and supervision are made available. Staff turnover was also documented. Human rights standards formed the basis of interviews on the following areas: the United Nations Convention on the Rights of the Child (CRC), the Federal Constitutional Act on the Rights of Children, Article 8 European Convention on Human Rights (ECHR) and the quality standards for the residential child and youth welfare services of FICE Austria, which were created in 2019 on the basis of pertinent scientific findings focusing on children's rights.

Employee training

Harmonised requirements are missing

In the *Laender*, different professional groups are allowed to work in the residential care of minors. The harmonisation of the requirements throughout Austria, which has been demanded by the NPM for a long time, was not even realised when the Federal Government alone was responsible for it. Since the reform of the Federal Constitutional Law with regard to the powers and responsibilities under the motto "delegation to the *Laender*", the *Laender* themselves are responsible for both the legislation and the implementation of child and youth welfare services. Harmonised regulations can thus no longer be expected.

Diverse professional groups are permitted to work in care

In all *Laender*, graduates are allowed to work in the residential care of children and adolescents if they have a degree in social pedagogy from an institute that is recognised in Austria, either over five years with the school-leaving exam or over three years while working part-time. Universities of applied sciences have been offering degree courses in social work in each *Land* for 20 years. Graduates can work both as social workers and in residential care or in mobile socio-pedagogical counselling. In addition to theoretical knowledge tailored to the future professional fields of work, the students receive job-related decision-making skills. Furthermore, their social and personal skills and their ability to reflect are enhanced.

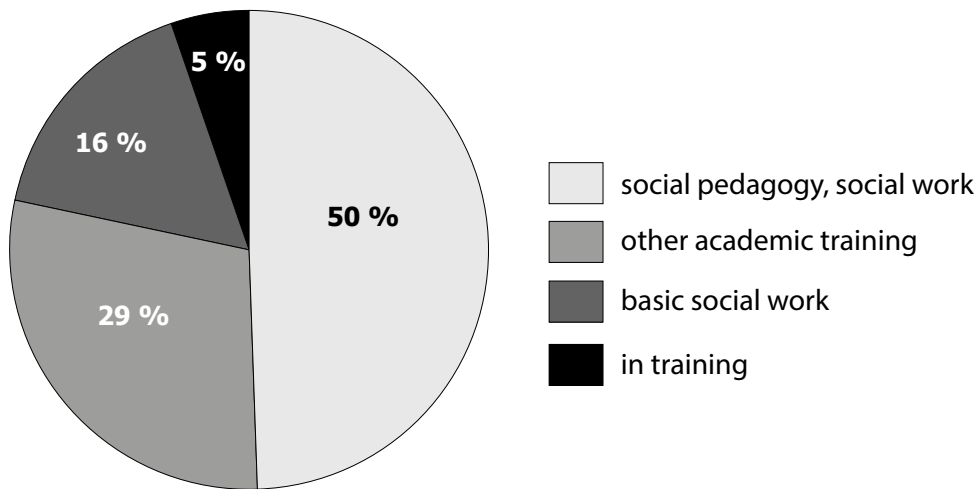
Furthermore, many graduates of educational sciences, psychology, teaching and pedagogy work in child and youth welfare residential groups. In addition, the *Laender* allow – again, different groups of – graduates of basic social professions to work as socio-pedagogical care staff, such as graduate social support, after-school education, early childhood education, psychotherapy, graduate special education, health and nursing professionals, family education and life and social counselling. What is more, the legal framework in some *Laender* permits the employment of persons without social or pedagogical training if they subsequently start a training course in the allowed professional groups. The maximum amount of time in which the training has to be completed varies and ranges from one to five years.

Training was surveyed

The commissions surveyed the training of the pedagogical staff on their visits in order to determine the proportion of authorised professional groups represented in the facilities. The following four categories were defined in the evaluation:

- Group 1: social pedagogues, social workers
- Group 2: university graduates of pedagogy, psychology, teaching and educational sciences
- Group 3: basic social professions that are not specially trained for socio-pedagogical care.
- Group 4: persons in training who already work in the facilities

Training of employees in child and your welfare facilities



This diagram clearly shows that in Austria, only around half of the care staff working in socio-pedagogical facilities have socio-pedagogical training and are thus educated to exactly meet the requirements of the profession. Even if multi-professionalism can enhance a group depending on its composition, the high proportion of other professions is to be viewed critically.

50% without special socio-pedagogical training

For half of the persons employed in residential groups, the content of their training does not fully correspond with the professional work in socio-pedagogical facilities. This situation could cause dissatisfaction among the employees. It can be assumed that for many of these persons, the work in socio-pedagogical facilities is not their first choice of profession but rather an interim solution until they find a job that matches their education. This could be the case for the second group of graduates from the areas of pedagogy, educational sciences and psychology, in particular, who make up roughly a quarter of the specialists working in socio-pedagogical facilities. This in turn could be one of the reasons for high staff turnover in the facilities.

The standard of education of group 2 is very high, however focused on areas other than socio-pedagogical care. Thus, graduates of the courses of study mentioned receive theoretical knowledge exclusively but have no practical experience – unlike group 1, whose training provides sufficient time for practical experience accompanied by practical seminars – after completing their studies.

Group 3 from the basic social professions is trained to provide care in schools, kindergartens, institutions and facilities for persons with disabilities or hospitals. Their training does not cover the particularities of children and adolescents with different traumas from their family systems. Roughly one fifth belongs to this group.

The proportion of persons in training is not insignificant, either. In particular, those who are still at the beginning of their training have no socio-pedagogical knowledge, which they urgently need for working with complexly traumatised children and adolescents.

Persons in training frequently overstretched

If persons in training work in residential care too early, they are exposed to situations almost every day in which they are overstretched. Due to the increasingly complex problems of the minors in care, training institutes are more frequently experiencing that their students are already at risk of burnout during their training. These negative experiences during training make many graduates decide to transfer to another professional field. For this reason, it is increasingly difficult for the operators of facilities to attract graduates from the universities of applied sciences and the institutes of social pedagogy, as a survey by the Association of Austrian Child and Youth Welfare Facilities confirms (see Association of Austrian Child and Youth Welfare Facilities (Ed.), *"Personalsuche in der KJH"*, 2022, pp. 5 et seq.). The staff turnover in the facilities increases with the change of professional field.

- ▶ ***Further education for those professional groups that are not trained in social pedagogy should be mandatory in order to close associated knowledge gaps.***
- ▶ ***Persons without training in a socio-pedagogical or psychosocial profession should only be allowed to work in child and youth welfare facilities if they have completed a third of a part-time socio-pedagogical training course outside work.***
- ▶ ***Persons in training should have successfully completed at least two-thirds of their course before they are allowed to work alone.***

Verification of personal suitability and professional attitude

Different approaches

The second question in the monitoring priority addressed ways for management to verify the suitability and attitude of the pedagogical staff. There was a choice of several answers: reflection meetings, observations, meetings with employees, or other. Multiple answers were possible. The evaluation indicated that the overwhelming majority of the facilities hold meetings with employees (97) and reflection meetings (106) to verify the personal suitability of new employees. The answers provided additional approaches to evaluating the suitability of new employees, which can definitely be considered good practice and are therefore shown here.

Participation-based attitude particularly important

A collaborative and participation-based attitude of the staff working in a facility is of key importance. Participation, in particular, is a fundamental pedagogical approach to encouraging young persons in their development into independent and socially competent personalities and to perceive them unconditionally as experts in their own living environment. The form and intensity of the participation must be oriented to the development and the age of the children and adolescents (FICE Austria (Ed.), *"Curriculum für die duale*

praxisorientierte Weiterbildung von Fachkräften in der stationären Kinder- und Jugendhilfe auf der Basis der FICE Q-Standards, 2022, pp. 60 et seq.).

Different facilities claimed that the management regularly views the documentation and the reports, and then discusses them with employees. In so doing, alternatives or suggestions for the improvement of approaches are pointed out where necessary. In one facility, personal suitability is verified every six months, whereby two cases are viewed and evaluated by the management. Furthermore, feedback is gathered from the other team members and there is an orientation meeting after six months. Another residential group holds tests on an ongoing basis and the management observes the employees on group holidays with the children in order to be able to assess and promote the feedback, error and learning culture of individual team members. One facility manager holds a one-to-one meeting with every specialist once a week and listens to what is on their mind. One facility operator sets tests on the attachment representation of all employees, which are evaluated by a psychologist and discussed in follow-up meetings.

Good practice

In some facilities, the team management regularly work on shifts themselves. In this way, they see all of the caregivers at work and give direct feedback and point out alternative courses of action. Other facilities work with "interviewing", a peer consulting procedure, which enables the management to obtain a good overview of the care staff in everyday life in the group and, if required, can provide prompt support through internal leadership or external measures. In this way, larger problems or even the departure of overstrained staff can be prevented.

Common to all tools is that strong management presence is required. It is only when the management level has sufficient time that the extremely important processes of a trauma- and attachment-sensitive, sympathetic and viable relationship-building, respectful and stabilising facility culture can be put in place. However, if the pedagogical management is responsible for several residential groups, as is customary with various operators, these duties, which are part of the management scope of activities, cannot be performed as part of the daily routine. Management that is infrequently on-site in the residential groups does not know the group activities or the minors well enough to be able to give the team specific instructions on building competence.

Strong management presence required

- ▶ ***The facilities should not limit themselves only to meetings with the employees and reflection meetings to verify the personal suitability of the specialists.***
- ▶ ***Management should be present and have sufficient capacity to establish a staff selection and development process based on children's rights, as well as transparent, appreciative and participation-based leadership and team structures. They should also always continue to observe the professionally substantiated cooperation and reflection of pedagogical processes.***

Induction training phase

Comprehensive instruction and support at the beginning

The induction training of new caregivers places specific demands on the management and the team. The comprehensive instruction and support of new employees in the initial phase is of great significance. It is especially important for keeping them in the facility. It is even more the case for persons who have recently completed their training, as in most cases they do not have sufficient confidence in their actions to deal with the challenges in everyday group life.

Duration of induction phase varies

In relation to the induction training phase, the data collection sheet predominantly covered the chronological sequence of the induction training and whether this is based on specific standards. A total of 97% of the visited facilities stated that they have an induction training phase. However, the duration varies considerably. In most cases, it lasts up to a month. It ends after just two weeks in approximately one-fifth of the facilities. The main critical factor is the amount of time the new caregivers have to simply observe the shift operation instead of working alongside as support for another person or even working alone.

Mentoring systems and induction training forms required

Some facilities have a mentoring system, which is led by either experienced colleagues or the management. When working alongside someone, the new colleagues can ask questions if they do not understand or know something and thus receive all information step by step. Several facilities structure the induction training phase individually according to the previous experience or the skills of the new caregiver. Systems with induction training forms containing the required skills are also successful. Only when all items have been processed and the skills verified are those involved allowed to be deployed on their own with individual responsibility.

Qualification programme with modules

Sometimes guidelines or induction training folders are forwarded to new employees before they start so that they are already familiar with it in advance. There are also residential groups in which a qualification programme has to be completed within the first year of employment, with various modules such as trauma pedagogy, sex education and the biographical approach. Many facilities use internships in an attempt to attract workers for later employment. The duration of the induction training is thus shorter, as this group already knows the processes.

Premature working alone

However, in a tenth of the facilities, new caregivers are deployed alone during the day after just one week; in approximately one-third of them, it is two weeks. This takes place after a month or more in roughly half of the facilities. New caregivers only start working alone on the night shift after a month or more in two-thirds of the facilities. However, a third of the facilities stated that employees worked their first night shifts alone after two weeks or less.

Asked whether this is in line with the concept of the facility, 75% answered “yes”. In a quarter of the facilities, the employees worked all shifts earlier than scheduled in the concept due to the strained personnel situation.

Conflict with the standards in the concept

This was confirmed in the interviews with the staff. The commissions were told that the facility concept actually stipulated that new employees should be deployed during the day as a third and thus additional person, which was not possible due to the shortage of staff. Staff reported that their first night shift alone was planned for one month after they started working but that they had been deployed alone after just a week. .

Shortage of staff is the cause

- ▶ ***It is recommended to introduce a mandatory induction training phase lasting one month in all facilities, during which time new employees do not work alone. Exceptions should only be allowed for new team members who have previously completed an internship in the facility.***
- ▶ ***A mandatory mentoring system should be used and a check list worked through during the induction training phase. In general, written standards should be available in every facility that clearly define both the content of the induction phase and the targets to be achieved.***
- ▶ ***The induction training phase should be extended if necessary.***
- ▶ ***In order to prevent work overload at the start of their career, induction training phases are not allowed to be shortened even if there is a staff shortage.***

On-call duty and stand-in duty

In many facilities, there are night shifts with people working on their own instead of having two caregivers. In most cases, the assistant support ends when the minors have finished getting ready for bed, which can be between 8.00 p.m. and 10.00 p.m. depending on their age. However, if there are problems during the night due to minors and adolescents going missing, escalation or illness, a second caregiver is necessary. The same applies if the caregiver becomes ill. If another team member is unable to come to work quickly, minors might have to be taken to hospital alone in an ambulance, for example, which is an enormous strain not just for those affected but also for the hospital, as they will be lacking quick access to important information on the patient’s medical history.

Predominantly one caregiver working during the night

However, only a third of the facilities has organised on-call duty during the night. In most facilities, the staff rely on the willingness of their colleagues to stand in if needed. One residential group reported that they have a WhatsApp group in which colleagues can be asked if they can work. Teams are very strained if undisturbed recuperation cannot be guaranteed in their free time. This too can cause overload and burnout in the long term.

Only a third has organised on-call duty

According to the staff in one facility, there was even a case where nobody was available, as no on-call duty is in place.

Caregivers also work alone at the weekend and in the holidays because it is assumed that some of the group goes home and there are thus fewer children to be cared for. But there can also be unforeseen problems in this case, too, meaning a second caregiver is needed. On-call duty is guaranteed at the weekend and in the holidays in just a third of all facilities.

The introduction of on-call duty made it possible for staff to be relieved in difficult situations. It is considered particularly problematic that caregivers have to work alone for 24 hours during the week in the facilities of the City of Vienna.

**On-call duty
often covered by
management**

Frequently, it is the management that volunteers for on-call duty and comes to the facility when there are acute incidents. In one facility, there is a voluntary on-call duty in the management team so that a member of the management can be reached at all times. The on-call duty was divided up among the managers in the same region at an operator with several residential groups. Other residential groups that have a partner residential group rely on their partners. For the larger operators, there are also collaborations between the residential groups so they can help each other with staffing. One private operator has a nationwide on-call duty centre. However, this only provides help over the phone. In a few facilities, there are two people working a shift even during the night, at the weekend and during holidays. One facility reported a sleeping on-call duty in the residential group. In another residential group, the support service from the day shift is called if required.

When asked how quickly those on call can be available if needed during the night, the majority stated that they can get there in good time. The times provided by the residential groups ranged from ten minutes to a maximum of one hour.

**Stand-in duty is
uncommon**

Another instrument for improving the working conditions would be the provision of a stand-in duty. These are additional caregivers who can work in cases of absenteeism due to illness, holidays or COVID-19 self-isolation. However, stand-in duty is in place in just 37% of the facilities. This means that in most facilities, the team covers the absenteeism themselves. In one facility, the caregivers have to organise the situation themselves when they are ill by asking another colleague from the team to stand in for them.

The commissions also surveyed how often this stand-in duty had been used in recent months. A total of 25 facilities said up to five times, nine up to ten times and eleven even more frequently. These figures clearly illustrate the need for such services.

- ▶ ***It is recommended to set up paid on-call duty in all facilities.***
- ▶ ***Stand-in caregivers who are known to the children, adolescents and the team should be deployed.***

Training and further education

The commissions surveyed whether there is a training and further education programme in the facilities, which was confirmed by 84%. The question as to whether this further education programme is mandatory for all employees was answered positively by 82%. In most of the facilities with a further education programme, this is regularly adapted to changing situations.

Further education programme not always mandatory

Facilities that do not have a mandatory training and further education programme were asked for the reasons why. The majority stated that the employees can choose to take part in training if they are interested. However, some facilities require participation in mandatory modules. In other facilities, employees take part in training that aligns with the focus areas of the team. Specific mandatory training programmes are prescribed by the Land in Upper Austria.

Training often only if there is interest

In some facilities, there are basic modules that new employees have to complete within three years. These include training in trauma pedagogy, de-escalation, working with parents and attachment-oriented work or new authority. Other facilities do not even intend to provide mandatory training for new employees.

Basic modules should be mandatory

The answers once again reflect that there was very little training in the past two and a half years due to the COVID-19 pandemic. The average 14 obligatory hours per year could not be completed during this time. Many operators tried to counter this problem with internal programmes to compensate for the loss of training. Two-thirds of the facilities have a training evaluation. Self-awareness, burnout prevention, relaxation training, self-reflection, the biographical approach and triggers, mental training, dealing with stressful situations, resilience and self-care were mentioned by the two-thirds of the facilities that have personal development training.

Little training due to the pandemic

Successful residential socio-pedagogical work also includes contact and working with the parents and the family system. An intensive form of working with the family of the children in care is essential for the support, strengthening and stabilisation of the family environment and has a positive effect on the well-being of the child being cared for. Only through continuous family outreach work is it possible to achieve long-term positive change in the family system. In many cases, this makes it possible to return the child to the family (sooner). As work with the family system thus plays an

important role, it is necessary that staff with the appropriate specialised skills are available in every socio-pedagogical facility.

**Little competence
in the area of
parental work**

Another item on the data collection sheet, however, addressed the question of whether the staff have the necessary skills in the area of working with parents. The survey by the commissions indicated that only one in every four facilities has employees with supplementary training in working with parents.

The situation is somewhat better regarding completed further training for working with parents, with 43% of the facilities at least having staff who have taken part in training for working with parents. Having said that, this percentage is still relatively low considering the importance of the topic. All in all, the numbers indicate that expert knowledge in this area is not consistently available in the facilities.

- ▶ ***The implementation of a mandatory further training and continuing education programme in all facilities is recommended. This should contain basic training in the areas of trauma pedagogy, de-escalation, new authority and attachment.***
- ▶ ***The training programme shall be oriented to the needs of the group to be cared for, that is, to the needs of the minors living there and not the interests of the employees.***
- ▶ ***The training that has not been able to take place since 2020 shall be held in the near future.***
- ▶ ***The topic of "working with parents" should be included in mandatory training for all employees in a facility.***

FICE quality standards

**Standards should
be harmonised**

In 2017, FICE Austria, the domestic section of the International Federation of Educative Communities, initiated a project to define quality standards for processes in the accommodation and care of children and adolescents in residential facilities. The objective of the project was to provide facilities and decision-makers with practicable orientation and decision-making aids for organising centralised procedures and care processes in compliance with the legal framework, and to harmonise the quality in residential child and youth welfare services.

66 quality standards were formulated in cooperation with representatives from 19 organisations. These quality standards for residential child and youth welfare were presented in a manual (FICE Austria (Ed.), *"Qualitätsstandards für die stationäre Kinder- und Jugendhilfe"*, 2019) in 2019. They include eleven topics that deal with questions regarding participation, the preventive protection of minors from violence, dealing with risks, assaults and violence,

as well as health care and education processes. Furthermore, the standards also define necessary professional conduct that is oriented to the child's well-being as well as to the objective of the best possible support, development, participation and inclusion of children and adolescents in residential child and youth welfare facilities.

Considering the significance of the standards for modern social pedagogy, it is essential that the employees of facilities are familiar with their specific objectives and content. For this reason, the commissions, within the framework of the monitoring priority, also queried the employees' knowledge of the FICE quality standards, as well as the measures used to monitor compliance with and implementation of the standards.

The result showed that the staff in only 53% of the facilities were familiar with the standards. Sound knowledge of the standards is lacking in almost half of the facilities. That every facility shall delegate responsibility for the implementation of and compliance with the standards to at least one person is also of key importance. However, this is the case in only 47% of the facilities.

Only half of staff familiar with standards

- ▶ ***It is recommended to set up relevant measures (training, workshops, etc.) in every facility to sufficiently familiarise the staff with the content and objectives of the quality standards.***
- ▶ ***It is also recommended to appoint one person in every facility who is responsible for the implementation of and compliance with the standards.***

Suitability of qualifications

The composition and functioning of a team are key factors in the protection and safety of children and adolescents. The professional qualification of the caregiver, in particular, is of considerable importance. This is essential for the children and adolescents and the staff working in the facility to feel safe and protected in the best possible way.

Qualifications shall meet specific requirements

In child and youth welfare residential groups, it is thus not only important that the qualifications of the care staff comply with the statutory provisions but also that they are suitable for the care of the children and adolescents living there. If this is not the case and if the training of the caregivers does not professionally qualify them to cope with the challenges arising from the behavioural disorders and diagnoses of the respective minors, there will inevitably be scenarios in which they become overstressed.

Overload imminent

It should also be born in mind that the needs of a residential group can change rapidly with the arrival of new members who affect the group dynamics. But the pedagogical interventions also have to be adapted due

Requirements change rapidly

to the psychosocial development of the children and adolescents. When the children reach puberty in particular, the pedagogical requirements of the care staff can change. Only if the facility can react to the new challenges as quickly as possible – for example, with supplementary training – is it possible to prevent breaks in relationships as a result of changing to another facility, which are extremely harmful for development.

Necessary qualifications do not exist in 28% of the facilities

During the visits, the commissions obtained an overview of the respective group composition and the pedagogical challenges. They assessed whether the staff had the necessary qualifications. The assessment was positive for 72% of those surveyed. However, in 28% of the facilities, that is, more than a quarter, the pedagogical team does not have the qualifications to provide the best possible care for their clients.

The facilities were also asked whether the residential groups can react to the changed needs of the group through supplementary training, and if so, how quickly. 85% stated that they received supplementary training, mostly within a month. A comparable proportion can avail of external competence within a month.

- ▶ ***When selecting personnel, care shall be taken at all costs to ensure that the qualifications meet the respective demands and needs of the group.***
- ▶ ***This should be determined through structured application and recruitment procedures.***
- ▶ ***Further training should be initiated immediately if the qualifications are insufficient.***
- ▶ ***If the situation in the group changes giving rise to different needs, supplementary training shall be provided as quickly as possible.***

Police operations and admissions to psychiatric institutions

Facilities designed to be safe places

Children and adolescents in third-party care come from very strained family backgrounds and thus display emotional suffering and trauma. Residential child and youth welfare facilities are designed as safe places for children and adolescents and are therefore especially obliged to guarantee this requirement to the full (FICE Austria (Ed.), "Qualitätsstandards für die stationäre Kinder- und Jugendhilfe", 2019, pp. 73 et seq.).

In order to protect children and adolescents in third-party care in the best possible way from assault, it is important to actively prevent violence and aggression and find adequate solutions for escalating situations (see Human Rights Advisory Council, statement of opinion on "Wegweisungen und Betretungsverboten aus vollstationären Betreuungs- und Pflegeeinrichtungen", 2020, <https://volksanwaltschaft.gv.at/stellungnahme-des-mrb-zu-betretungsverbot-und-wegweisung.pdf>).

Although many facilities now have concepts for protection against violence and de-escalation, these are often not applied adequately in practice. During visits, the commissions identified deficits in further training and continuing education on violence prevention and de-escalation. For example, it was noticeable that the staff did not know the content of existing protection concepts or were not trained to implement them. Furthermore, children and adolescents with serious combinations of problems and psychiatric diagnoses also live in care facilities whose focus is not adapted to the needs of these vulnerable children and adolescents. Such misplacements can put the safety of minors at considerable risk.

Deficits in training

If the behaviour of the children and adolescents to be cared for escalates or becomes violent in such cases, staff are often unable to cope. This applies particularly if the caregivers have not been prepared to effectively intervene in a de-escalating manner. Under certain circumstances, decisions are made that are not in the best interests of the affected minor. A feeling of helplessness especially can lead the staff to involve the police. This can not only evoke memories of traumatic experiences in the family system but also cause particularly problematic situations. If, for example, adolescents have to be barred from their residential groups by the police after impulsive outbursts, there is often no adequate alternative place available. This, in turn, results in acute admissions to child and adolescent psychiatry or, if in-patient admission is refused, the unacceptable solution that minors are temporarily sent back to their family systems.

Inadequate preparation for crisis situations

In light of these diverse problems, an item on the data collection sheet addresses police operations in socio-pedagogical facilities. The evaluation shows that police support is requested very frequently, with 41% of the facilities stating that there had been one or more police operations at the facility due to aggressive behaviour in the six months before the survey. While there was just one police operation at a third of these facilities in the surveyed period, the rest reported several police operations in the last six months. Of these, some stated that they took place on a weekly or monthly basis. One facility reported to the commission that there are "constant police operations".

Police are called often

When asked for the reasons why the police had been called, the facilities reported self-harm by residents, aggressive and violent behaviour and threats to other children and adolescents and the staff, violent impulsive outbursts (also associated with underlying psychiatric disorders), damage to property, drug consumption and expressing the intention to commit suicide.

The police operations often result in the referral of the children and adolescents to psychiatric wards. But even without police intervention, there are acute admissions to child and adolescent psychiatric departments. The frequency of referrals to psychiatric institutions was monitored to obtain a better overview of the situation and identify possible structural deficits.

Frequent referrals to psychiatric institutions

The answers show that there were referrals to psychiatric institutions in almost half of all interviewed facilities in the last six months. In the vast majority of these facilities, the referrals were limited to one or two cases in the surveyed period. This number was over ten in three facilities. One facility reported over 30 admissions.

The most common reasons for admission to child and adolescent psychiatric departments were suicidal thoughts and attempted suicide. Short or longer-term stays in child and adolescent psychiatric institutions were also the result of impulsive outbursts as well as behaviour that is harmful to oneself or to third parties. Six facilities stated that the children and adolescents were admitted to the psychiatric institution of their own free will. In most cases, however, public medical officers had a referral.

Cause: incorrect de-escalation techniques

The frequency of police operations and referral to psychiatric institutions could be attributable to the application of incorrect de-escalation techniques or to insufficient competence in this area. After all, the information collected by the commissions demonstrated that staff did not have the required de-escalation skills in 21% of the facilities.

Two court decisions in relation to claims from the representative(s) of residents pursuant to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) have also recently addressed the issue of the appropriateness of de-escalation techniques applied in child and youth welfare facilities. The courts identified deficits in the area of the interventions applied for the escalating behaviour of residents. In one of the cases, in which, according to the court, alternative de-escalation techniques were not sufficiently exhausted, these deficits were attributable to factors such as the form of de-escalation training that had been selected, which had been tested in the army. This illustrates the importance of the qualifications of de-escalation trainers, the methods taught and the formulation of customised crisis plans taking into consideration the diagnoses, disorders, trauma and age of the minors, as the application of inadequate techniques can have an additional escalating effect.

Implementation in need of improvement

Apart from this, even after completion of suitable de-escalation training, the practical implementation of the knowledge learned and existing de-escalation plans and protection concepts may require improvement. The mandate of socio-pedagogical facilities is in any case to recognise boundary violations and work appropriately with the affected young people to best prevent escalation and violence, and to find a supportive way to deal with violent incidents, with the aim of restoring a safe environment.

► ***Every facility should have sufficient measures and guidelines for the prevention of and dealing with aggressive behaviour and for avoiding escalation.***

- ▶ *In every facility, there should be a facility-based protection concept as well as customised de-escalation and crisis intervention plans that are regularly audited and adapted.*
- ▶ *The care staff should be optimally trained in order to also be able to implement existing concepts. Training in violence prevention, de-escalation and conflict management should be mandatory.*
- ▶ *Sufficient opportunities for reflection should be provided so that excessively stressful situations can subsequently be worked through.*
- ▶ *In the interests of the affected children and adolescents, calling the police should be limited to dangerous situations as an emergency measure. If a barring order is unavoidable, adequate support measures shall be set in motion.*

High staff turnover in the facilities

Stable relationships are particularly important for children and adolescents in third-party care. Successful pedagogical practice always takes place with a foundation of sustainable relationships. Only on the basis of secure and sustainable relationships can children and adolescents take on what is offered to them by pedagogical staff and apply it for themselves. The condition for this is the highest possible continuity of care. It is the duty of the facilities to create the best possible framework conditions to ensure that this continuity of care is guaranteed (see FICE Austria (Ed.), "Qualitätsstandards für die stationäre Kinder- und Jugendhilfe", 2019, p. 41). Moreover, frequent changes to the pedagogical staff can agitate even harmonious groups and make their care more challenging. Every broken relationship means new trauma for children in third-party care because bonds that have been formed end abruptly. Commitment issues then increase enormously. Measures for minimising staff turnover are thus especially important.

Stabl relationships particularly important

In order to determine how many facilities in Austria are affected by high staff turnover, those interviewed were asked whether there had been any personnel changes in the team in the respective facility in the year before the survey. Evaluation of the data collection sheets shows that there had been high staff turnover in 79% of the facilities in the previous year. This number has increased again since an interim evaluation of the data six months ago.

High staff turnover affected 79% of the facilities

The reasons for personnel changes were diverse. 40% of the facilities had one or more changes in the team due to pregnancy, 24% due to parental leave, 25% due to educational leave and 12% due to retirement. It was noteworthy that only 10% of resignations were initiated by the employer, whereas in 50% of the facilities it was the employees who resigned. In most of the facilities, one person resigned, however in ten facilities more than four employees quit.

Many employees resign

Critical staff situation This reflects the very critical staff situation in residential child and youth welfare. As the commissions observed on most of the visits since the beginning of the pandemic, it is now very difficult to maintain stability in care teams and quickly fill positions that become vacant even in urban areas. Even facilities that on previous visits had had a stable team for a long time and a waiting list of applicants were faced with the unexpected departure of staff and suddenly had difficulties in finding the right persons for their team.

Few applications In the above-mentioned survey by the Association of Austrian Child and Youth Welfare Facilities, almost all of the management of the facilities interviewed stated that there are substantially fewer applications for vacancies now compared to five years ago. They estimated that the effort required for finding new personnel is also greater than five years ago. Most of the persons in management positions were of the view that higher pay would make the search easier (see Association of Austrian Child and Youth Welfare Facilities (Ed.), "Personalsuche in der KJH", 2022, pp. 5 et seq.).

Framework conditions shall be improved In order to avoid even more staff turning their backs on residential child and youth welfare, the main improvement should be the financial framework conditions, in addition to increasing the staffing ratio and introducing more attractive working conditions. Short-term and medium-term measures are urgently required, as the situation will continue to worsen in the next few years due to the upcoming retirement of many employees.

- ▶ ***The working conditions in residential child and youth welfare services shall be improved. In particular, higher wage agreements and financial incentives such as paying for employees' travel expenses or the provision of staff apartments, etc. should be implemented. An increase in the staffing ratio would enable the deployment of stand-in and on-call services and the consistent manning of shifts with double the number of staff. The working time regulations should be restructured through at least partial crediting of nights spent away from home to the weekly hours of work.***
- ▶ ***The management shall have sufficient time to be physically present in the residential groups on a frequent basis and support the team in particularly challenging care phases.***
- ▶ ***More training positions for all social professions, and for social pedagogues in particular, should be created nationwide, and training subsidies granted. Furthermore, there shall be measures to ensure a living wage for lateral entrants based on the model from the care area.***
- ▶ ***Image campaigns should be used to try to achieve more appreciation for residential care work.***

Supervision and team meetings

For persons in helping professions in particular, regular supervision is an essential component of maintaining mental health and safeguarding and improving the ability to work. It is also a recognised instrument in preventing burnout, mobbing and violence.

Regular supervision important

Stressful work situations left unprocessed continue to affect subsequent activities and can, if the workload increases, cause premature overload or further mental problems. In this context, supervision is an aspect that cannot be ignored in relation to safeguarding human rights. It supports the care staff in dealing with their clients based on professionalism and human rights principles.

It is equally important to provide the employees with opportunities to communicate both within the team and with the management in the form of regular team meetings. These not only promote active dialogue about processes in everyday work but also provide an additional framework for addressing challenging circumstances in the care setting.

The survey of the facilities relating to their practices in terms of team meetings and supervision showed that in the vast majority of facilities, team meetings are generally held weekly and supervision monthly. It was notable, however, that due to the pandemic, no supervision and no team meetings were held in many facilities for a long period of time. Despite the required protective and precautionary measures during the COVID-19 pandemic, it is precisely the ensuing additional challenges for the care staff that would have made support and regular dialogue in the team necessary.

Little supervision and few team meetings during the pandemic

Over 94% of the surveyed facilities stated that the care staff can also avail of individual and case supervision. However, the evaluation of the questionnaires showed that it is not possible to receive individual supervision during the induction training phase in a relatively large proportion of almost a quarter of the facilities. In this case, it is overlooked that comprehensive opportunities for reflection including individual supervision should be available to new employees as early as the training phase (see FICE Austria (Ed.), "Qualitätsstandards für die stationäre Kinder- und Jugendhilfe", 2019, p. 84).

Individual supervision often not possible during training phase

- ▶ ***Individual and team supervision as well as team meetings should not be interrupted for long periods but should take place regularly while complying with the COVID-19 protective measures.***
- ▶ ***Individual supervision as an important reflection process for new employees should also be facilitated in all facilities as early as the induction training phase.***

2.3.4 Positive observations

- Team with a clinical psychologist** In a residential group in Carinthia, a clinical psychologist supports the care team. She is also responsible for reporting measures that restrict freedom, takes care of working with parents and leads a psychoeducation group for the adolescents in the residential group. Furthermore, a psychiatrist is employed for four hours who examines the measures that restrict freedom for their appropriateness and necessity, and discusses alternatives in the team meetings. The staffing of the residential group with nine FTEs enables 1:1 care.
- Involvement of special services** On the monitoring visit to a socio-pedagogical residential group run by a major operator in Lower Austria, Commission 5 learned that it provides what are termed "special services" in its facilities. These can be called on by the respective team. The topics covered include sex education, the biographical approach and neuro de-escalation. The pedagogical work of the team is supported and qualitatively improved by incorporating these special services. A specialist for physical pedagogy also visits the residential group regularly and spends a lot of free time with the children.
- Promotion of a wide range of activities** A residential group in Lower Austria is characterised by a unique concept that adopts conventions of the former family farm, but is managed by pedagogical specialists. The facility has been run as a family operation including farming for 35 years, is a permanent fixture in the village and is linked with local businesses. This fosters not only the participation of the children and adolescents in local clubs, associations and festivals but also in the search for apprenticeships and jobs in the area. The manager of the facility puts considerable effort into ensuring that the children and adolescents being cared for gain different types of experience and get to know as many facets of life as possible. He therefore promotes a wide range of activities such as working in the internal farming business, the participation in training units and competitions with dogs. Commission 6 considers this an excellent pedagogical tool for the development of the children and adolescents.

2.4 Institutions and facilities for persons with disabilities

Introduction

The six regional commissions visited 135 institutions and facilities for persons with disabilities in 2022. After ten years of NPM work, it is evident that many institutions and facilities want to orientate their work according to the requirements of the UN Convention on the Rights of Persons with Disabilities (UN CRPD). Extremely severe deficits are observed less frequently and there is growing awareness of some problems. This is also reflected in the increasing number of institutions and facilities in which the commissions identified scarcely any points of criticism.

NPM is taking effect

At the same time, the NPM and its commissions observe every year that persons with disabilities do not enjoy the human rights they are entitled to in many institutions and facilities.

Still much to be improved

This is primarily attributable to the inadequate legal conditions that continue to impede self-determination and equal rights: splitting of regulations between the Federal Government and nine Länder; the alignment of many laws with the medical model of disability instead of the social model; the lack of clear de-institutionalisation strategies; the provision of services without a legal claim; insufficient social insurance protection for those affected; no care security for many persons with disabilities and a system that relies predominantly on the family environment in cases of lifelong disability. The latter is evident for children from all age groups, however it is particularly bad for babies and infants for whom there is in some cases no help outside of the family.

Legal conditions need improvement

However, there is frequently no clear awareness in institutions, facilities and the authorities of areas that should be a matter of course. The consequence is that, as an example, barrier-free accessibility, Augmentative and Alternative Communication (AAC), the freedom of choice of where to live or work and participation in society are still not a matter of course.

Even institutions have little awareness of the problems

One topic that was rather neglected when the NPM started its work is the (sexual) self-determination of persons with disabilities in institutions and facilities. As announced in last year's report, the NPM jointly defined this area as a monitoring priority with the commissions. The objective is to gain an overview of the current situation regarding (sexual) self-determination.

Monitoring priority (sexual) self-determination

To this end, a questionnaire was drafted that was jointly agreed upon by the NPM, its commissions and the AOB. In the participative creation of the questions, suggestions from the different disciplines were gathered and a final document jointly formulated. In preparation for the monitoring priority, the NPM arranged to engage with experts in the area of violence protection and the sexuality of persons with disabilities.

Workshop with experts Commission members exchanged experiences and ideas with Ninlil, an association for the empowerment and support of women with disabilities (*Ninlil – Empowerment und Beratung für Frauen mit Behinderung*) and the Hazissa association. The focus of the workshop was on conducting conversations with persons with disabilities about the important but sometimes sensitive topic of sexual self-determination.

Representatives from the Ninlil association provided an overview of their advisory work. Using case studies, pictures and material on Augmentative and Alternative Communication (AAC), they presented how they discuss the topics of sexuality, sex education and self-determined living even with nonverbal customers. Members of the NPM reported from their practical experience within the framework of their monitoring visits.

Study on violence towards persons with disabilities The representative from the Hazissa association reported about the study on „Violence towards persons with disabilities: experience and prevention“ (*„Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen“*, 2019, Mayrhofer, Mandl, Schachner, Seidler), for which more than 300 interviews were conducted with persons with disabilities in institutions and facilities.

Persons with disabilities more often victims of violence The results of the study were alarming. 72.5% of the interviewed persons with disabilities stated that they had already been the victim of physical violence. Persons with disabilities or mental illness are also more often victims of sexual violence. The study results also highlight that embracing their sexuality is still far from being a matter of course for persons with disabilities. Only around half stated that they had received adequate sex education, either in school, at home or in the institution or facility – without statements on the quality of the sex education.

However, sexual self-determination does not include the right to a fulfilled sexuality or is generally restricted to sexual activities. The area also covers topics such as partnership and love, privacy, sex education, perception of one's own body and protection from sexual violence and harassment.

No age limit for sexual self-determination Another misunderstanding that is prevalent relates to older persons. There is no age limit for the right to sexual self-determination, and older persons are naturally included. Statements such as “older residents no longer have any interest in sexuality” demonstrate a fundamental lack of knowledge of the right to sexual self-determination.

The monitoring priority was not yet finalised at the time of reporting. In addition to positive examples, the initial reports show that some institutions and facilities have hardly looked at the topic and others develop sex education concepts but fail to implement them. Commissions even reported regression at some institutions and facilities. Many institutions and facilities do not adequately deal with the topic. Generally speaking, sexual self-determination is not a reality for the residents.

2.4.1 Staff shortages

The NPM repeatedly observes that staff shortages and high staff turnover in all visited institutions and facilities are fundamental risk factors for human rights violations. Commissions also criticised personnel shortages more frequently, in particular the lack of qualified personnel in institutions and facilities for persons with disabilities. The situation was exacerbated by the COVID-19 pandemic and the associated shortage of manpower.

Lack of qualified personnel

In a Viennese residential facility for persons with disabilities, Commission 5 observed massive understaffing, which resulted in a dangerous care situation. Apparently, because an employee was on sick leave, just one caregiver and an assistant were responsible for ten clients, most of whom needed full support with nutrition, mobility and personal hygiene.

The staff seemed exhausted and frustrated and had to work a considerable amount of overtime. The team reported that due to the staff shortage, it is difficult to accommodate the wishes of the residents. Going for walks or other excursions are virtually impossible. Augmentative and Alternative Communication (AAC) can also only be offered to a limited extent even though most of the residents are nonverbal. Despite the many clients requiring a high amount of care input, there was only one on-call night shift.

Barely any time for leisure activities and pedagogical work

The operator conceded in their statement of opinion that vacancies cannot be satisfactorily filled. The inability to meet the planned staffing levels means that there is a focus on the most important basic needs of the customers in order to avoid dangerous care situations.

Focus on most important basic needs

The NPM also observed in other institutions and facilities that in most cases, the staff were very committed but often undermanned. They can thus only provide everyday care, leaving barely any time for leisure activities, fostering self-determination or building up communication.

These examples demonstrate that care shortfalls due to a lack of personnel impair the quality of care and safety of the clients as well as compliance with human rights standards. The UN Convention on the Rights of Persons with Disabilities (UN CRPD) demands the full participation, self-determination and rehabilitation of persons with disabilities (Articles 3, 19, 26 UN Convention on the Rights of Persons with Disabilities, UN CRPD) as focal points. In several of the institutions and facilities visited by the NPM, the staff simply had no time to adequately deal with these aspects. The shortage of staff poses a considerable additional strain for employees and can cause negative dynamics in the team.

Quality of care and safety suffers

The problem of staff shortages was evident to the NPM in several *Laender*. When confronted on the issue, the City of Vienna explained that there are no concrete figures on vacancies. However, it is apparent that the personnel problem is greater when the care needs are higher. In particular, there is

The higher the care needs, the greater the lack of personnel

a lack of employees with socio-pedagogical training and care skills in the area of persons with mental illnesses and for jobs with irregular working hours. The City of Vienna is examining how to support this with a training campaign.

Staff shortages will worsen in the future

Generally, operators of institutions and facilities seem to be endeavouring to take measures to alleviate the shortage of staff. Some offer training courses for care assistants themselves or link up with others to counter the lack of care personnel. However, the problem could become worse in the future. Demographic developments mean that on average, employees are becoming older. The high demands in terms of mental and physical strain cause more frequent sick leave, which can no longer be covered with the staffing ratio.

NPM warns against unequal treatment with the care bonus

Unequal treatment in relation to the care bonus is not helpful in the view of operator organisations. Despite initial improvements, many of the employees in institutions and facilities for persons with disabilities still do not receive the care bonus. In its statement of opinion on the draft law, the AOB also warned against the unequal treatment of persons in the same team who provide services involving close body contact for very old persons or those with disabilities.

Care did not meet modern standard

The consequences of a lack of adequately and well-trained personnel combined with high staff turnover were evident in the example of a facility in Salzburg. A young man with autism spectrum disorder was cared for by inadequately trained staff who were unable to cope with this task. His care did not meet the modern pedagogical standard for work with persons with disabilities. There appeared to be no pedagogical concept in place.

The resident was repeatedly sent alone to his room during impulsive outbursts. The room was sparsely decorated and emotionally cold, and the sloped roof made it appear cramped. The resident had no bed, there was merely a mattress and a beanbag.

Numerous assaults by the resident on care staff meant that their attitude towards him was one of fear and uncertainty. After several escalations, the client was placed in a psychiatric clinic up to eighteen times within a few months according to available information.

Man transferred after NPM intervention

The NPM identified an urgent need for action. In their statements of opinion, the *Land* and the operator conceded difficulties with the care of the client. One of the main problems with the remote facility is the lack of specialised personnel. Qualified staff are practically non-existent on the employment market. After intervention by the NPM, the man was subsequently transferred to a facility in Upper Austria.

Personnel are overstrained and fear assault

The situation apparently improved for the client after the transfer, however things seemed to remain strained in the facility in Salzburg. The NPM received reports from several sources that indicated a massive overload of

the team, a constant lack of qualified personnel and resulting care deficits. There are repeated assaults on employees who fear that their health is at risk and constantly have to work overtime.

The NPM recently contacted the operator and the *Land* Salzburg. Both referred once again to the current lack of staff but announced comprehensive measures: new pedagogical management had already been hired and an admissions freeze for new residents imposed. Additionally, further training and continuing education should be promoted more and the monitoring by the *Land* intensified, for example.

- ▶ ***Working conditions and pay for caregivers in the area of persons with disabilities shall be improved.***
- ▶ ***Training places for the qualification of staff shall be expanded and promoted.***
- ▶ ***Sufficient staff shall be deployed in order to guarantee the right to self-determination and participation in society, and the best possible care of persons with disabilities.***

2.4.2 No human rights without Augmentive and Alternative Communication (AAC)

The AOB – including in the NPM Reports – has regularly criticised the lack of Augmentative and Alternative Communication (AAC) in many institutions and facilities for persons with disabilities over the years. Despite the sustained criticism, all of the commissions observe that there is little change from year to year. They still note that many persons who cannot express themselves verbally or only to a very limited extent do not receive adequate support in their communication in the institutions and facilities where they live. What does this mean for those affected?

Longstanding criticism

Thousands of persons in Austria with physical, mental or multiple disabilities have problems expressing themselves using spoken language. In extreme cases, they cannot or barely communicate with their environment. They cannot express wishes or make any objections, and are thus virtually unable to make any decisions for themselves. There is, however, a remedy for this.

There are various methods, approaches and concepts to improve the individual expression and communication possibilities of the affected persons. The different methods are grouped under the collective term “Augmentative and Alternative Communication (AAC)”. The body’s own forms of communication such as gestures and other expression aids such as objects, graphic symbols and/or technical aids can be used.

Collective term for communication possibilities

Which methods or concepts are useful always depends on the affected person. Solutions and programmes shall thus be oriented on the individual

Only individualised programmes useful

nonverbal person without compromise. There are no general solutions. In order to provide AAC in the best possible way, suitable methods and aids as well as specifically trained staff with the necessary knowledge are required.

Still insufficient programmes

Because the application of AAC is so fundamental and without alternatives, it is all the more surprising that many institutions and facilities have insufficient programmes. For example, Commission 5 visited a facility in which approximately 75% of the clients were nonverbal but where there were scarcely any AAC programmes available. The staff were not trained in the use of AAC. In another facility, aids were available for AAC but the staff had no time to use them.

Deaf man was not able to communicate with anyone

Commission 6 reported about a facility that was home to a deaf resident with no command of Austrian Sign Language. In a conversation with the commission, the man explained that he suffers because he is not able to communicate with anyone and feels isolated. No interpreter service is brought in even for important meetings or visits to the doctor.

Austrian Sign Language recognized language in constitutional law

Austrian Sign Language is enshrined as a recognised language in the Austria Federal Constitution (Section 8 (3) Federal Constitutional Law). It has been recognised in Austria since 2005 and is the native tongue of deaf persons. It is thus even more important that sufficient trained care staff are available and that Austrian Sign Language is used in institutions and facilities with deaf persons.

Commission 3 also reported about inadequate AAC programmes in connection with a residential school. AAC was provided there for nonverbal children but not to the extent necessary. For example, there were no pictograms, and issuing tablets (computers) for communication purposes was associated with incomprehensible obstacles.

In another facility, Commission 1 reported that tablets were provided for AAC but terms were incorrectly entered and therefore not usable for the nonverbal clients.

Staff, not those affected, make decisions

Commission 4 reported about a facility for persons with intellectual and multiple disabilities. AAC was offered by means of gestures and objects, but decisions were made predominantly by the staff vicariously and not by the nonverbal persons themselves. The management explained that the older residents are not prepared to learn new communication methods.

In many institutions and facilities, AAC is either non-existent or is not sufficiently offered. Finally, AAC opportunities are offered in some residential facilities but – according to the staff – those affected do not want (allegedly) to apply them.

Volition not possible

In all of these cases, those affected cannot express their wishes or cannot do so enough to be understood. If, however, persons do not have the ability to express opinions, wishes or complaints and thus make decisions, which

human rights can they then exercise? Self-determination, an independent life, equal rights, education, privacy and participation in society are inconceivable without the relevant possibility to communicate.

As a consequence, affected persons often feel isolated, have little self-confidence and others have "low expectations" of what they can do, or their abilities are underestimated. At the same time, the development opportunities of nonverbal persons are suppressed. It is assumed that this group of persons is undemanding and "content". If unusual forms of communication used by nonverbal persons are not understood, this can also be a cause of challenging or self-harming behaviour. Barriers to communication are also major obstacles in pain diagnoses.

Social isolation, low self-esteem

As being controlled by others is a risk factor for violence, being able to express oneself is also particularly important in violence prevention. This applies both to the prevention of violence and the processing of violent actions by others.

Important for violence prevention

Due to the enormous importance of AAC, its use should be a basic (legal) condition for the care of nonverbal persons with disabilities. To this end, awareness in institutions and facilities, sufficient adequately trained staff and the necessary infrastructure should be made available. Ultimately, AAC should be applied regardless of whether one or more persons are dependent on it.

Legal obligation necessary

The UN Convention on the Rights of Persons with Disabilities (UN CRPD) requires that persons with disabilities have access to information and communication (Article 9, 21 UN Convention on the Rights of Persons with Disabilities, UN CRPD) in order to enable them to enjoy self-determined living and to fully participate in all spheres of life. Commission 6, however, encountered a facility in Lower Austria for persons with visual impairments that was not adequately designed for this target group. There were no notices in braille, no visual floor markings and no lift buttons in braille. There was a pinboard with important information in the entrance hall, however the font size was much too small for persons with visual impairments to read it. When residents were admitted to the facility, they were also not asked if they could read braille.

Facility not geared towards target groups

The NPM recommended solutions such as recording possible forms of communication as soon as people were admitted to the facility. In addition, the staff should undertake training on the topic. The *Land* Lower Austria, in its capacity as supervisory authority, came to similar conclusions and imposed numerous requirements on the facility.

► ***Nonverbal persons cannot exercise their human rights without Augmentative and Alternative Communication (AAC).***

- ▶ ***AAC should be officially mandatory by law.***
- ▶ ***AAC shall be individualised and provided in a way that meets the needs of the individual.***
- ▶ ***The relevant training of staff is a basic condition for this.***

2.4.3 Inclusive ageing

Suitable structures for older clients necessary Since the beginning of the OPCAT mandate, the NPM commissions have regularly pointed out that the care situation for older persons with disabilities is problematic. The observations often showed that the structures in facilities for persons with disabilities were not entirely suitable for older clients.

In day workshops against their will Persons at retirement age, for example, were forced to visit day workshops against their will because no care was provided during the day in their residential facilities. But the provision of age-appropriate care services was also barely possible in many institutions and facilities because the necessary expertise or infrastructure was not available. The only alternative for the affected persons was to stay in a nursing home.

No places for those in need of care Operator organisations were also aware of this problem. More programmes focusing on older persons have been developed in recent years. In spite of this, the commissions reported about operators of facilities that do not want to admit any older persons with disabilities at all (in particular, those with higher care needs). In this context, daily allowances that are too low and the abolition of funding for older persons, for example the rehabilitation financing, are problematic.

Study on persons with intellectual impairments To analyse the current situation, a study on the inclusive ageing of persons with lifelong intellectual impairments and high support needs was presented in October 2022. The research company that was commissioned with conducting the study gathered and processed data from questionnaires sent to the operators of facilities, persons with disabilities, care staff, experts and caregiving relatives.

Little data on this target group The target group of persons with lifelong intellectual impairments in particular has only been scientifically researched to a limited extent to date. Ageing in this group was barely noticed. According to the authors of the study, gerontology focused predominantly on persons who were able to participate in society and were only confronted with (intellectual) impairments in old age. It was thus even more important that the current study concentrated on the target group of older persons with lifelong intellectual impairments.

Those affected want continuity in old age The results show that the interviewed persons with disabilities would like to continue living and working where they are for as long as possible. The place and type of residence should also be self-determined in old age and those

affected should be able to continue working for as long as they are able and want to. But the possibility of being able to withdraw to one's own room even in old age is important to those interviewed. They fear compulsory change of residence, loneliness and the loss of self-determination.

For experts, the support and care of older persons with high support needs is the greatest challenge in facilities for persons with disabilities. There are not enough concepts with integrated care or partnerships with external service providers. In turn, concepts for self-determination and participation are missing in the old age area. An expansion of partnerships between facilities for persons with disabilities and geriatric care is thus necessary. Intention alone is not enough to achieve this, so legal conditions are also required.

The importance of the topic in the future is demonstrated in the survey of 89 operator organisations and 443 institutions and facilities. In facilities for persons with disabilities, currently an average of 41% of the residents belong to the target group and are over 50 years of age, whereas just 4% are over 70. In the area of geriatric care, the share of the over 50s target group is 6% of the total number of residents, and just 2% are over 70. The majority of the interviewed facilities reported that the importance of the older target group for the institution will grow in the future.

At the same time, a third states that currently the choice of caregiver or flexible mealtimes is not possible for the target group. A fifth said that these persons (mostly) cannot decide how their day should be structured.

71% agreed that older persons with lifelong intellectual impairments need more psychological care and still 29% stated that they had little or no time to take on the needs of persons in the target group. The enormous shortage of staff is problematic for the vast majority of those interviewed. Major challenges include the possible transfer to other facilities, the onset of dementia and care staff with no experience of working with persons in this target group.

Interviewed caregivers from facilities for persons with disabilities and geriatric care consider sufficient time and human resources essential in order to facilitate the person-centred care of older persons. Almost all of those interviewed also emphasise that it should be possible for the residents to spend their whole lives in the respective facility. They see the transition from work in daily structures to retirement as critical. The lack of any pension entitlement combined with insufficient resources in residential facilities makes retirement – even if it is wanted by those affected – often impossible.

The following recommendations for action are derived from the surveys in the study:

Politicians and legislators shall orientate themselves on the social and human rights model of disability and perceive persons with disabilities as legal persons. A nationwide harmonised sector of social affairs should be created

Cooperation between facilities for persons with disabilities and geriatric care

Topic will become increasingly important in the future

Person-centred care essential

Recommendations for action

Nationwide sector of social affairs/quality standard in Austria

in Austria based on individual needs as opposed to belonging to a group. Harmonised quality standards are also desirable. De-institutionalisation and barrier-free access to the health system as a mandate for politicians to act were also recommended.

Facilities for persons with disabilities and geriatric care should establish person-centred approaches and guarantee more flexible structures for living and working. Multi-professional teams and networks with external service providers are necessary for integrated care.

**NAP on Disability
addresses problems**

The existing and future challenges are also reflected in the current NAP (National Action Plan) on Disability 2022–2030. Self-determined living, collaboratively developed care concepts, alternatives to regular daily structures and measures that are aligned with the specific needs of those affected are defined as targets.

**Legislator shall
create framework
conditions**

For the NPM, it is clear that solutions to these challenges have to be found as quickly as possible. Persons with lifelong intellectual impairments have the same human rights as all other people in every phase of their lives. It is the duty of the legislator to create framework conditions that guarantee self-determination and participation in society. To this end, coordination between the Federal Government and the Laender is imperative.

- ▶ ***There are not yet sufficient programmes for older persons with disabilities in order to guarantee self-determination and participation. There is inequality compared to persons without disabilities in this respect.***
- ▶ ***Legislators shall create framework conditions in order to make the relevant programmes possible.***
- ▶ ***Pension entitlement for work in daily structures should be a matter of course.***

2.4.4 Positive observations

Despite the problems and points of criticism in the annual NPM Reports, the change of paradigm laid out in the UN Convention on the Rights of Persons with Disabilities (UN CRPD) is, with a few exceptions, making progress: away from the view of persons with disabilities as recipients of charity towards an effective human rights approach. Persons with disabilities are entitled to human rights and it is the obligation of the state to respect, guarantee and protect these rights. The positive observations serve to illustrate these rights and motivate facilities and operators to continue developing their work.

Persons with disabilities have the right to live and love self-determinedly. The commissions consistently make positive observations during visits to institutions and facilities on the ongoing monitoring priority “Self-determination and sexual self-determination”.

Commission 1 gained a particularly good impression of a facility in Vorarlberg. The residents live largely independently in their small apartments. They receive support when necessary, e.g. the clients are only accompanied to complicated medical examinations. For mild symptoms, they go to the doctor alone. There are no fixed mealtimes or bedtimes. They are, however, supported if necessary in finding a good sleep cycle pattern that suits them. They can decide for themselves what kind of work they would like to do and where; it is possible to change workshop. Leisure time is planned autonomously, contact with the outside is fostered and supported by means of leisure time assistance, among other things.

Self-determined life in facilities

The work in a facility in Tyrol that Commission 1 visited also sticks closely to the principle "as much support as necessary, as little as possible". The persons with disabilities are involved in all processes and they decide together in which areas each individual would like to further develop themselves. For example, one resident had always wanted to learn to read. The caregivers motivated him to do this and learned to read alongside him in slow steps. Personal strengths are promoted. Augmentative and Alternative Communication (AAC) is applied intensively. In the residents' rooms, there were pictograms and pictures on the walls that depicted development targets and the steps to achieving them. One resident, for example, had aids in her room to help her write a shopping list on her own.

As much support as necessary, as little as possible

Self-representation is also a reality and supported in the facility. The elected residents representative thus visited a training course on self-representation with his caregiver. Once a month, he goes around all of the apartments and asks the residents three questions that he has formulated in advance with his caregiver. He then discusses the answers with the management.

Participation

Commission 3 also made very positive observations in a partially assisted socio-psychiatric residential facility in Styria. Autonomy and the goal of living independently again and also being able to work to the extent possible are promoted intensively in the facility. The affected persons determine themselves how much support they need and want. Every single apartment has a double bed to facilitate overnight visits. Each resident is given a bicycle to encourage independent mobility.

In the area of sexual self-determination, the commissions noticed during their visits carried out on the current monitoring priority to date that the operators have differing sex education concepts but that they are often not known yet in the institutions and facilities and are not implemented. Nevertheless, the commissions also often made positive observations: for example, caregivers have an open approach to the topic. They try to support the residents in living their wish for intimacy and sexuality in a self-determined way, but at the same time to respect the boundaries of other persons. Some facilities involve external expertise for support with sex education questions, in particular when internal staff are not yet adequately

Sexual self-determination

trained on the topic. "Dealing with one's own sexuality" is a fixed component of the resident-related documentation in the facility.

Accommodating individual needs and development targets

A basic prerequisite for self-determined life in a facility is that individual needs are accommodated and personal development targets promoted. Here are some positive examples:

In one facility, a resident had a "shoe box" filled with shoes that were only there for him. Before that, he had repeatedly taken the other residents' shoes. In another facility, an older resident in "semi-retirement" alternately spent one day per week in the day-care centre and with his family, which fulfilled his wishes perfectly. One facility was particularly notable for the loving way in which the target agreements were prepared.

In one facility, two residents have an external personal trainer who carries out a fitness programme with them. In other facilities, a resident plays on an inclusive football team, another plays tennis regularly. One facility has its own party room in the basement where the residents can celebrate occasions with family and friends.

Self-determination should be possible until the end of life: one facility works with a hospice movement and in doing so tries to shape the final phase of life in the best possible way. In another facility, care is made possible on the premises through the mobile care service provided by the operator so that residents can stay in familiar surroundings until the end of their life.

Avoidance of restriction of freedom through de-escalating measures

Violence prevention is a core element of the monitoring activity of the NPM and shall be one of the main pillars in every facility for persons with disabilities. Commission 5 had an extremely good impression of how persons with disabilities and very high care needs are dealt with in a small facility in Lower Austria. Despite violent impulsive outbursts with many actions that display aggressive behaviour towards the residents themselves and others, the facility can cope while applying an absolute minimum of freedom-restricting measures; PRN medication or restraints are applied very rarely. This is attributable to the individual care system with 1:1 care and an extremely dedicated team. The caregivers show great understanding for the needs of the residents. Individual solutions and de-escalation intervention are considered jointly. Despite the enormous strain caused by the many impulsive outbursts, the team has remained constant; there is very little fluctuation.

Innovative methods for violence prevention

In 2020, Commission 1 identified that there had been a massive boundary violation of a nonverbal female resident by a male employee in a Tyrolean facility. Without consultation or a care-related indication, he had shaved her private parts. On a follow-up visit the following year, the commission observed that this incident as well as other violent assaults by a resident had not been dealt with.

However, the facility has since implemented many recommendations made by the NPM. The affected residents received psychotherapy and well-being modules as well as a tablet computer for AAC. The team took the assault of another resident by an unknown motorist very seriously, worked through the incident in a structured manner together with the resident and the help of external consultants and filed a complaint against him.

In the area of AAC, the NPM succeeded in arranging for a facility for children and adolescents in Lower Austria to hang picture and photo cards in the hallway at a height that is appropriate for infants. Now infants who are nonverbal and sometimes move by crawling along the hallway due to physical disabilities can express their basic needs more easily. The picture and photo cards are widely accepted by the children.

Picture and photo cards at infant's eye level

2.4.5 Legislative equality after NPM criticism

A longstanding demand from the NPM directed at politicians was implemented recently with the removal of the legal discrimination of chronically mentally ill persons in Carinthia.

Approx. 700 persons with mental illnesses are accommodated in 28 centres for psychosocial rehabilitation. Commission 3 has conducted more than 20 monitoring visits to the facilities since 2012 and found that the persons in these farming operations do not have sufficient access to professional occupations and social rehabilitation. The reasons for this included that they were expressly excluded from the benefits of the Carinthian Equal Opportunities Act (Kärntner Chancengleichheitsgesetz) and thus were not eligible for aid that was reserved for persons with disabilities. In 2017, the AOB reiterated in a jointly determined case of maladministration that there were severe deficits and recommended rectifying this legal discrimination of mentally ill persons.

Legal discrimination of the mentally ill in Carinthia removed

This recommendation should now be implemented at last. In December 2022, a governmental bill was presented for assessment, according to which the Carinthian Equal Opportunities Act should also apply to persons with mental illnesses who live in ZPSR or in facilities for those suffering from addiction, meaning that there can no longer be unequal treatment between different types and degrees of disability. A resolution of the Diet of Carinthia could ensure that all persons with disabilities in Carinthia receive equal access to the same services and benefits for the first time. The desired objective of facilitating the return to a largely self-determined life through customised rehab plans will, however, only be achieved with the relevant funding.

2.5 Correctional institutions

Introduction

The NPM visited 36 facilities of the penitentiary system and forensic institutions in the year under review, including socio-therapeutic residential facilities.

„The detention of juvenile offenders“

As announced, the NPM completed the monitoring priority of “the detention of juvenile offenders” and summarised its observations in a special report on juveniles in detention. This report was handed over to the Federal Ministry of Justice in September and presented to the public during a press conference. At the end of December 2022, the Federal Ministry of Justice set up a working group. In addition to questions regarding the modern detention of juvenile offenders, the group should also address the future use of the site in Gerasdorf (see the details in the observation report in chapter 2.13.). The NPM was invited to collaborate in this working group.

Dialogue with senior management staff

At the end of November 2022, the NPM was invited to the annual meeting of the senior management staff of the facilities. A large number of topics were discussed, from upcoming structural measures to staff shortages – both in law enforcement and non-law enforcement service – to the overcrowding in the correctional institutions due to illegal migrants and arrested human traffickers, in particular in the east of Austria. After more than two years of distancing because of the pandemic, this in-person contact should be taken up again and continued.

Dialogue with officers

The NPM also took part in the meetings with the officers in the correctional institutions and gained valuable insights into the challenges of the day-to-day operation of the service (see chapter 3.8.4. of the Austrian Ombudsman Board’s Annual Report).

International contact

A visit by the Moroccan NPM lasting several days took place at the end of June 2022. There was a joint visit to Korneuburg correctional institution. For its support in organising this visit, during which the Moroccan colleagues were able to speak to a detained native of their country, the NPM would like to reiterate its gratitude to the Federal Ministry of Justice.

The NPM held the chair of the SEE NPM Network, an association of South-East Europe NPM organisations, in the year under review. Two meetings were held in Vienna; during the one in June 2022, the special needs of older persons and those with physical disabilities who have been deprived of their personal freedom were discussed. At the second meeting in mid-November, the participants exchanged experiences and ideas on topics such as the permissibility of coercive measures applied to adolescents and persons with disabilities in the different places where they are deprived of their liberty. Both meetings concluded with closing resolutions and jointly agreed recommendations, which were published on the Network’s website (see <https://www.see-npm.net>).

In late autumn, the annual meeting with the German and Swiss NPMs took place, with colleagues from Liechtenstein and Luxembourg also taking part this time around.

Additional activities such as collaboration in working groups, lectures and contributing to discussions at specialist events, as well as publications on the topic of facilities of the penitentiary system and forensic institutions by representatives from the NPM rounded off 2022.

2.5.1 Methods and monitoring priorities

Preparation for the monitoring visits by the Federal Commission starts long before the observations on-site. Information about the individual institutions (e.g. suicides, responses to previous visits, complaints), about detention in general and reports in the media are gathered and incorporated into the preliminary discussions.

Depending on the institution, the visit plan is generated regionally and functionally. The specific tasks for the respective visits are defined by teams of two persons in advance (e.g. viewing medical files, examination of administrative penalties, visiting certain areas, meetings with specific professional groups). In so doing, cultural, ethnic and gender-specific aspects, among others, are also taken into consideration. Attention is also paid to specific issues from the follow-up visit and the respective monitoring priority of the visits as part of the tasks.

Conducting the visits

Visits to correctional institutions are conducted according to the availability of the commission members, generally with all staff present, including the management. The information collected can thus be cross-checked (triangulated) as much as possible in accordance with the size of the correctional institutions. Furthermore, the different observations of the individual commission members, such as interviews with detainees and staff in particular, enable a representative overall impression of the institutions. The preventive task of the commission should thus not be confused with scientific, sociological, statistical or other evaluative activity.

Particular emphasis is placed on dealing with those involved in a respectful and considerate manner. The summary of the initial feedback for the concluding meeting is compiled at the internal interim meeting of the commission on-site. The opening meetings and concluding meetings are designed to be a constructive and critical dialogue with those responsible in the facilities. In this context, it is important to the commission to make a distinction between structural problems that cannot be overcome by the facility alone and those that it can combat itself, meaning some recommendations can be implemented without delay.

Recommendations for implementation

In the respective visit reports, much attention is paid to the transparency of the observations and the human rights criticism and recommendations derived from them. In this context, it must be emphasised that recommendations do not always have to be based on existing deficits or verifiable infringements of rights in the sense that they have been violated, but should seek to avert and avoid human rights deficits that can already be predicted in line with their preventive function.

Priorities It is not surprising that the AOB often encounters the same problems in its *ex-post* controls as the NPM does on its monitoring visits. As in previous years, the two parts of the report thus complement each other. Constantly referring to the respective other volume would render the report unreadable so, with a few exceptions, references have been omitted.

In anticipation of the ongoing observations on the monitoring priority of "Violence among detainees", preliminary preventive recommendations can be found in chapter 2.5.2. There are also preliminary observations and feedback by the NPM on monitoring priorities that were observed in autumn 2022 (chapter 2.5.3.). For the third consecutive year of the pandemic, the NPM noted the unreasonable restriction of living conditions (chapter 2.5.4.). This is followed by criticism and recommendations on the confidential use of data (chapter 2.5.5.), health care (chapter 2.5.6.) and the matter of returns and release (chapter 2.5.9.). The NPM views the extension of the complaint register favourably (chapter 2.5.6.). The cards with sayings on them that prison guards hung on the wall of an office in Vienna-Josefstadt correctional institution were met with incomprehension (chapter 2.5.7.). The importance of not only sufficient staff in police departments and forensic institutions but also collaboration between the professional groups is highlighted in chapter 2.5.8.

The focus of the findings and recommendations in chapter 2.5.10. is on follow-up care facilities. These are particularly important in light of the future "provisional avoidance of detention" pursuant to the law for amending the Detention of Mentally Ill Offenders Act 2022 (*Maßnahmenvollzugsanpassungsgesetz*), (Federal Law Gazette I 2022/223). On the positive side, the NPM encountered satisfied clients in all of the facilities visited. Recurring points of criticism include the frequent lack of barrier-free accessibility, inadequate precautions for the protection of non-smokers and staff who are unqualified or still in training, in particular in the area of violence prevention.

2.5.2 Dealing with allegations of violence – Salzburg correctional institution

Dramatic incident The NPM learned that a prisoner was seriously threatened and beaten by two other inmates and was forced to dance naked for them while one of the inmates allegedly took a broomstick and pushed it into the victim's

underpants. This allegation of violence prompted the commission to recommend more or better involvement of the special services and document this accordingly. Consideration should also be given to how the willingness of witnesses to report incidents can be increased so that allegations of violence can be productively worked through in a low-threshold mediation procedure.

In response to this, the Federal Ministry of Justice stated that the special services are always involved when such incidents as described by the commission arise and that they document the meetings accordingly. Furthermore, the prison officers work closely with the special services and there is also regular discussion of the mental health of the detainees. Care is taken to provide closely coordinated support, including from the socio-pedagogical services, in the adolescent department in particular. In addition, the special services of the correctional institutions are also in constant, direct, inter-disciplinary contact with each other. This closely coordinated support also serves to increase the willingness of witnesses to report incidents so that allegations of violence can be productively handled in a low-threshold mediation procedure.

**Interdisciplinary
handling of incidents**

- ▶ ***Closely coordinated support and regular discussion of the mental health of detainees are preventive measures that help recognise conflict among prison inmates early and implement de-escalating measures.***

2.5.3 Observation of monitoring priorities – Federal Ministry of Justice

In late autumn 2022, the Federal Commission observed a series of monitoring priorities in Innsbruck, Salzburg, Graz-Karlau and Vienna-Josefstadt correctional institutions. There was a consistently calm atmosphere throughout thanks to the detailed planning. Items that could not be explicitly classified as being an issue were gathered in one place so that they could be discussed with the prison officers responsible for the cell or the head of operations.

Dedicated approach

Photos were taken of the respective cell before and after each search. The cell logs contain the names of the prison officers who conducted the body search. The search in the cells is meticulous, but in a correct manner. The approach used by the officers was considered de-escalating and professional. The interviewed officers stated that they had been well prepared for the operation and had volunteered to take part. The de-escalating effect was also enhanced by the fact that the operational unit stayed in the background. Their intervention was not required at any point.

Nevertheless, there are quite a few recommendations in the commission's visit reports:

Body searches only in stages The commission first reiterated its longstanding demand that body searches with disrobement shall always only be conducted in stages so that either the upper body or the lower body is covered at all times. In view of the fact that body searches shall be conducted in “as gentle a manner as possible”, the individual delegations also noted that the use of text module formulations such as “The body search was conducted in observance of pride and human dignity” are empty phrases and do not constitute adequate documentation for the infringement of a fundamental right.

Dealing with the possessions of the detainees Searches of the personal belongings of prisoners should be conducted in their presence provided the search techniques used or a possible risk to the officers do not preclude the same. Inmates whose cells are searched should be informed of the reasons why any objects are removed and about the further course of action even if impermissible objects have been removed. Regardless of the photo documentation of the cell before and after the search, detainees should be informed of the possibility of lodging a complaint if they believe that damage was caused during the search.

Additional restrictions of fundamental rights When confiscating documents, it should be guaranteed that correspondence with public offices, legal assistance and support centres cannot be looked at without authorisation. The commission thus recommended asking detained persons at the beginning of the search whether they have these documents among their personal belongings. Should this be the case, the inmates could either leave the documents in the cell in a sealed envelope or accept the offer of taking the documents with them during the search.

Finally, the commission pointed out that the prison guards should be sufficiently aware of cultural and religious objects that the inmates have with them, e.g. in connection with the use of drug sniffer dogs for detained persons of the Muslim religion.

- ▶ ***During monitoring priorities, care should be taken that extremely personal and religious objects are taken into consideration.***
- ▶ ***Human dignity shall be safeguarded in every single act, especially when physical and emotional integrity is infringed.***

2.5.4 Living conditions

Excessive internal COVID-19 measures – Vienna-Simmering correctional institution

Multiple isolation periods During its monitoring visit in January 2022, the commission discovered that the management of Vienna-Simmering correctional institution imposed a (five-day) isolation period in an arrival cell when inmates had already undergone this preventive measure in another correctional institution and had had no outside contact during their transfer.

During this time, the special services are not allowed to communicate with inmates through the food hatch while wearing PPE. Whereas inmates with an isolation notice ("in quarantine") have access to the special services, prisoners who are isolated based on the suspicion of COVID-19 do not have this option. Exceptions are made only in cases where there are urgent requests. It is not always possible, however, for inmates to convey this urgency. There have been cases of deadlines being missed.

The Federal Ministry of Justice said that in line with its duty of care, attempts are always made to minimise the spread of the virus. The five-day isolation period after being transferred to the correctional institution had been imposed internally by the institution after there had been infections despite preventive measures in a previous institution. However, the Ministry conceded that repeated isolation was excessive. Inmates shall not be classified as new admissions in this case.

Federal Ministry stops unilateral measures

The psychological service held meetings with the inmates who were in isolation, while the social work service initially did the same only in urgent cases through the food hatch in the cell door. All in all, it must be conceded that the approach used by Vienna-Simmering correctional institution was not in line with the general directorate.

- ▶ ***Preventive measures against the spread of the COVID-19 virus shall not be excessive.***
- ▶ ***Access to special services shall be guaranteed even while in arrival cells.***

No outdoor exercise – Vienna-Josefstadt correctional institution

Back in 2020, the NPM criticised the fact that detainees are not allowed to exercise outdoors during their time in the arrival department, where they are isolated to protect other prisoners against being infected with the coronavirus. The provision in the Penitentiary System Act (*Strafvollzugsgesetz*) is unequivocal: prisoners who do not work outdoors are entitled to an hour outside in the fresh air every day. The time shall be extended if this is possible without interfering with other operations and order in the institution.

Locked up around the clock

Although it is understandable that it is difficult from a logistical point of view to organise going outside for detainees in the arrival department, it must be made possible for detainees in this phase of the restriction of their personal freedom to get some fresh air outside for an hour at least. Especially during a time when detainees are locked up all the time, every attempt should be made to ensure that they can exercise their right to go outside once a day (see COVID-19 Report 2020, p. 152).

Massive criticism by the CPT of the lack of outdoor exercise

During its monitoring visit in mid-June 2021, the commission noted that there was still no change in this respect. Despite the urgency expressed by the NPM, this condition prevailed until winter 2021. This was also evident to the CPT and, after a visit to the institution at the end of November 2021, this resulted in an “immediate observation” with the request to the Federal Ministry of Justice to communicate within a month what had been undertaken to rectify this violation of the law.

As the Federal Ministry of Justice stated, they are working on a solution. The process turned out to be arduous. It is only since 18 May 2022 that it has been possible for inmates who were detained in isolation to go outside again due to the epidemiological development. Since then, going outside is managed by the department and in strict compliance with the obligation to wear an FFP2 mask.

- ▶ ***All detainees shall have the possibility to go outside in the fresh air every day, in particular during the pandemic.***

Unusable sports hall – Innsbruck correctional institution

In October 2021, the NPM observed that the sports hall at Innsbruck correctional institution had been closed due to water damage for quite some time. At the time of the visit, repairs in the form of drainage were underway. Innsbruck correctional institution assumed that the sports hall would be unusable for at least two months. The Federal Ministry of Justice spoke of an even longer period during which the hall would be unusable, as there weren’t sufficient financial resources to implement rapid repair. Moreover, quotes related to the building application for the floor renovation still had to be obtained. The hall was still unusable on a monitoring visit at the beginning of December 2022.

The NPM holds the view that a room, equipment and machines should be available to all detainees, in particular to young persons, in order to give them the opportunity to get sufficient exercise. The renovation of the sports hall should thus be continued immediately.

- ▶ ***Sufficient opportunities for sport and exercise shall be ensured.***

Insufficient visiting hours – Vienna-Favoriten correctional institution

No visiting hours at the weekend

In April 2022, the NPM noticed on its monitoring visit to Vienna-Favoriten correctional institution that visits are not possible on Fridays and at the weekend. The times are set for Mondays, Tuesdays and Wednesdays from 3.00 p.m. to 7.00 p.m., as well as Thursdays from 3.00 p.m. to 8.00 p.m.

The Federal Ministry of Justice responded that the visiting hours comply with the statutory regulations.

The NPM considers these hours to be insufficient because visits are not possible on Fridays and at the weekend. It is possible, that inmates maybe cannot be visited if visitors live far away. It shall be possible for prison inmates, as it is for the detainees, to maintain relationships with family and social contacts. Reference shall also be made to the CPT standards (No. 51), which stipulates that promoting contact with the outside should be the guiding principle.

- ▶ ***An extension of visiting hours to include the weekend is advisable for maintaining family contact and other personal relationships.***

Restricted video telephony – Korneuburg correctional institution

At Korneuburg correctional institution, the NPM noticed that inmates were not aware of what they can do if an internet connection does not work. Video telephony is also not offered to all detainees by decree but is reserved for those who cannot receive visits in Austria.

The Federal Ministry of Justice clarified that a call is considered failed if the connection does not function. However, inmates then have to submit a new request for another call. Due to the limited number of devices available, the availability of video telephony is restricted. It is not currently possible for all inmates to make regular calls. The required equipment, the necessary room and particularly the staff are missing.

Not available for everyone

In the opinion of the NPM, it is important to communicate clearly the rules when a video telephone call has taken place. Otherwise, the detainees do not know that if the connection does not work, they can request another call. The NPM advocates making video telephony available to all prisoners, for example by purchasing more devices. This enables the inmates to maintain better contact to the outside world and promotes their resocialisation.

- ▶ ***Video telephony should be possible for all inmates.***

Little privacy on long visits – Asten correctional institution

During the monitoring visit in summer 2021, the commission observed that the space for long visits at Asten correctional institution provides little privacy due to its location within the locked area. For visits from both partners and family members, a more intimate setting would be desirable, also for the visitors.

Structural enhancement: room for long visits

In response, the Federal Ministry of Justice had the potential relocation of the entrance doorway checked so that the relevant visiting room would be situated outside the locked residential area. In July 2022, it was communicated that the recommendation could be implemented and the work was completed. The NPM welcomed the rapid implementation of the measure.

- ▶ ***The location of rooms for long visits should be selected in a way that the visitors do not have to be inside the locked residential area for the detainees.***
- ▶ ***Rooms for long visits shall facilitate privacy and intimacy.***

2.5.5 Right to confidentiality and privacy

Body searches with disrobement – Korneuburg correctional institution

Inmates at Korneuburg correctional institution claimed that they are regularly searched after table visits. They have to completely undress and do three squats while naked. Sometimes female prison officers are present.

Frequent searches

The Federal Ministry of Justice responded to this by stating that in 2022, 109 body searches were conducted after table visits at Korneuburg correctional institution, and inmates had to undress during 23 of them. In three cases, such examinations were conducted twice. They dismissed the allegation that it was not just prison officers of the same gender as the searched persons that were present during the searches.

Regarding the recommendation by the NPM, according to which body searches with disrobement should take place in two stages, the Federal Ministry of Justice refers to the high security risk associated with two-stage searches. Furthermore, the Ministry stated that detainees only have to undergo a full body search with disrobement after a table visit if there is well-founded suspicion.

Undressing in stages

The NPM is still critical of the fact that detainees have to fully undress during searches and that clothing is not removed in two stages. As expressed many times, the NPM sees full disrobement during body searches in conflict with human rights standards. Conducting body searches in two stages or parts is the recommendation.

- ▶ ***Full disrobement during body searches shall be avoided. Body searches should be conducted in two stages.***

Disclosure of health data – Salzburg correctional institution

During the monitoring visit to Salzburg correctional institution, the commission observed that VISCI classifications were on display next to cell doors through the use of coloured stickers (yellow and red notes).

The stickers make information on suicidal tendencies public and thus violate the privacy of those affected. There is no justification for this type of disclosure.

Health data visible for all to see

The stickers were removed after the visit by the Federal Commission. When required, a query now has to be run in the Integrated Prison Administration to obtain the current VISCI status in advance. Sticking a QR code to the cell door that can only be read by the relevant authorised persons is another option.

► ***Health data is information that shall be protected at all times. The VISCI status shall not be visible for all to see.***

Lack of confidentiality of meetings with the special services – Graz-Karlau correctional institution

Inmates who are classified as dangerous are only allowed to meet psychologists in the presence of prison guard staff. However, the presence of a third person impedes the establishment of mutual trust.

The Penitentiary System Act (*Strafvollzugsgesetz*) guarantees inmates psychosocial support. This shall be confidential. Until the refurbishment of Graz-Karlau correctional institution is completed, measures shall be taken to appropriately address the safety of the staff on the one hand, and to enable holding a therapeutic meeting on the other.

Glass partition for protection

The Federal Ministry of Justice argued that modifying a room in the contact area is not possible due to the current situation. However, after completion of the new building, it should be possible for dangerous inmates to have confidential therapy sessions in a meeting room with a glass partition and intercom. Until then, persons who are considered a threat to safety are offered the possibility of a Zoom meeting without supervision by the prison guards.

► ***Confidentiality shall be assured for meetings with staff from the special services.***

Therapy meetings in the visiting room – Schwarzau correctional institution

The commission observed that at Schwarzau correctional institution, the confidentiality of therapy meetings between inmates and the psychotherapist

Poorly soundproofed partition

is not always ensured. The meetings take place in the visiting room of the institution, in which there are two booths. These are separated only by a perspex screen. It is thus possible to hear the conversation between the other inmate and their visitor. In the same way, another inmate or a visitor can follow the therapy meeting.

The Penitentiary System Act guarantees the detainees psychosocial support. Needless to say, this has to be confidential in order to be able to uphold the confidentiality required for professional conduct.

The Federal Ministry of Justice reacted immediately and announced that there are usually no visits in the room at the same time as a therapy meeting. Should there be a conflicting schedule in the future, another room will be provided for the therapy meeting.

► ***Therapy meetings shall not be held in the presence of or be audible to third parties.***

2.5.6 Complaint management

Further development of electronic complaint register – Federal Ministry of Justice

Since taking up its mandate, the NPM has been advocating for the systematic recording and evaluation of complaints so that the prison administration can quickly identify deficits and react with suitable measures (see sections such as NPM Report 2015, p. 116 et seq.).

Additional module At the end of 2018, the Federal Ministry of Justice informed the NPM about the successive implementation of an electronically operated complaint register. An additional module (“Complaint Procedures”) was added to the electronic prison administration at the beginning of November 2022. This will facilitate the consistent and exclusively digital processing of complaints for administrative review and legal complaints, as well as requests from the Austrian Ombudsman Board. It will be possible to call up statistical data, which will enable targeted complaint monitoring.

Effective complaint management is a fundamental precautionary measure against abuse and arbitrariness in prisons.

► ***The systematic recording and evaluation of complaints is a condition for reacting quickly and in a targeted manner to undesirable developments and countering human rights violations preventively.***

2.5.7 Evidence of torture, mistreatment, abuse, neglect and degrading treatment

Degrading slogans on cards – Vienna-Josefstadt correctional institution

During the monitoring visit at Vienna-Josefstadt correctional institution in March 2022, the NPM noticed cards with slogans on them in the booth of the security office. The A5 cards (which can also be acquired via the internet) were placed such that the inmates could see them clearly; apparently, the messages on the cards were directed at them.

In addition to obscenities, slogans such as “All I can hear is blah blah blah”, “Should I call your mum?”, “Life’s not a walk in the park”, “I know what you mean, I just don’t care”, “Don’t give a damn pill”, “Get lost”, “You’d better get outta here”, “A slap is what you need”, “Get dug in” and “I’m too hot to go outside” are printed on these cards.

Intentional humiliation

There were so many cards stuck to the glass partition that it was only possible to see what was going on in the hallway from the office by standing up. Apart from the fact that affixing cards to the window of an office from which the hallway should be monitored undermines security, these slogans demonstrate a set of values and an attitude that are not only objectionable but shall be confronted resolutely.

Prison guards should ensure that the trust of the general public in the objective execution of their official duties is maintained in all of their actions. The cynical and derogatory attitude to detainees – and that in a security area – creates distance and diminishes interpersonal relationships. The staff shall behave at all times in such a way that has a positive impact on the prisoners, fosters humane treatment and is respected.

Detrimental signal

The Federal Ministry of Justice assured that the cards have been removed and the prison guards have been made aware of the consequences of their behaviour. It thus pre-empted the recommendation to initiate official supervisory measures.

► ***Any behaviour, including hanging up signs, cards and the like, that expresses a derogatory attitude shall be stopped.***

2.5.8 Health care

Inadequate medical care – Graz-Karlau correctional institution

The focus of the visit in November 2021 was to monitor the availability of medical care at Graz-Karlau correctional institution. The commission noted

Insufficient doctors

that just one general practitioner is employed on a 40-hour basis and that they predominantly treat the detainees, meaning that the inmates in regular detention are often at a disadvantage. The management of the institution explained that it is difficult to organise a substitute during leave of absence or in the event of illness.

There is no sufficient substitute for the psychiatrist working in the forensic department either. Another specialist in psychiatry supports him for just five hours per week, and because he only works seven hours per week himself, he is the only psychiatrist for inmates in regular detention.

Lack of funding does not justify care deficits

The NPM recommended creating an additional position for a general practitioner, due to the high number of detainees, who are more in need of intensive medical care than inmates are in the penal system. Furthermore, the NPM advocated expanding psychiatric care. It is possible that more incentives are required to increase the attractiveness of working in facilities in the penitentiary system and forensic institutions.

In response, the Federal Ministry of Justice explained that the general medical care at Graz-Karlau correctional institution is managed by the recruitment agency for justice supporting staff, which provides a full-time general practitioner (38 hours per week) and an additional general practitioner for three hours per week. Psychiatric care is guaranteed by two specialists in psychiatry, who work 30 and 12 hours per week respectively.

The Federal Ministry of Justice conceded that better medical care could be ensured and the deployed staff could be relieved by introducing more general practitioners and specialists in psychiatry. However, the difficulty lies predominantly in filling the vacant permanent positions. The low pay is simply not an incentive to apply to work in forensic institutions. Only when an attractive salary scheme can be offered will medical staff be found.

- ▶ ***Sufficient medical staff should be available to guarantee adequate care of the inmates.***
- ▶ ***Appropriate financial incentives shall be created in order to acquire sufficient suitable medical staff.***

Deficient psychiatric care – Stein and Innsbruck correctional institutions

The NPM has been highlighting the blatant lack of specialists in psychiatry in correctional institutions for years (most recently in the NPM Report 2021, pp. 123 et seq.).

Long-term inadequate care

The NPM had to make pertinent observations once again in the period under review. For example, in February 2022 the psychiatric department of Stein

correctional institution was not sufficiently or adequately staffed. In total, at the time of the visit there was one psychiatrist for eight hours per week and a psychiatrist from another correctional institution for five to six hours per week as an assistant.

The Federal Ministry of Justice confirmed the staff shortages and stated that it is extremely difficult to find a psychiatrist for the position at Stein correctional institution. The recruitment agency for justice supporting staff is currently tasked with providing Stein correctional institution with people to work 49 hours per week for psychiatry and psychotherapeutic medicine. All endeavours to date have been fruitless. To soften the blow of the blatant shortage somewhat, the Ministry is contemplating introducing tele-medical psychiatric care as a supplement to the primary care.

The commission also had to make similar observations to those in Stein at Innsbruck correctional institution in October 2021. There too, the psychiatric care continues to be inadequate. Just one psychiatrist is present for seven hours per week and receives only irregular support from two colleagues. Increasing the current quota to 30 hours per week would be advisable.

Lack of medical specialists everywhere

The collaboration between Innsbruck correctional institution and the Department of Psychiatry at Innsbruck Regional Hospital continues to be difficult. Although the law stipulates that public hospitals have a duty to admit all patients, the association of Tyrolean hospitals (*Tirol Kliniken*) sees in-patient care of prisoners critically. Patients who require longer-term hospital care only receive out-patient treatment. Once back at Innsbruck correctional institution, they have to be placed in specially secured cells if there is still an acute risk of harm to themselves or to others.

Hospital does not admit prisoners

The Federal Ministry of Justice confirmed the problem areas mentioned. Despite monetary incentives, the endeavours to find additional medical staff have failed to date. Regarding the collaboration with Innsbruck Regional Hospital, the Ministry again promised network meetings to improve cooperation.

- ▶ ***The Integrated Prison Administration shall guarantee treatment and care in line with current medical science.***
- ▶ ***Specially secured cells are inadequate environments for treating mentally ill persons.***

Long waiting times for HCV treatment – Graz-Karlau correctional institution

In November 2021, the commission observed once again that Graz-Karlau correctional institution had been waiting for months for a response from the medical superintendent in the general directorate for prisons and the

No medication

enforcement of custodial measures (see previously NPM Report 2020, p. 117 et seq.). The particular case was about the treatment of two patients with hepatitis C and one with hepatitis D. The therapy was, as the experts were informed, approved but had not been provided up to the day of the visit by the commission despite several written reminders of the urgency of the cases.

**Federal Ministry
aware of problem**

The Federal Ministry of Justice regretted the delay. It referred, however, to the fact that the office of the medical superintendent only has limited resources available due to the special (known) challenges in the medical area.

The NPM upholds its demand that all persons with chronic HCV infections receive interferon-free combination treatment with direct acting antiviral substances (known as DAA therapy) quickly after diagnosis. That the prevailing allocation practice constitutes maladministration that should be urgently rectified is also documented in the Annual Report of the Austrian Ombudsman Board 2022, chapter 3.8.4.6.

- ▶ ***Inmates have a right to DAA therapy.***
- ▶ ***Effective measures for combating infectious diseases in prisons shall be undertaken immediately to protect all persons.***

2.5.9 Personnel

Cooperation between law enforcement and non-law enforcement personnel – Asten correctional institution

Daily areas of conflict

Detainees complained during the monitoring visit to Asten correctional institution that the law enforcement officers sometimes fail to understand behaviour that is related to their illness. Notwithstanding the above, the commission observed that the mutual understanding between prison guards and care staff shows room for improvement.

For some, the security aspect falls short. They refer to the inherent danger emanating from the detainees. For the others, an order-based system precludes a therapeutic setting. However, without such an environment, the dangerousness of a person cannot be treated such that the court can be recommended conditional release. Mentally ill persons are often not in a position to observe strict daily routines.

**With and not against
each other**

To balance this area of conflict, Asten correctional institution is starting initially by regularly deploying prison guards in the residential groups. These officers face the detainees on a daily basis. In order to be able to interpret their behaviour, the officers should be familiar with at least the basics of a range of illnesses. These law enforcement officers are also obliged to be involved in the supervision, and they take part in the weekly case team meetings.

Furthermore, preparations have been made for a joint training concept for the law enforcement and non-law enforcement personnel in forensic institutions. The objective of this training is how to deal with mentally ill persons in detention in the right way. With the completion of a joint training programme that will be mandatory for the officers who will be deployed at Asten correctional institution in the future, a better understanding of the persons detained there is expected.

The NPM welcomes the establishment of this additional joint training measure.

- ▶ ***Law enforcement personnel that are regularly deployed in forensic institutions should be familiar with the basics of the illnesses suffered by the persons detained there.***
- ▶ ***A joint (additional) training programme for law enforcement and non-law enforcement personnel promotes mutual understanding and should be established in all correctional institutions.***
- ▶ ***Teambuilding measures are important factors for achieving detention objectives.***

Internship for special services – Federal Ministry of Justice

During monitoring visits, including the one to Simmering correctional institution in January 2022, the NPM has been asked several times about the cancellation of the internship in the psychological service. The internship in the social service had already been cancelled before that.

The internship was the only possibility to date for career starters to gain an insight into the daily routine of the justice system. In this way, interested parties could be contacted and in some cases hired for work in police departments and forensic institutions. Both special services are urgently looking for staff to fill vacant positions.

Ideal career start

The Federal Ministry of Justice regrets this step. Interns had consistently proved themselves in daily law enforcement operations as support for the psychological service and contributed greatly to alleviating the burden on staff. No longer offering internships in the correctional institutions in 2022 due to budgetary restrictions was seen as a step backwards.

Mutual getting to know one another

It is therefore pleasing to know that the Federal Ministry of Justice succeeded in securing the funding for 2023. The advertisements for internships in both special services went online in late autumn, with duties starting in January 2023.

- ▶ ***Internships are often the only possibility of giving career starters an insight into daily law enforcement operations and of convincing them to apply to work in police departments and forensic institutions.***

2.5.10 Return and release

Closure of the Dornbirn satellite facility – Feldkirch correctional institution

Direct impact The Dornbirn satellite facility was closed at the end of September 2022. On the day of the visit (23 August 2022) 20 of the 29 places were still occupied; 14 detainees were in relaxed detention and six were on day release. As the commission learned, several persons had already been transferred to other correctional institutions. The next transfers to Wels, Stein and Innsbruck were planned. The detainees were successively accommodated all over Austria. They “did not receive this information well”. The associated psychological strain was considerable for some.

The news came as a surprise for the staff too. The manager of the satellite facility found out about the closure while on holiday. There have already been several requests for relocation. Two prison guards want to continue working at Feldkirch correctional institution, one has requested relocation to Tyrol, and another wants to transfer to Stein correctional institution.

Multiple drawbacks The NPM regrets the decision not to continue with the Dornbirn satellite facility, considering this step counter-productive. The closure of the institution means that the only day release prisoner department in Vorarlberg has been abandoned.

The NPM is concerned that inmates who were detained at Dornbirn will have to transfer to another place of detention. They will be torn away from their resocialisation and their personal environment, and their privacy and family life will be unreasonably restricted due to the transfer to correctional institutions that are far away (such as Wels or Stein).

Threat of longer detention The low number of relaxed detention places in the main Feldkirch correctional institution also bears the risk of systemic postponed or delayed preparation for release. What this really amounts to is a longer time spent in detention.

In connection with the closure of the Dornbirn satellite facility, the NPM also criticised the fact that the detained persons were informed about the transfer to their future place of detention by letter and not verbally.

Location was unviable The Federal Ministry of Justice communicated that the closure of the Dornbirn satellite facility had been unavoidable after careful consideration of all factors: on the one hand, the number of day release prisoners has decreased and there is more pronounced evidence of wear and tear in the building in Dornbirn than in Feldkirch. On the other hand, the staff situation in western Austria is so strained that it is not possible to maintain operations in Dornbirn. In return, renovation in the form of extending Feldkirch correctional institution was promised.

- ***Relaxed detention and day release are part of preparing for release, which no correctional institution can do without.***

2.5.11 Detention in forensic institutions and follow-up care facilities

High occupancy pressure in forensic institutions – Federal Ministry of Justice

During the monitoring visit to Salzburg correctional institution in April 2022, the commission was concerned that several of the prisoners pursuant to Section 21 (2) of the Austrian Criminal Code (*Strafgesetzbuch*), whose sentences have been final for some time, are still detained in a regional court prison.

Too few places

The NPM used this opportunity to ask the Federal Ministry of Justice to provide information, sorted by prison, on how many inmates whose sentence pursuant to Section 21 (2) of the Austrian Criminal Code was final since the beginning of August 2022, were still being held in a regional court prison due to the lack of places in the target institution prescribed for them, and which therapy programmes they were being offered.

The Federal Ministry of Justice provided a list, according to which on the effective date of 1 August 2022 a total of 30 prisoners were being held in court prisons, with one to two persons affected in most cases. The exception in this respect was Vienna-Josefstadt correctional institution, where 14 inmates were waiting for a place in their target institution.

A further breakdown of when the allocation was made and when the transfer actually took place shows that in individual cases, it takes up to almost four months for detainees to finally be placed in the institution intended for their detention (for individual cases see chapter 3.8.4.8. of the Annual Report of the Austrian Ombudsman Board).

Up to four months waiting time

With this in mind, from a human rights perspective it should be criticised that in the regional court prisons, aside from the routine psychological and psychiatric support delivered by the special services (external), individual therapies or therapy groups (for example regarding alcohol or for violent and sex offenders) are provided only in very few cases.

Hardly any therapy

This means the need for intensification is not met, nor are detainees prepared for further treatment(s) in the target institution.

- ***If detainees cannot be transferred to their target institution as planned, they shall be offered an adequate therapy programme.***

Inadequate specialist care – Asten correctional institution

Only part-time care Asten correctional institution is a facility for mentally ill offenders. The commission observed that on weekdays, six medical specialists take care of the persons detained there. There is no medical care after 3.30 p.m. or at the weekend.

It appears urgently necessary that specialist medical care is also available in the evenings and overnight as well as at the weekend for the planned 200 patients. Both the management of the correctional institution and the Federal Ministry of Justice endorsed the demand of the NPM, but referred to the fact that hardly any personnel can be found for psychiatric care.

Better pay demanded Since taking up its mandate, the NPM has observed that some positions for medical specialists in correctional institutions remain vacant for years, as no well-qualified staff can be found for the job. This is attributable to the lack of medical specialists in psychiatry in Austria on the one hand, as well as the fact that work in correctional institutions and prisons is very stressful due to the challenging behaviour of the detainees on the other. Furthermore, remuneration in facilities of the penitentiary system and forensic institutions is low.

The NPM emphasised that more has to be done to convince medical staff to work in correctional institutions. It is regrettable that interested doctors are not offered contracts with specific conditions.

- ▶ ***In forensic institutions in particular, the presence of medical specialists in psychiatry is also required at night and at the weekend.***
- ▶ ***In the long term, the Federal Ministry of Justice shall develop a strategy to convince more doctors to work in the prison administration.***

Structural deficits – Mauer Regional Hospital, Pavilion 12, CARDO non-profit Ltd.

During the monitoring visit of the follow-up care facility on the campus of Mauer-Öhling Regional Hospital, the delegation saw the respectful way in which the staff dealt with the patients. However, the visible dedication of the caregivers and the satisfactory staffing ratio (15 caregivers for 12 clients) are in stark contrast to the structural conditions, with buildings that are worn and, in some cases, damaged and did not make an overall positive impression.

Lack of barrier-free access One of the points of criticism was that the follow-up care facility is not barrier-free. A particular weakness is that an emergency exit cannot be used without assistance.

A very steep self-made ramp leads into the garden, which means that there is no barrier-free access to the green area. For those who do not use the steep ramp, the only way outside is via several steps.

In the evacuation plan, the main entrance is marked as an emergency exit even though it is not barrier-free. The commission also criticised that on the day of the visit, it was not clear how persons can get outside in the event of an emergency. The delegation also pointed out that in line with preventive fire protection, the doors of emergency exits shall not be locked and shall be easily opened without help.

**Emergency doors
locked**

Furthermore, emergency exits shall be permanently and visibly marked as such using appropriate symbols in accordance with the labelling regulation and shall be illuminated separately to the grid in case of a power failure.

**Emergency exits
unmarked**

In their response, the operator of the institution pointed out that the building has three entrances, that is, one entrance with four steps up to the building, the way through the garden with five steps including the self-constructed ramp, and an entrance in the middle of the building, which is locked.

The latter entrance is actually the "main entrance" with a driveway that is used only by the institution and emergency services. Permanent availability as an open entrance is not permitted by the landlord, as the entrances to remedial education classrooms for child and adolescent psychiatry are located there too.

The criticised self-constructed ramp in the garden has already been upgraded to meet the legally required standard and extended accordingly. The evacuation plan is being corrected and the emergency exits re-designated. Signage is being updated in accordance with fire protection regulations.

Ramp improved

The marking of the bathrooms was improved so that these can now be used by different genders separately. Broken tiles were replaced in the shower. In addition, the recommendation by the commission to install a complaint letterbox was met.

Additional measures

On the negative side, the recommendation to install an alarm button in every room that can be activated in the event of an emergency was not implemented. However, a client who is at risk of falling was given a wireless doorbell, as he had refused to wear an emergency alarm wristband. The person involved also prefers a half-closed door to a technical aid at night.

With regard to the criticism by the delegation that there is initial training for the staff but no refresher courses on specific topics such as violence prevention and de-escalation, the operator of the institution stated that in addition to two-day de-escalation education programmes, training on the topic of trauma pedagogy is covered.

Lack of training

In addition, another training programme on the topic of “challenging customers” is provided. Restraint training courses are also completed relevant to the prevailing situation. Difficult situations are reflected on and discussed during both supervision and team meetings. The caregivers for challenging persons alternate so that those affected are supported by two caregivers.

- ▶ ***Follow-up care facilities shall be barrier-free.***
- ▶ ***Emergency doors shall not be locked and emergency exits shall be marked as such.***
- ▶ ***The staff shall be offered regular refresher and training courses on the topic of violence prevention.***

Inadequate non-smoker protection – WEGE Wels, Caritas Uper Austria

At the beginning of October 2021, the commission visited the shared accommodation for released detainees in Wels, which is operated by Caritas Upper Austria.

Varied programme The members of the visiting delegation met a volunteer worker who eagerly answered questions. The facility made a positive impression in terms of the quality of care and recreation areas. The diverse leisure programme for the residents was considered to be particularly good. Weekly excursions are offered, and sometimes there are parties. There is a gym and a wide range of leisure opportunities.

No barrier-free access The delegation highlighted the critical point that the building is not barrier-free. Caritas argued that there has been no need for barrier-free accessibility to date and therefore nothing has been invested in it.

The NPM countered that, regardless of the fact that no client is currently reliant on access without steps, visitors cannot access the facility in a barrier-free manner. Caritas subsequently announced that a ramp would be built in the entrance area and a stair lift installed on the stairs. Barrier-free access can thus be assured for five out of 12 residents in the entire residential area (rooms, kitchen, bathrooms and common rooms). The measures will be implemented in the coming year.

Separation of duties for the staff Caritas Upper Austria also responded to the criticism that volunteer workers should not replace trained staff. The operator of the facility pointed out that the duties and responsibilities of the full-time workers and the volunteers are clearly defined in the respective job descriptions.

The induction, training and support of the volunteer workers are conducted with considerable effort by competent full-time staff and guarantee that the respective functions remain separate and thus the full-time workers are not

displaced by volunteers. Social work is performed exclusively by the trained full-time social workers.

A smell of stale smoke was clearly perceivable while viewing the rooms. Caritas Upper Austria introduced a smoking ban from May 2022 in the communally accessible rooms such as common rooms, kitchens, hallways and stairs. An outside smoking zone is being set up in the undercover area. The spatial separation is intended to reduce the harm to health as far as possible.

Cigarette consumption

Smoking is still tolerated in the residents' individual rooms. However, they are strongly advised not to smoke in the rooms for health reasons and to keep the door closed when they do so. The staff still have a smoking room equipped with an air extraction unit in the small glazed enclosure in the office area.

In the view of the NPM, this recommendation was thus also deemed implemented, which was reported with thanks to Caritas Upper Austria.

- ▶ ***The barrier-free accessibility of a building shall be guaranteed for residents and visitors.***
- ▶ ***Volunteer work in follow-up care facilities is commendable. However, social work should be performed exclusively by staff specifically trained for this purpose.***
- ▶ ***Smoking should only be permitted in segregated areas for the protection of the health of the staff and clients.***

Various recommendations for improvement – Mariahilfergürtel Project IB21, WOBES Vienna

In March 2022, the commission visited a follow-up care facility run by the WOBES association in the 1150 postal district of Vienna. The facility specialises in (former) inmates from forensic institutions. The abbreviation "IB" is from the German "*Intensivebetreuung*", which can be translated as "intensive support".

The delegation had an overall positive impression. They particularly liked the appreciative and respectful way in which the residents were treated. They also welcomed the fact that after the previous visit, the recommendation for an elected residents' representative was put into action.

A critical view was taken of the fact that not all staff in the facility had specific qualifications or training such as de-escalation and violence prevention training. The management of the association stated that all employees with care duties have the relevant specialist qualifications. These include qualifications in social work, social pedagogy and training in psychiatric health care and nursing.

Lack of training

On the day of the visit, the delegation noticed that the rooms in one of the residential groups were very warm with the already mild temperature in March. The question arose as to whether the apartment on the top floor is habitable in mid-summer. Interior blinds and ventilation units did not appear to provide sufficient protection against the heat to the experts. They recommended structural measures such as insulation or the installation of an external shade. The operator of the facility pointed out that there had not been any complaints in this respect to date. A remedy would be found if required.

House rules WOBES' argument that the house rules from 2012 are part of the framework agreement with the Federal Ministry of Justice and shall not be changed failed to convince the commission. The Ministry will not oppose an update that includes the visiting rules that currently apply, among other things. The association in turn should ensure that all residents are familiar and comply with the latest house rules.

Protection of non-smokers The association fully supported the recommendation of the commission to render all of the rooms smoke-free at all costs. The protection of non-smokers is being addressed as a long-term project to be implemented in stages. The next step is to impose a smoking ban in the entire building. A covered smoking zone in the courtyard is necessary to this end.

In order to effectively protect non-smokers from the negative effects of passive smoking, the NPM recommended implementing the required structural measures as soon as possible.

- ▶ ***All staff shall have the required qualifications and training.***
- ▶ ***House rules shall be kept up to date.***
- ▶ ***Facilities shall ensure that non-smokers are protected.***

Inadequate training and further education – forensic transitional residential buildings Graz, *pro mente* Styria Ltd.

Complaint letter box While visiting the two forensic residential buildings in Graz in October 2021, the commission had a very good general impression. However, they raised the point of criticism that the complaint letterbox is located in the entrance area of the building, which is under video surveillance. The delegation recommended placing the complaint letterbox in another location that facilitates anonymous and barrier-free usage.

The operator of the facility accepted this criticism and placed the letterbox on the ground floor in a room that is not under video surveillance and is accessible without steps, ensuring discreet usage.

The delegation also remarked that despite their high level of motivation, not all members of staff had adequate training and further education. For example, a degree in philosophy is not considered as an adequate basis for the psychosocial work with particularly challenging clients from forensic institutions. The qualification for a health and nursing professional is not sufficient for the support and care of persons from facilities of the penitentiary system and forensic institutions either.

Training and further education

The commission thus recommended that the employed residential caregivers should complete a basic socio-psychiatric course (with a duration of 104 hours). This qualification should be taken into consideration when hiring further staff.

The operator of the facility also implemented this recommendation, and all staff had to complete a basic socio-psychiatric course. In order to maintain operations and staffing, the employees were divided into two course groups, with the first course ending in June 2022 and the second course ending in February 2023.

The house rules were eventually adapted such that visits from persons under 14 years of age are subject to special conditions.

- ▶ ***Complaint letterboxes can only fulfil their purpose if they are anonymous and barrier-free.***
- ▶ ***In view of the particular challenges in follow-up care facilities, staff shall complete the basic socio-psychiatric course.***

Deployment of alternative civil service staff – EXIT-sozial, Linz

At the end of September 2021, a delegation of the Federal Commission visited a residential facility of the association of psycho-social services in Linz. Seven out of the ten available places were occupied on the day of the visit.

The delegation had a positive impression while viewing the building. All of the rooms were clean and appeared bright and well maintained. However, there is no barrier-free access to the building. A structural change should be implemented.

Structural defects

A bathroom on the second floor seemed outdated to the delegation. The shower, sink and WC are in the same room and only separated by privacy screens.

The delegation expressed doubt as to whether four persons would be able to perform their daily hygiene routines while observing some form of privacy

in bathrooms such as these. For example, the two sinks are located directly beside each other and the WC has no acoustic protection. The delegation therefore recommended examining possible renovation options in the bathroom on the second floor.

The installation of a complaint letterbox in a place that is shielded from view and is accessible anonymously was recommended.

In their statement of opinion, the management of EXIT-sozial reported that the additional installation of a stair lift is being examined. Unfortunately, the stairs are very narrow and steep; nevertheless, they want to entrust a specialist company with finding another solution, which has since been appointed. Attempts are also being made to find a solution with regard to the bathroom on the second floor. The intention is to create more space and arrange the fittings further away from each other and with more privacy. However, from a structural perspective, the sloped roof makes changes very difficult.

Persons on civilian alternative service only with adequate training

Regarding the reservations expressed by the commission about a person on civilian alternative service being alone in the building, EXIT-*sozial* is of the view that persons on civilian alternative service should not be alone in a facility within the framework of those for the detention of mentally ill offenders. After consultation with the Upper Austrian office for civilian alternative service, this would only be possible with additional training. In future, persons on civilian alternative service will therefore only be deployed alone in the facility in exceptional cases and after having completed such additional training.

In any case, the management is endeavouring to implement the recommendations of the delegation as well as possible. The recommended complaint letterbox was installed quickly.

- ▶ ***Residential follow-up care facilities shall be barrier-free.***
- ▶ ***Every follow-up care facility should have a complaint letterbox that is shielded from view and can be used barrier-free.***
- ▶ ***Persons on civilian alternative service in forensic follow-up care facilities shall have proof of completing additional training.***

No psychotherapeutic programme – WAF Enns, *pro mente Plus Gem. Ltd.*

The delegation had a positive impression during the monitoring visit to the follow-up care facility in Enns. The facility, which is in a former hotel, is characterised by spacious rooms, structural barrier-free accessibility and modern, bright amenities. The 14 exclusively male residents obviously feel

comfortable there. There is a varied leisure programme. Noticeable positive points include the smoking ban in the rooms and common rooms, and that room inspections are only conducted in the presence of the residents.

The delegation criticised that there is no psychotherapeutic programme without having to leave the building. Psychotherapeutic treatment is part of health care and, due to the illnesses suffered by the clients, is also an essential factor in their rehabilitation.

Psychotherapy only offered outside the facility

Furthermore, the commission observed that the staff are required to participate in mandatory de-escalation training. However, at the time of the visit, seven out of the 24 employees had not yet completed this training.

Untrained staff

The facility reacted promptly to the points of criticism and now offers psychotherapy twice a month. Access to this should be as low-threshold as possible. Residents who are unable to complete a full session due to illness can also sign up. A basic forensic course that includes de-escalation strategies in forensic facilities has been offered since the spring.

The NPM welcomes the reaction to the criticism and rapid implementation of the recommended changes.

- ▶ ***Psychotherapy is an essential factor in the rehabilitation of mentally ill persons and shall thus be offered to the extent necessary.***
- ▶ ***The facilities shall ensure that the staff receive the relevant training and further education.***

Little privacy in double rooms – Neuland Enns, *pro mente Plus Gem. Ltd.*

The delegation had a good overall impression on the monitoring visit to the follow-up care facility in Enns. The 16 residents of the facility are content, insofar as this could be established, and are well taken care of. There are twelve members of staff working for them. Three have a degree in social work from a university of applied sciences, two have a degree in health care and nursing. A caregiver for geriatric work and for persons with disabilities rounds off the specialist team. While visiting the building, the delegation was impressed by the well-equipped basement area with a large gym and spacious recreation room.

One point of criticism was that the facility has an anonymous complaint letterbox in the basement, but some of the residents do not know about it. Furthermore, the delegation criticised the lack of privacy in the double rooms and recommended they be redesigned.

Possibility to lodge complaints and privacy

The operator of the facility reacted to the points of criticism. The letterbox was labelled with large writing. Furthermore, the letterbox was included in

Paragraphs modified

the care agreement with the information that every resident has the right to lodge written complaints anonymously. As it is not possible to redesign the double rooms, screens should facilitate a higher level of personal space and privacy.

- ▶ ***The possibility to lodge anonymous complaints shall be communicated to everyone in order to facilitate the use thereof.***
- ▶ ***Rooms shall be designed such that personal space and privacy are protected as far as possible.***

Good practice example – *Miteinander leben* Ltd., Graz

Modern building The delegation had an excellent impression on the initial monitoring visit to a facility in Graz that is run by *Miteinander leben, Organisation für Betreutes Wohnen* Ltd. Almost half of the 22 places are reserved for forensic residents who are referred predominantly from Graz Regional Hospital 2. Persons pursuant to the Styrian Disability Act (*Steiermärkisches Behindertengesetz*) reside in the remaining rooms.

Completely barrier-free The delegation was particularly impressed that the entire building is barrier-free, all of the single rooms have their own bathroom and WC and the adjoining garden can be reached without steps.

Many activities In the facility, the delegation experienced the excellent atmosphere for themselves and the appreciative and respectful way in which the clients were treated. The wide range of group activities offered several times a week also stands out. In addition to a games group, these include garden work, a relaxation group, a competence group, painting therapy, a music atelier, a creative group and coffee sessions and DVD evenings. There is a dedicated concept for every single group.

After moving into the facility, persons who are not yet on conditional release are motivated to take part in these groups. In this way, they are encouraged to come out of their shells and to work on their social behaviour in the form of a conflict-free interaction with others.

2.6 Police detention centres

Introduction

In 2022, the commissions conducted a total of 12 monitoring visits in police detention centres, in Vordernberg detention centre, the Zinnergasse family accommodation and the Competence Center Eisenstadt. As in 2021, the commissions focused their monitoring activities on the implementation of the standards adopted by the living conditions in police detention centres working group (see NPM Report 2020, p. 138) and the quality of the documentation of the fitness to undergo detention examinations by the public medical officer. In addition, the commissions also recorded the stock levels of clothes for detainees without money to change into in the individual detention centres.

**12 monitoring visits
in police detention**

2.6.1 COVID-19 in police detention enforcement

In 2022, the NPM continued to monitor ex-officio the measures of the Federal Ministry of the Interior for managing detention enforcement during the COVID-19 pandemic. As presented in the NPM Report 2020 (see p. 135 et seq.), the Ministry announced a decree with fundamental restrictions of those detained at the end of November.

In October 2021, the NPM recommended that the Federal Ministry of the Interior include antigen testing in said decree for detainees who were vaccinated or who had already recovered from a COVID-19 infection before the start of their detention. The NPM also requested information on why detainees had to go into ten days of quarantine even with a negative test result (see NPM Report 2021, p. 142 et seq.).

The Federal Ministry of the Interior stated that it had already announced a new decree in November 2021. At the same time, the Ministry also communicated the concepts from the nine Police Departments for a regulated daily structure and occupational opportunities for persons in police detention (see NPM Report 2021, p. 143).

**New decree of
November 2021**

Fortunately for the detainees, the new decree stipulated visits in the form of security visits or "screen visits" once again. Furthermore, the detention centres were able to offer detainees a voluntary (antigen) test upon admission if they were able to provide evidence of full vaccination with a vaccine that is approved in the EU. In the event of a negative test result, preventive arrival quarantine of the affected persons is not necessary pursuant to the decree, however a further antigen test shall be conducted on the fifth day for safety reasons.

The NPM acknowledged the new decree, however requested that the Federal Ministry of the Interior in May 2022 inform it promptly of any changes to the requirements.

Voluntary COVID-19 tests only for vaccinated detainees

What was not understandable for the NPM, however, was that the offer of a voluntary antigen test was exclusively limited to vaccinated detainees. In February 2022, the Federal Ministry of the Interior was itself of the opinion that both a vaccination and recovery from a COVID-19 infection would very likely provide protection against a reinfection and serious progression of the disease. The NPM therefore recommended that in future, the Ministry offer a voluntary antigen test to persons being admitted to a detention centre who are proven to have recovered.

The Federal Ministry of the Interior rejected this and referred to its medical superintendent. In its opinion, the National Vaccination Committee had recommended full vaccination – regardless of an additional infection with COVID-19. As recovered persons are only allowed to receive a booster vaccination four weeks after their infection, it can be assumed they still bear the risk of contagion during this time. According to the medical superintendent, the conditions for “testing clear” are only fulfilled after this period of time. In order to avoid clusters of infection in detention centres, particular protective measures are required. The medical superintendent therefore recommended continuing to restrict the tests to vaccinated detainees.

New decree of September 2022

In September 2022, the NPM received a new statement on the decree regarding measures for avoiding the introduction and spread of COVID-19 infection in detention enforcement from the Federal Ministry of the Interior. Therein, the Ministry amended the hitherto obligation for all persons inside a detention centre to wear an FFP2 mask into a recommendation.

Ex-officio proceedings on infection clusters in Hernalser Gürtel police detention centre

Prior to that, the Federal Ministry of the Interior had reported to the NPM in November 2021 that it ultimately had to close open detention pending forced return at Vienna police detention centre for four weeks due to several COVID-19 infections among the detainees. As the infection cluster affected several cells and the source was unknown, the NPM initiated *ex-officio* proceedings.

The Federal Ministry of the Interior stated that the infection of the detainees was not traced back to the law enforcement officers. It could also be deducted from the detailed information from the Ministry that two of the three COVID-19 infection clusters at Hernalser Gürtel police detention centre affected detainees who had undergone the ten-day quarantine together and had probably become infected during that time. According to the Ministry, the suspected source of the third cluster was two detainees who had possibly become infected by an unknown source before or during their transfer from a correctional institution to the police detention centre. They did not have to go into quarantine upon arrival because they had been transferred from a correctional institution. Furthermore, none of the infected detainees were vaccinated against COVID-19 or had recovered from a previous infection at the time of admission to the police detention centre.

The Federal Ministry of the Interior was of the opinion that arrival quarantine is a proven method that should continue to be used in order to isolate persons who are infected with COVID-19 at the time of their admission to the police detention centre and thus prevent the spread of infection to other cells.

In the year under review, the NPM recommended that the Federal Ministry of the Interior amend the conditions for the prevention of COVID-19 infections in detention enforcement. The recommendations were based on observations made by the commissions during their monitoring visits.

For example, the NPM recommended on the visit by the commission to Roßauer Lände police detention centre in October 2021 that the competent health authority offer vaccinations for the detainees. The Federal Ministry of the Interior rejected this recommendation, as such preventive medical programmes are not the responsibility of security authorities and thus not part of the medical services in police detention enforcement. The Ministry also pointed out that the possible acquisition and administering of vaccines cannot be logistically planned considering the very short detention time for detainees awaiting forced return in particular.

No offer of vaccinations in detention centres

During the monitoring visit to Hernalser Gürtel police detention centre at the end of May 2022, the commission noted that detention pending forced return enforced in the open departments of the police detention centre was, as in 2021, organised on an alternating basis, that is, in a shift operation. In concrete terms, that meant the doors of the individual cells for multiple inmates on the first floor were only opened for two hours per day each. The staff of the police detention centre referred to the decree of the Federal Ministry of the Interior of November 2021. Pursuant to the decree, a maximum of 16 detainees are allowed to be outside the cells at the same time in order to avoid larger numbers of persons mixing.

Detention awaiting forced return enforced in a shift operation

The commission considered this restriction disproportionate, especially when the pandemic-related protective measures were already being relaxed for the population at the time of the visit. Furthermore, the commission discovered that the management of the police detention centre had asked the Federal Ministry of the Interior several weeks before the visit when the restriction on detention enforcement would be lifted but had received no reply.

The NPM recommended that the Federal Ministry of the Interior examine the criticised restriction of the open detention awaiting forced return as soon as possible and relax the measures faster. The statement of opinion from the Ministry was not available at the time of editing this report.

During the mentioned visit in Hernalser Gürtel police detention centre, the commission also observed that there was an infection department on the third floor where detainees with COVID-19 were housed. However, there

Lack of leisure opportunities

were neither televisions nor other leisure opportunities in the cells there. Other cells were also not equipped with televisions; foreign language stations could not be received on the available televisions seen.

The NPM recommended ensuring that adequate leisure opportunities that conform with the decree are provided for the detainees. Whether the Federal Ministry of the Interior followed this recommendation was not known at the time of editing this report.

Ban on children playing together

During the monitoring visit to the Zinnergasse family accommodation in March 2022, the commission discovered that the children from different families housed there were not allowed to play together or make contact with each other in the playground. The NPM recommended lifting this ban. In order to reduce the spread of infection, the children should, as an alternative, be motivated to wear a mask when playing together.

The Federal Ministry of the Interior justified the ban: all newly admitted detainees are obliged to spend ten days in quarantine upon arrival. Besides, detention usually only lasted two to three days. However, the Ministry reported also about its communication to Vienna Police Department. According to this, children detained at the same time in the centre should be allowed to use the outdoor playground together.

Restriction of visits to detainees in violation of decree

On the monitoring visiting to Graz police detention centre at the beginning of April 2022, the management of the centre informed the commission that – contrary to the requirements of the decree of November 2021 – detainees had not been allowed to receive visits from relatives or social contacts. Only visits from legal representatives and the staff of the refugee support organisations and/or the *Neustart* Association had been permitted.

The Federal Ministry of the Interior regretted that due to the increase in COVID-19 infections in the population in spring 2022, the management of the police detention centre had mistakenly assumed that the possibilities for detainees to receive visits were to be restricted again. At the same time, the Ministry stated that the persons detained in the police detention centre could be visited by relatives and social contacts again since the end of April 2022.

No visits possible due to lack of rooms

During the monitoring visits to Eisenstadt police detention centre in May 2022, it transpired that there was no way for the detainees housed there to receive visits. The management of the centre justified this with the lack of rooms available for “screen visits”. The commission recommended setting up a table with a perspex screen to facilitate “screen visits” in one of the rooms on the premises. As the management of the police detention centre promised to implement the recommendation, the NPM refrained from discussing the issue with the Federal Ministry of the Interior.

- ▶ *The Federal Ministry of the Interior should constantly examine the restrictions imposed due to the COVID-19 pandemic in enforcement detention for their necessity and appropriateness and inform the NPM of changes without delay.*
- ▶ *During the COVID-19-related restrictions in detention enforcement, all detainees shall be provided with sufficient, diverse leisure opportunities that they can pursue in the sometimes locked cells assigned to them.*

2.6.2 Implementation of NPM recommendations

As explained in the NPM Report 2020 (see p. 138), the NPM made recommendations to the Federal Ministry of the Interior in May 2016 and in December 2017 to implement the standards adopted by the living conditions in police detention centres working group together with the Federal Ministry of the Interior.

In the NPM Report 2021 (see pp. 146 et seq.), the NPM reported that the Federal Ministry of the Interior implemented those recommendations for which structural measures are required dependent on the announcement of the revised Directive on Workplaces and that this was not available by the end of 2020.

The Federal Ministry of the Interior informed the NPM in March 2022 of the intention to announce a new decree for the standards in administrative detention enforcement and detention awaiting forced return.

New Directive on Workplaces

Contrary to what was announced by the Federal Ministry of the Interior in recent years, the new Directive on Workplaces does not stipulate any specific requirements for the implementation of those recommendations in police detention centres for which structural measures are required. The Directive only contains specific regulations for the design of detention rooms in police stations. In relation to the police detention centres, the Directive refers to a special description of the relevant rooms and their functions.

During a meeting in March 2022 on the then planned, new decree, the Federal Ministry of the Interior explained that the special description of the rooms in police detention centres had been included in what is known as the "police detention centres basics folder". This document is the result of a joint working group of the Federal Ministry of the Interior and Austrian Real Estate (ARE) and contains elements such as a description of the functional relationships of the rooms. This basics folder should serve as a working basis for the Police Department in the planning of future construction measures.

On the occasion of this meeting, the NPM also learned that the Federal Ministry of the Interior intends to specify the definitions and minimum sizes of the rooms in the detention areas of detention centres as well as their

New decree for detention enforcement

functional relationships – in the annex of the draft decree initially discussed with the NPM.

During the meeting in March 2022, the NPM welcomed several of the regulations stipulated in the draft decree. For example, the decree announced in June 2022 stipulates that detainees without a sufficient change of clothes of their own shall be provided the necessary spare clothes. Pursuant to the decree, the detention centres should, where appropriate, enter into partnerships with local pastoral workers or organisations such as Caritas (see chapter 2.6.7.).

The NPM also welcomed the requirements in the decree that give clarification on the medical examination of whether a person is fit to undergo detention or treatments in or outside of police stations. For example, in order to protect privacy, law enforcement officers should not closely guard searches inside police stations if, after assessing the individual case, it can be assumed that higher interests are not at risk (i.e. risk of escape or injury to others). The law enforcement officers present should, where possible, not be those who were involved in the arrest and should be of the same gender as the persons being searched if disrobement is required.

The NPM also took a positive view of the clarification in the decree regarding the requirements for visitors to detainees who are considered a legal representative pursuant to Section 21 (3) Detention Regulation (*Anhalteordnung*).

This affected any searches conducted after the initial medical examination by the public medical officer at the beginning of the placement of a person in a specially secured (padded) cell and shall be carried out within twelve hours at the latest (see NPM Report 2019, p. 152). It was not clear from the draft decree whether law enforcement officers trained in medical service are allowed to perform all of these examinations, if there are no reservations from a medical perspective. The decree of June 2022 now stipulates unequivocally that the affected detainees shall be examined by a doctor in any case at least once a day. Furthermore, the medical examinations shall be performed regardless of any previous examinations by the law enforcement officers.

**Recommendation
of the NPM**

In April 2022, the Federal Ministry of the Interior took up some of the NPM's recommendations regarding the formulations in the draft decree and submitted adapted versions of the same. However, the NPM recommended amendments to several regulations to the Ministry in writing.

For example, this included one of the points already agreed in the working group, according to which it should be possible for external parties to organise the detainee leisure time (see NPM Report 2019, p. 162). Despite the promise by the Federal Ministry of the Interior during the meeting in

March 2022 to determine whether sports training would be possible in the Vordernberg police detention centre, the draft decree finally submitted at the end of April 2022 did not include any reference to the same. Concerning this matter, the Ministry stated in September 2022 that it had refrained from using a relevant formulation for the time being, as before the survey by Styria Police Department, liability issues in connection with the possible training programme still had to be clarified.

Furthermore, the NPM considered it unacceptable that according to the draft decree – contrary to the standards adopted by the working group – only detainees awaiting forced return are allowed to receive social and contact visits. This should also be the case for prisoners serving an administrative penalty and prisoners in administrative custody. The Federal Ministry of the Interior replied that this method will in future allow for table visits at least in those detention centres in which this was already possible to date. Furthermore, the Ministry referred to the agreement made with the NPM to carry out a trial operation of table visits in Hernalser Gürtel police detention centre (see chapter 2.6.4.).

The Federal Ministry of the Interior also presented the NPM with an annex containing the initial draft decree in March 2022. In it, the Ministry formulated detailed requirements for the structural design and fittings for all types of cells and other rooms in the locked area of detention centres.

**Decree annex
with structural
requirements**

A positive highlight is that this decree annex, which came into force in June 2022, principally includes all of the standards adopted by the working group, the implementation of which the NPM had recommended to the Federal Ministry of the Interior in 2016 and 2017. The NPM is also pleased that the decree annex includes a regulation, as promised by the Ministry in 2020 (see NPM Report 2020, p. 139), according to which vandal-proof options for detainees in the cells of the police detention centres to keep small, personal possessions shall be provided.

The NPM criticised, however, that according to a passage in the introduction to the decree annex, all of the regulations therein “shall be considered in new buildings, extensions and larger constructions”. The NPM saw this as a regressive step in the implementation of the human rights standards developed over four years by the working group. Furthermore, this formulation gave rise to concerns for the implementation of all standards that were adopted by the working group and can only be realised through (extensive) structural measures.

**Implementation only
in new buildings,
extensions and larger
constructions**

The Federal Ministry of the Interior did not follow the recommendation of the NPM to refrain from using said formulation in the decree annex. The Ministry justified its negative stance with the argument that for measures such as carrying out electrical installations, the closure of entire floors as a minimum, or sometimes an entire police detention centre, is required to

protect the detainees from noise and dust pollution and to facilitate access to the cells for the commissioned companies. In addition, according to the Ministry, in view of detention management organised on a national level, the simultaneous closure of several or all detention centres in order to implement all of the working group's standards at the same time is impossible. The Ministry assured, however, that it would continue its efforts to successively implement all of the working group standards.

Aside from this, the NPM criticised the requirements in the decree annex in relation to the fittings in security cells. In the working group standards, it was agreed that the cells in security category 1 shall be fitted with a socket, a bed, a table and a seat. Now these "single cells with fixed fittings" no longer have the socket requirement and all furnishings shall be screwed to the floor or the wall. This is what was originally stipulated for level 2 security cells. These "tiled" security cells were now transformed into "security cells without fittings" in the decree annex.

Deviating from the standards developed with the Ministry

In this context, the Federal Ministry of the Interior stated that a security category 1 single cell is deemed more moderate in relation to the other cells for (particular) security measures. Consequently, no movable fittings or everyday objects that might be misused shall be provided. Unlike the security category 2 cells, however, these cells do have –a bed, a table, a fixed seat, a proper sit-down toilet and a sink.

The Federal Ministry of the Interior also pointed out that due to the given risk situation, detainees placed in a level 1 security category cell are not allowed to use any objects there that require electricity or have a cable with which strangulation is possible. In light of the above, there are concerns that the detainees housed in these cells could electrocute themselves with an existing power source or socket or cause a short circuit.

Even if the stated security reservations appear understandable, the NPM considers it important to note that the representatives of the Federal Ministry of the Interior in the working group did not express these reservations at any time. If these reservations had been addressed at the time, they could have been discussed much earlier and possible solutions recommended.

Complete separation of toilets in cells for multiple inmates

As stated in the NPM Report 2021 (see p. 147 et seq.), while on a monitoring visit to the Salzburg police detention centre in August 2021, the commission observed that the respective cell toilet was not fully separated from the rest of the room in two cells for multiple inmates. The Federal Ministry of the Interior promised to implement the separation of the toilets in all cells for multiple inmates during the renovation of the police detention centre due to start in 2024. The Ministry also stated that by then, all detainees would be able to express the wish to be placed in a single cell.

In connection with this monitoring visit, the NPM also recommended that the Federal Ministry of the Interior establish documentation at the Salzburg police detention centre and nationwide to inform the detainees of the option of being placed in a single cell. This should also include the scenario where a detainee rejects this alternative and justify why they wish to be placed in a cell for multiple inmates without a completely separate toilet. The Ministry rejected the implementation of this recommendation with the argument that such documentation would constitute unreasonable additional effort for the staff of the police detention centre. The NPM criticised this stance: the documentation would enable the Ministry to provide evidence to the NPM that, firstly, it offers detainees single cells when desired. Secondly, any false allegations made by detainees of having received no information about single cells can be refuted.

Detainees are apparently offered placement in single cells

On the follow-up visit to the Salzburg police detention centre at the beginning of September 2022, six detainees claimed to have received no information until that point that they can request a transfer to a single cell due to the partial separation of the toilet in the allocated cells for multiple inmates. The NPM took this opportunity to continue the discussion of this topic.

No documentation of this „offer“

In the year under review, the NPM also confronted the Federal Ministry of the Interior with the observation that on the monitoring visit to the Innsbruck police detention centre in December 2021, the toilet in a cell for multiple inmates was only separated from the rest of the room by a curtain. The Ministry explained that the toilet door was only removed temporarily for repair and closure of the cell was not possible due to the lack of detention places at the time. The NPM criticised the observed separation of the toilet with a curtain, as the detainees placed in the cell had, in the view of the NPM, to answer nature's call out of sight but within hearing distance of the other cell inmates.

During the monitoring visit by the commission to the Roßbauer Lände police detention centre in October 2021, it transpired that in a specially secured cell, the marking for the alarm button installed behind a padded wall panel was not visible. The Federal Ministry of the Interior replied that the staff at the police detention centre usually marked the position of the alarm button by hand with a paint marker and renew the marking if it is no longer visible. As the Ministry was not able to explain the missing marking on the day of the visit, the NPM criticised this deficit.

Alarm buttons in security cells not marked

The commission also observed that the alarm button in one of the cells had no relevant marking during the monitoring visit to the Wels police detention centre in February 2022. The Federal Ministry of the Interior reported that the staff of the police detention centre had followed the recommendation made by the commission to clearly mark the alarm button directly after the visit and placed a label in English on the alarm button panel.

In connection with the incomplete separation of the toilets in three cells for multiple inmates observed on this visit, the Federal Ministry of the Interior also stated that the renovation of the Wels police detention centre is expected to start in 2023.

On future visits, the NPM will continue to monitor the implementation of all (including structural) standards that it had recommended to the Federal Ministry of the Interior in May 2016 and December 2017, and which are now stipulated in a current decree of June 2022 issued by the said Ministry.

- ▶ ***In all police detention centres, there shall be a sufficient number of cells suitable for the enforcement of single detention pursuant to Section 5 and 5B (2) (4) Detention Regulation.***
- ▶ ***Specially secured cells in police detention centres should have natural daylight, and there must be natural or mechanical ventilation in all single cells.***
- ▶ ***All single cells must have an alarm button that is clearly marked.***
- ▶ ***Single cells pursuant to Section 5 of the Detention Regulation must be fitted with a sink, supply of cold and hot water, a sit-down toilet, a bed and a table with seating.***
- ▶ ***Tiled security cells shall have a (squat) toilet.***
- ▶ ***The technical surveillance of all cells used for security purposes should be carried out using video surveillance that is independent of any light source and in full respect of the personal space of the detainees.***
- ▶ ***Access to toilets and washing facilities for the detainees in police detention centres as well as the protection of their personal space must be guaranteed at all times through structural and/or organisational measures.***
- ▶ ***Toilets in cells for multiple inmates in police detention centres must be completely separated from the rest of the cell.***
- ▶ ***The cells and the general rooms accessible by the detainees shall be kept hygienically clean.***
- ▶ ***Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees in police detention centres. These include, for example, access to foreign-language media, simple sports equipment or board games.***

2.6.3 Further aspects of detention enforcement in police detention centres

As announced in the NPM Report 2021 (see pp. 150 et seq.), the NPM recommended that in 2022, the Federal Ministry of the Interior offer persons detained in police detention centres and, in particular, detainees awaiting forced return free or reasonably priced video telephony.

NPM recommendation regarding video telephony

In addition to the considerations contained in the Annual Report 2021, the NPM pointed out in its recommendation that the relatives of detainees awaiting forced return usually live outside Austria and therefore it is seldom possible for detainees to have physical contact with them in the form of visits. The NPM also noted that the telephone contact of detainees awaiting forced return with their relatives usually depends on whether they can raise the financial resources to buy what can be expensive phone cards. Furthermore, the NPM emphasised that detainees awaiting forced return, for whom video telephony with their relatives in their home country is possible, could subsequently decide to leave Austria of their own free will.

In its reaction to this recommendation, the Federal Ministry of the Interior stated that it saw no discernible use for video telephony in detention enforcement and therefore did not intend to implement the NPM's recommendation. The existing possibilities for telephone use, post and receiving visits adequately guarantee the legally required scope of detainees' social contact with the outside world. In response to the argument of the NPM that video telephony has a positive impact on the decision of detainees awaiting forced return to leave Austria voluntarily, the Ministry stated that prior to the detention pending forced return, those affected had every opportunity to contact their relatives but still had not followed the official administrative orders to leave the country of their own free will.

No intention to implement the recommendation

The NPM cannot understand this position and upholds its considerations in favour of facilitating video telephony in detention enforcement and the associated improvements for detainees.

As in the previous year (see NPM Report 2021, p. 151 et seq.), the NPM also monitored *ex-officio* the progress of the Federal Ministry of the Interior in creating digital documentation of curative medical detainee information for all institutions in all detention centres in 2022.

Digital curative medical detainee information

In a progress report dated June 2022, the Federal Ministry of the Interior stated that the so-called medical module was activated in the application "Detention file prison administration" (*Anhaltedatei-Vollzugsverwaltung*) as a training application, and the medical staff in the detention centres in particular had been requested to report technical problems or suggestions for improvement. The Ministry promised the nationwide roll-out of the medical module in the third quarter of 2022.

The NPM requested another progress report in September 2022 and, in the event that the documentation had been rolled out, information about which persons have access to the data stored there and how unauthorised access is prevented. The requested progress report was not available at the time of editing this report.

Use of application in at least two police detention centres

However, on monitoring visits to Bludenz police detention centre in August 2022 and Innsbruck police detention centre in September 2022, the competent commission discovered that the medical module was already in use.

As it was unclear up to the time of editing this report whether the medical module is available in all detention centres, the NPM will continue the *ex-officio* investigations regarding the nationwide roll-out of the medical module in 2023.

Realisation of table visits

In 2022, the NPM also monitored the initiatives of the Federal Ministry of the Interior regarding whether table visits in detention enforcement can be realised. As recently explained in the NPM Report 2021 (see p. 149 et seq.), the NPM agreed with the Ministry to enable table visits in Hernalser Gürtel police detention centre on a trial basis after the COVID-19 restrictions in detention enforcement had been lifted.

In January 2022, the NPM again requested that the Federal Ministry of the Interior provide a detailed concept for the trial facilitation of table visits as agreed with the Ministry in 2021. The Ministry did not initially meet this request and in June 2022 held the opinion that due to the prevailing pandemic situation at the time, the finalisation of the concept drafted in 2019 is unnecessary. The NPM asked the Ministry in September 2022 to provide the concept, as the pandemic situation had eased considerably at the time. The Ministry then provided a new version that had been adapted by Vienna Police Department and the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*) in 2021.

New concept for the trial operation of table visits

In connection with the new version of the concept, the Federal Ministry of the Interior pointed out that the adaptations had significantly simplified the original concept in structural terms and would guarantee faster initiation of the trial operation. The NPM could not understand this stance. The concept stipulates that instead of measures such as wall openings or dismantling parts, the panes of glass already installed in the booths should be pushed upwards on rails thus enabling dialogue partners to touch. In the opinion of the NPM, this does not fulfil the table visits standard defined by the joint working group.

The Federal Ministry of the Interior also pointed out that it can only commission the structural measures to prepare for the trial operation and communicate a specific date for the start of the same after the announcement

of the end of the COVID-19 pandemic by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection. Whether, in what form and, if necessary, when such an announcement will be made by said Ministry is still unknown. The NPM will in any case continue to observe the pandemic situation in order to request information on the further initiatives of the Federal Ministry of the Interior for the preparation of the trial operation in due course..

- ▶ ***The opportunity for detainees to use free-of-charge or cheap video telephony should be set up in police detention centres.***
- ▶ ***The digital documentation of curative medical detainee information for all institutions should be set up in all police detention centres as soon as possible.***
- ▶ ***Unless there are specific, safety-related criteria or dealing with prisoners in court custody, visits to detainees should take place at a table. It must be ensured that table visits are undisturbed – if necessary, through the use of structural measures. A dedicated room with a table must be provided for visits from relatives under 18 in police detention centres.***

2.6.4 Substandard fittings and structural deficits in police detention centres

On their monitoring visits, the commissions regularly monitor the condition of the fittings in the police detention centres. They continued to observe deficits in 2022. It should, however, be noted that any deficits were usually rectified promptly, and the commissions were able to confirm the implementation of the promised improvement measures.

During the visit to the Graz police detention centre in April 2022, several structural deficits and substandard fittings were observed, which were attributable to the age of the police detention centre building. These included the incomplete separation of the toilets from the rest of the room in the cells for two persons, which constituted a metal wall with a door that others can look over. There were also missing food hatches in several cell doors, and the old electrical installations criticised by the staff of the police detention centre. One officer also expressed the need to install peephole cameras (with infrared function or a residual light amplifier) in the cell doors in order to be able to carry out the stipulated cell patrols during the night without turning on the cell lighting, thus avoiding any disturbance to the detainees' sleep.

Graz police detention centre

The Federal Ministry of the Interior conceded the need for renovation or the alternative construction of a new building for the police detention centre. It also promised to deliver a decision on how to proceed after presenting a feasibility study that was not complete at the time. However, the Ministry pointed out that the renovation or new construction of several

police detention centres is not possible at the same time and can only take place gradually over several years. The NPM could not share this opinion in view of the mobile door peephole cameras available in shops, as their installation does not depend on the decision in favour of the renovation or new construction of the police detention centre.

As could be predicted, the Federal Ministry of the Interior rejected the installation of door peephole cameras in January 2023. In so doing, the Ministry held the opinion that the surveillance of the interior of cells with devices for image transmission is only permissible if there is a risk of harm to others or self-harm by a detainee. In the view of the NPM, the Ministry mistakenly assumed that the recommendation made by the NPM was directed at permanent video surveillance of detainees placed in normal police detention cells.

Eisenstadt police detention centre

While visiting the Eisenstadt police detention centre in May 2022, a detainee complained that his sleep was regularly disturbed by the bright light from the searchlights in the outside area of the police detention centre shining into his cell. There were no fittings in the cell to darken the windows. The NPM recommended that the Federal Ministry of the Interior either ensure that the cell windows are shaded or darkened, or reduce the intensity of the mentioned searchlights during the night. The Federal Ministry of the Interior announced that the positions of the bothersome searchlights would be changed as soon as possible, and a reflective foil attached to the inside of the cell windows.

Salzburg police detention centre

As explained in the NPM Report 2021 (see p. 157), it transpired during the monitoring visit to Salzburg police detention centre in August 2021 that the pane of glass installed in one of the visiting rooms, which separates the area for the detainees from that for the visitors, posed an acoustic barrier. The Federal Ministry of the Interior announced that an intercom would be installed in 2021.

On a follow-up visit to the police detention centre in September 2022, the commission observed that the two visiting rooms had two visitor booths each, but only one in each room was equipped with the mentioned intercom. Furthermore, a partition between the cramped visitor booths was missing in the smaller of the two visiting rooms. The NPM recommended that the Federal Ministry of the Interior equip all of the visitor booths with an intercom and install the mentioned partition in the smaller visiting room. The statement of opinion of the Ministry was not yet available at the time of editing this report.

Competence Centre Eisenstadt

On the occasion of the monitoring visit in the Competence Center Eisenstadt, the NPM recommended improving the structural fittings of the building, which made a very worn impression, and ensuring modern working conditions for the staff and adequate living conditions for the third parties located there.

The Federal Ministry of the Interior reported about several measures such as decorating work and laying new floors in the building. At the same time, the Ministry pointed out that the Burgenland Police Department only used the building as a tenant of *Landes-Immobilien-Gesellschaft GmbH* and therefore cannot exert a direct influence on the decision to renovate or build a new building.

On the follow-up visit to the Bludenz police detention centre in August 2022, the commission was unable to find any updates with regard to the construction of the police detention centre promised for the Feldkirch-Giesingen site the previous year. Upon request by the NPM, the Federal Ministry of the Interior stated that the construction of a new security centre including a police detention centre in Vorarlberg was definitely going ahead and the planning is already underway for the project implementation expected to start in two or three years' time. The Ministry pointed out at the same time, however, that the specific location of the police detention centre is unclear again and that intensive talks between the town of Feldkirch and potential property owners have not achieved any results yet.

**Bludenz police
detention centre**

- ▶ ***Door peephole cameras with infrared function or a residual light amplifier should be used when needed in order to avoid having to turn on the cell lighting and thus disturb the detainees' sleep during cell patrols because the spyholes are too small.***
- ▶ ***In order to avoid disturbing the detainees' sleep, organisational or technical measures shall be taken to ensure that every cell window in a police detention centre provides sufficient shading to keep out bright light.***
- ▶ ***The design of rooms in which detainees receive visits in police detention centres should not have acoustic barriers that impede the conversation.***

2.6.5 Fire protection in police detention centres

In 2022 the NPM also monitored *ex-officio* the implementation of the recommendations made by the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) of the Federal Ministry of the Interior ("*Polizei.Macht.Menschen.Rechte*") for the improvement of fire protection in police detention (see NPM Report 2018, p. 147 et seq.).

The Federal Ministry of the Interior reported progress on the implementation of several of these recommendations. In spring 2022, the Austrian Federal Fire Brigade Association was contacted in order to promote the recommended expansion of the Technical Guidelines for Fire Prevention N 160/11 for correctional institutions to include the terms "police detention centre" and "places of detention in district and municipal police headquarters". According to the Ministry, the Federal Fire Brigade Association had announced in October 2022 that the needs of the Ministry would be considered in the

**Progress on the
implementation of
recommendations
by the Dialogue
Committee on Civil
Society**

revision of these Technical Guidelines, however did not state how long this will take.

The Federal Ministry of the Interior also stated that it had made preparations together with the Security Academy for the training of law enforcement officers in the areas of “de-escalation when dealing with psychotic and aggressive persons” and “fire protection training” as recommended by the Dialogue Committee on Civil Society. The publication of the relevant training modules by the Security Academy is due in the first quarter of 2023 according to the Ministry.

In addition, the Federal Ministry of the Interior reported about the mandate to all Police Departments to purchase necessary equipment such as fire helmets or short-duration compressed air breathing devices, if required, from the Federal Procurement Agency (*Bundesbeschaffung GmbH*). The purchases should be completed by the end of June 2023.

The Federal Ministry of the Interior also announced that it would gradually work through the recommendations of the Dialogue Committee on Civil Society that have not been implemented yet. The NPM will continue to monitor their implementation.

- ▶ ***The fire protection standard in police detention shall be aligned with that applicable to correctional institutions as the minimum.***
- ▶ ***The Federal Ministry of the Interior should develop an overall strategy for the nationwide standardised organisation of preventive and reactive fire protection and enforce standards.***
- ▶ ***All of the cells used for longer-term police detention should have suitable, automatic fire detection systems.***

2.6.6 Insufficient stocks of clothes to change into for destitute detainees

In 2022, the commissions prioritised the stocks of free clothes for destitute detainees to change into in the detention centres. The commissions identified the need to increase the stock levels in just two police detention centres.

Wels police detention centre

During a monitoring visit to the Wels police detention centre in February 2022, the commission observed that besides three winter coats, only white disposable overalls were available as a change of clothes there. Furthermore, the commission discovered that the police detention centre had no arrangement with charitable organisations or associations to procure more changes of clothes. Upon receiving the relevant recommendation, the Federal Ministry of the Interior replied that the police detention centre had already increased its clothing stock levels. According to the Ministry, the

management of the police detention centre is also attempting to increase the stock through possible donations and collaboration with Caritas.

On the monitoring visit to the Hernalser Gürtel police detention centre, it was observed that the stock of changes of clothes, which consists solely of voluntary donations from the police detention centre staff, only had a few pairs of trousers, t-shirts and one pair of shoes. The NPM recommended that the Federal Ministry of the Interior provide outdoor and indoor footwear in all common sizes and a change of clothes including underwear in every common size in order to be able to dress one person in every season. The statement of opinion of the Ministry was not yet available at the time of editing this report.

**Hernalser Gürtel
police detention
centre**

- ***In every police detention centre, there should be a stock of changes of clothes (including underwear) suitable for the season and according to the number of detention places for detainees who have no change of clothes. A stock of outdoor and indoor footwear should also be available.***

2.6.7 Hygienic deficits in detention enforcement

During a monitoring visit to the Innsbruck police detention centre in December 2021, the commission discovered that at least two detainees were not aware of the possibility to have their clothes washed in the washing machine provided by the police detention centre. The NPM therefore recommended that the Federal Ministry of the Interior inform all detainees in a suitable way upon arrival of the possibility to clean their clothes.

**Lack of information
about clothes
washing**

The Federal Ministry of the Interior assured the NPM that the staff at the police detention centre already regularly inform the detainees about this possibility at arrival, and as part of the showering procedure. Furthermore, the possibility to have detainee clothes washed is also explained in the form of pictograms on the poster about the daily schedule in the police detention centre. The NPM was not convinced by these explanations in light of the contradictory information from the detainees, and especially considering that the daily schedule poster that was seen only contained a pictogram for cleaning the cell. The NPM criticised the lack of information and recommended that the Ministry add a relevant pictogram to the poster about the daily schedule.

On the monitoring visit to the Innsbruck police detention centre in September 2022, the commission observed that a detainee had no cover for the blanket/duvet, nor a pillowcase for the pillow, which was soiled with dried blood stains. Another detainee also complained that he had no pillowcase for his pillow. The NPM recommended that the Federal Ministry of the Interior ensure that all persons detained in police detention centres are given the required amount of clean bedding upon arrival. The statement of opinion of

**Inadequate provision
of clean bedding**

the Ministry on this recommendation was not available at the time of editing this report.

- ▶ ***Detainees should receive information upon arrival in a detention centre about the possibility to have their clothes washed and/or dried in a washing machine and/or dryer in the institution. Pictograms should also be used to show this possibility in order to avoid language barriers.***
- ▶ ***At the beginning of their detention, detainees shall be given clean bedding in the required amount agreed between the Federal Ministry of the Interior and the NPM. Soiled or damaged bedding and covers shall be replaced immediately.***

2.6.8 Inadequate shopping opportunities and food for detainees

Pursuant to Section 18 Detention Regulation (*Anhalteordnung*), all persons in police custody shall be given the opportunity to purchase everyday essential items, groceries, tobacco products in limited quantities, newspapers and magazines at least once a week.

Wels police detention centre

On the monitoring visit to the Wels police detention centre in February 2022, the commission observed that the detainees could enter the number and quantity of the required groceries and/or tobacco products in the prepared German shopping lists to have the same collected by the staff of the police detention centre. As nine of the ten persons detained in the police detention centre at the time had poor knowledge of German, the NPM recommended providing an English version of the shopping lists as a minimum. The Federal Ministry of the Interior stated that the staff of the police detention centre had immediately taken up this recommendation and created an English version of the shopping lists. In light of this, the NPM considered the criticised deficit to be rectified.

Innsbruck police detention centre

Pursuant to Section 13 (2) of the Detention Regulation, all persons in police custody have the right to receive adequate food and a warm meal once a day. In addition, attention should be paid to medical requirements (low-fat, purpose and diet foods) and religious restrictions (special food).

On the monitoring visit to the Innsbruck police detention centre in September 2022, the commission noticed while observing lunch (goulash with polenta and white cabbage salad) that two detainees of Indian origin only received the mentioned side dishes to the main course. Regarding this matter, the management of the police detention centre responded that the staff can order a vegetarian meal upon request by the detainee, however, for this to work, they would have to know which detainee is vegetarian or vegan. This was however unknown in the case of the mentioned detainees.

The NPM recommended that the Federal Ministry of the Interior ensure that at the Innsbruck police detention centre, as is customary in other detention centres, a warm vegetarian or vegan meal is regularly provided and that the staff actively inform the detainees about this alternative. The statement of opinion of the Federal Ministry of the Interior was not yet available at the time of editing this report.

- ▶ ***The lists of purchasable products in detention centres should also be available in English as a minimum.***
- ▶ ***For detainees who do not want to or are not allowed to eat meat, a warm vegetarian or vegan alternative meal pursuant to Section 13 (2) of the Detention Regulation shall be provided and the detainees actively and regularly informed about this option.***

2.6.9 Positive observations

The commissions noted the great willingness to cooperate on the part of the staff on all monitoring visits in 2022.

On the monitoring visit to the Bludenz police detention centre in March 2022, the commission noticed that almost all of the standards adopted by the living conditions in police detention centres working group had been implemented in detention enforcement. All that was missing in the police detention centre was a basketball basket and balls. The staff at the police detention centre explained this with the fact that in the past, detainees had often thrown the balls over the walls of the centre into neighbouring private and public property and parking spaces.

**Bludenz police
detention centre**

The commission also praised the detention of all detainees in the open section, although the decree generally stipulates this for detainees awaiting forced return only. According to the commission, the detainees can thus also communicate with other detainees and pursue activities together outside of the allocated cells.

In addition, the commission found the large stock of free changes of clothes for destitute detainees positive. It also viewed the visiting regulations in the police detention centre positively. Even though only closed visits were allowed at the time, the detainees were able to receive visits from their children when accompanied by an adult.

Furthermore, the commission praised the respectful way in which the staff of the police detention centre dealt with the detainees, especially because there was a noticeably infrequent need for detaining persons in security cells. In the view of the commission, the way the staff treat the detainees should serve as a model for other police detention centres.

**Vordernberg police
detention centre**

On the occasion of the monitoring visit to the Vordernberg police detention centre in May 2022, the commission reported several positive observations. These included the cleanliness inside the building, the wide range of leisure and occupational opportunities for the detainees and the possibility of consulting a psychiatrist via video link for the psychiatric care of the detainees.

The commission also gave a special mention to the trial operation of a task force in the detention centre, which was set up in September 2020. The specially trained members of the same are tasked with intervening with detainees in escalating situations in order to avert disturbances in the open enforcement of detention awaiting forced return in the centre. According to the management of the detention centre, the approach used by this task force in line with the "3 D strategy" (Dialogue – De-escalation – Drastic Measures) has reduced the number of violent assaults by detainees on fellow detainees and on the staff.

2.7 Police stations

Introduction

The commissions conducted 52 monitoring visits to police stations in the year under review. Compared to the previous year with 121 visits, this represented a decrease of 57% and a return to the pre-COVID-19 pandemic level. The large number of visits in 2021 is attributable to the fact that police stations were visited more frequently during the pandemic, as capacity became available in other places in order not to put vulnerable persons at risk, in particular in retirement and nursing homes. As in previous years, the focus of the visiting delegations was on the proper documentation of measures that deprive liberty and the structure and furnishings of the stations and departments.

52 visits to police stations

Within the framework of their monitoring priorities in 2021 and 2022, the NPM focused on barrier-free accessibility in all police stations in Austria and the proper documentation of detention in the detention book. After an evaluation of these topics, new monitoring priorities in the area of short-term police detention are planned, such as communication and alarm protection in detention rooms as well as the documentation of detention with special consideration for the detainees' rights to information and notification (see chapter 2.7.2).

Monitoring priorities

The shortage of doctors and associated waiting times in the police stations following arrests continues to be an issue (see NPM Report 2016, p. 149; NPM Report 2018, p. 157). A group set up in the Federal Ministry of the Interior in 2021 showed initial improvements for Vienna at least (see chapter 2.7.4).

Lack of doctors

The NPM observed an improvement on a monitoring visit to a police station. The Federal Ministry of the Interior set up an interpreter register to which persons are added after meeting specific criteria and conditions. Police stations nationwide can use the register. It can be used over the telephone, which can be an advantage in rural areas in particular and means interpreters can be available faster.

Interpreter register

2.7.1 Monitoring priorities

As set out in the report from the previous year, in 2021 the NPM defined – after consultation with the Human Rights Advisory Council – the monitoring priorities “barrier-free accessibility” and “proper documentation of detention in the detention book” (see NPM Report 2021, p. 161 et seq.) and evaluated 79 visit reports in this context.

The evaluation for 2021 indicated 35 barrier-free police stations. One police station could not be entered as it was not staffed. In two cases, the suspicion of inadequate barrier-free accessibility could not be verified. The

Results of 2021 evaluation

NPM criticised the situation on-site in 28 cases. At eight of these police stations, the Federal Ministry of the Interior removed the deficits immediately or promised prompt improvements.

The commissions identified nine cases of properly and transparently maintained detention books in the reporting period 2021. Three of the visited police stations had no detention room. In one case, the observations of a commission were not specific enough to warrant further monitoring. The NPM criticised the inadequate maintenance of the detention books in two cases. The Federal Ministry of the Interior removed the deficits immediately.

The evaluation of the monitoring priorities in 2022 showed that the commissions conducted 52 visits to police stations in the period under review, of which 48 formed the basis for the evaluation.

**Results of 2022
evaluation**

The commissions selected the monitoring priority "barrier-free accessibility" in all 48 visit reports. In 28 visit reports, the commissions addressed the monitoring priority "proper documentation of detention in the detention book". There was no mention of the monitoring priority "proper documentation of detention in the detention book" in twelve visit reports because the commissions noted that the visited police stations have no detention room. On four visits, the commissions made observations regarding the documentation of detention in the detention book, however without explicitly noting the monitoring priority in the visit report.

28 police stations ensured barrier-free access, thus giving the commissions no grounds for criticism. In two police stations that had no barrier-free entrance, the commission refrained from making recommendations due to planned moves to new locations and promised follow-up visits. The criticism of inadequate barrier-free accessibility could not be verified in two cases. The NPM criticised the lack of barrier-free accessibility in seven cases. The Federal Ministry of the Interior promised prompt improvements for four of these police stations. Ten examinations of the monitoring priority "barrier-free accessibility" were not completed at the time of reporting.

In 2022, the commissions observed properly and transparently maintained detention books in 23 police stations. 17 of the visited police stations had no detention room, which is why there was no criticism. The NPM criticised poor maintenance of the detention book in one case. One examination of the monitoring priority "proper documentation of detention in the detention book" was still open at the time of reporting.

**Summary of
the 2021/2022
evaluations**

Whereas the monitoring priority "barrier-free accessibility" was addressed in 70% of all visits to police stations in 2021, the commissions consistently addressed this monitoring priority on all visits in the 2022 reporting period. The increase in the second monitoring priority was also positive. Whereas the "proper documentation of detention in the detention book" was addressed on just 14% of the visits in the previous year, the commissions took up this

monitoring priority in 58% of visits in 2022. If cases are included in which observations were made, but not explicitly noted in the visit report, this topic was addressed in 81% of all visits to police stations.

The evaluation of the two monitoring priorities for 2021 and 2022 showed that these were considered by all of the commissions – albeit not to the same extent – and thus the nationwide situation could be depicted. The final evaluation confirmed the proper documentation of detention in the detention book in a large number of the visited police stations.

The continued highlighting of the monitoring priority “barrier-free accessibility” resulted in the Federal Ministry of the Interior setting up a working group. In order to obtain an overall view of the situation and the continued development in the area of short-term police detention, the NPM initiated ex-officio investigative proceedings in summer 2022. A statement of opinion from the Federal Ministry of the Interior was not yet available at the time of editing this report. A conclusive assessment is planned for the next annual report.

Following consultation with the Human Rights Advisory Council, the NPM has defined new monitoring priorities.

New monitoring priorities

In the implementation of the CPT standards (CPT/Inf/E (2002) 1 Rev. 2010, German, p. 16, no. 48), according to which persons in police custody shall be able to make contact with prison guards at all times, Section 4 (4) Detention Regulation (*Anhalteordnung*) stipulates that suitable facilities for contacting the enforcement authorities shall be provided in detention rooms. The installation of an alarm button usually suffices to fulfil this regulation.

Deactivating alarm buttons in detention rooms is only permissible pursuant to the decree from the Federal Ministry of the Interior of 19 December 2013, Zl. BMI-OA1320/0045-II/1/b/2013, if the detained person is permanently monitored via visual contact from the time when the alarm button is deactivated, the duration and the reason for deactivating the alarm button and the type of monitoring are documented, and the call system is reactivated immediately after the reason for deactivating it no longer exists.

Alarm buttons that are defective or that can be switched off and/or are not adequately marked are problematic from a human rights perspective in connection with the state’s duty of care of the security authorities for the detained persons and their particular dependent relationship. If this means of communication is removed for detained persons, there is the risk that it will not be possible to react in time to their needs or in emergency situations. For this reason, the possibilities for those detained in detention rooms to contact the officers was already a monitoring priority in 2018 to 2020.

As the commissions regularly observed inadequately marked and defective alarm buttons in police stations in 2022, the NPM decided to define the

Communication and alarm protection

communication and alarm protection in detention rooms as a monitoring priority once again (see chapter 2.7.3).

The CPT (CPT/Inf/E (2002) 1 Rev. 2010, German, p. 6, no. 36, 37, 40 and p. 9, no. 16) emphasises the importance of informing persons taken into police custody of their rights as a fundamental protective measure against abuse. It is essential that the affected person has the right to have a contact person notified of the arrest, to have access to legal representation as well as the right to a medical examination. A relevant form that clearly explains these rights should be given to those affected as soon as they are taken into custody. The detained person should also be requested to confirm having been informed of their rights.

With the decree of 20 June 2017, Zl. BMI-OA1320/0026-II/1/b/2017, the Federal Ministry of the Interior regulated that a detention log shall always be written as a matter of principle for every type of deprivation of liberty, regardless of the duration and the legal basis. This is not required for simply establishing the identity of persons at the place of an official act.

Detention shall be fully documented

The commissions regularly view detention logs on the monitoring visits to police stations and identify deficits (see chapter 2.7.2.). The monitoring priority "proper documentation of detention with special consideration of the detainees' rights to information and notification" is designed to examine the implementation of the CPT standards and to highlight not just gaps but also opportunities for improvement.

2.7.2 Inadequate documentation of detention

The commissions regularly view the detention books and detention logs on their visits. Restrictions of freedom constitute serious infringements, which is why they must be fully documented.

Persons who are arrested have rights to information and notification (see most recently NPM Report 2021, p. 163 et seq.). Failure to respect these is a violation of the constitutionally guaranteed right to personal freedom. Public security service bodies shall inform detainees of their rights and document the same. The detained person shall confirm the receipt and availing or waiving of rights to information and notification. If a person refuses to sign, the law enforcement body shall document the same in the log.

Measures that restrict freedom shall be documented in a transparent manner. For example, the beginning and the end of the use of handcuffs shall be documented. Handcuffing for a long period of time shall be justified.

Inadequate documentation

As in previous years, the commissions identified deficits in the documentation of detention and pointed this out to the heads of the stations in the concluding meetings. In some cases, the detention logs were not complete

and the signatures of the law enforcement officers performing the official acts were missing. Once again, the NPM complained about the inadequate documentation of the distribution of information sheets. The Federal Ministry of the Interior initiated awareness measures in all cases.

Effective July 2017, a decree was adopted by the Federal Ministry of the Interior pursuant to which all police stations with usable detention rooms shall maintain a detention book (see NPM Report 2019, p. 173). The decree also clearly regulates which entries shall be made in the detention book. At the Ried im Innkreis motorway police station, an officer told the commission that the station only has a waiting room and thus a detention book is not maintained. In the course of the examination, the Federal Ministry of the Interior explained that the information provided by the employee, who was then instructed accordingly without delay, was incorrect. There is no detention book for the multifunctional room that is also used for detention.

On the monitoring visit to Mistelbach police station, the commission noted that the beginning but not the end of three detentions was entered in the detention book. In addition, establishing the identity of several third parties who were not held in the detention room was mistakenly entered in the detention book. At Viktor-Christ-Gasse police station, providing the detainees with drinking water was not transparently documented in the digital detention book. In both cases, the head of the station held a detailed conversation with the responsible officers. The NPM considered the deficit rectified.

► ***Detention in police stations shall be fully and transparently documented.***

2.7.3 Deficient structural conditions in police stations

If the commissions observe deficits in structural conditions on their monitoring visits, these are usually discussed with the station head in the concluding meeting. Smaller deficits are frequently eliminated quickly. If a solution cannot be found in this way, the NPM informs the Federal Ministry of the Interior.

Persons in police custody should, pursuant to CPT (CPT/Inf/E (2002) 1 Rev. 2010, German, p. 15, no. 47), have access to normal bathroom facilities in acceptable conditions. Article 3 of the European Convention on Human Rights (ECHR) forbids the degrading treatment of detainees. The obligation to treat detainees humanely and as carefully as possible is set forth in Section 1 (4) of the Personal Liberty Act (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*).

Unacceptable toilets in detention rooms

The commission criticised the construction of the toilets in the dirty detention rooms in Gänserndorf police station. The flush is installed out of reaching distance of the detainees, meaning they cannot flush the toilet after answering nature's call and require the help of the officers. The NPM considered these conditions of detention as degrading in view of the lack of a minimum level of privacy. The Federal Ministry of the Interior conceded that the bathroom facilities no longer meet modern requirements but was unable to provide a schedule for improvements due to problems with the property owner. In the opinion of the NPM, problematic tenancies shall not be at the expense of detainees. The Ministry promised to improve the hygiene situation by increasing the cleaning intervals.

The commissions observed that there were no light switches in the detention rooms in Feldbach police station and Kapfenberg police station. Detainees who are merely suspected of having committed a punishable offence are thus more restricted in detention than prison inmates, who are entitled to reading lamps in detention that can be switched on and off. The NPM upheld its recommendation from 2017 to fit all detention rooms in police stations with light switches as standard and criticised the deficit again (see NPM Report 2017, pp. 160 et seq.). The Federal Ministry of the Interior rejected the recommendation again primarily for reasons of suicide prevention.

According to the Directive on Workplaces, building components or parts that can cause injury or serve as a fixing point for strangulation shall not be used in detention rooms. The NPM considered the use of a bed with legs in the cell as a security risk in Eben im Pongau police station. It recommended countering the risk of strangulation by using an easily applied covering. The Federal Ministry of the Interior rejected this recommendation.

Many structural deficits

The commission criticised the lack of a security gate at Feldbach police station. Furthermore, the connecting door to the rooms of the tax office in the same building was not secured. The Directive on Workplaces stipulates a security gate in the entrance area of a police station as a matter of principle. As the structural deficits were to be improved as part of a planned refurbishment, the NPM refrained from further criticism.

Pursuant to CPT (CPT/Inf/E (2002) 1 Rev. 2010, German, p. 8, no. 42), police stations should have adequate ventilation. The NPM criticised the poorly ventilated cells in Feldbach police station. The Federal Ministry of the Interior promised speedy refurbishment. In Salzburg-Maxglan police station, the NPM recommended keeping detention in the cell as brief as possible due to the ventilation, which was considered borderline.

The NPM criticised the structural deficits in the two detention rooms in Kindberg police station. The Federal Ministry of the Interior conceded that renovation is necessary but was unable to provide a schedule for improvements. All of the movable objects in the cell that is used as a storage

room were moved after the visit by the commission to the municipal police in Gmunden.

On the monitoring visit to Salzburg-Maxglan police station, the NPM criticised that the alarm button for the cell was neither marked nor activated. Alarm buttons should only be deactivated in absolute emergency situations if a detained person uses the call system excessively and abusively (see also chapter 2.7.3.). The NPM therefore criticised that the possibility for communication was deactivated. In Eben im Pongau police station, at Gmunden municipal police, in St. Johann im Pongau police station and in Viktor-Christ-Gasse police station, the NPM criticised inadequately marked alarm buttons in detention rooms. The Federal Ministry of the Interior rectified the deficits promptly.

Deactivated alarm buttons

Due to the monitoring priorities defined for 2022, the commissions observed that many police stations had no barrier-free access (see chapter 2.7.3.). Many police stations could only be accessed via stairs. Not even the bell/intercom was barrier-free in some police stations. The Federal Ministry of the Interior stated that in addition to the COVID-19 pandemic, the Ukraine crisis is now causing increasing costs and delays on construction projects. Many police stations are housed in municipal buildings.

The NPM understands that the respective Police Departments have to rely on cooperation with the municipalities for the planning and implementation of barrier-free accessibility. However, the Ministry has been aware of the problem of the many non-barrier-free police stations for a long time and the deadline for implementing the same had already expired before the beginning of the COVID-19 pandemic and the war in Ukraine. It is a fact that the Ministry was unable to promise prompt implementation of barrier-free accessibility in many police stations.

No barrier-free accessibility

For persons in wheelchairs in particular, stairs, intercoms that are too high up, heavy doors and doorways that are too narrow pose insurmountable obstacles. The Federal Ministry of the Interior followed the recommendation of the NPM in several cases and installed intercom systems lower down in the entrance area. In several police stations, the Ministry presented a concrete schedule for renovations or a move to a new police station. In one case, the Ministry announced the construction of an alternative barrier-free office in the near future. In another police station, the Ministry had high-contrast markings put on a glass entrance door for improved visibility.

In the year under review, the commissions criticised the lack of tactile floor information for persons who are blind or have impaired eyesight in several police stations. As reported in the previous year, an internal working group in the Federal Ministry of the Interior has been working since 2021 to make existing barrier-free police stations more visible on the internet using icons (see NPM Report 2021, p. 168). The Ministry promised the NPM in December

Visibility of barrier-free police stations

2022 that these will soon be available in an app. At the editing deadline for this report, there was no further information available to the NPM. However, the NPM recognises the steps taken by the Ministry to date and its appreciation of the problem.

- ▶ ***Detention rooms shall be fitted with acceptable sanitary facilities and light switches and have adequate ventilation.***
- ▶ ***Building components or parts that can cause injury or serve as a fixing point for strangulation shall be avoided in detention rooms.***
- ▶ ***Alarm buttons in detention rooms shall be adequately marked so that detainees can contact the security staff.***
- ▶ ***Cells shall be clean.***
- ▶ ***Police stations should have self-protection systems.***
- ▶ ***Police stations shall have a barrier-free layout.***

2.7.4 Shortage of (police) public medical officers

On the monitoring visit to Viktor-Christ-Gasse police station in summer 2021, the commission viewed the detention documentation and suspected excessively long waiting times for examination of the fitness to undergo detention in two cases. The commission assumed that the reason for this was a shortage of public medical officers in Vienna Police Department.

2021 shortage of doctors in the Vienna Police Department

In both cases, the Federal Ministry of the Interior could demonstrate that the examination of fitness to undergo detention was not delayed. It conceded, however, that 14 public medical officers had left the Vienna Police Department for different reason in the first six months of 2021. The public medical officer service of the Vienna Police Department is set up on the basis of 30 permanent positions for doctors. In July and August 2021, there were only six doctors available at times.

The Federal Ministry of the Interior pointed out the nationwide general shortage of doctors. For this reason, many steps have been taken to increase the attractiveness of permanent positions in the police public medical service. For example, advertising campaigns have been run in diverse media and part-time work established. Negotiations with the Federal Ministry for Arts, Culture, the Civil Service and Sport resulted in a rise in the basic salary. This bundle of measures has already effected an increase in applications. Regarding the situation in summer 2021, the Ministry explained that due to a ban on leave and a reduction in the other police public medical programme, normal service could be maintained without problems for the detainees.

The NPM did not have any cases to verify that there was an unacceptable waiting time for the examination of fitness to undergo detention in police stations of the Vienna Police Department in summer 2021. However, the NPM criticised the understaffing in the public medical service of the Vienna Police Department in July and August 2021.

On the monitoring visit to Fuhrmannsgasse police station in February 2022, the commission suspected – as in the case depicted above in relation to Viktor-Christ-Gasse police station – long waiting times for examinations by the public medical officer. In view of the conceded acute understaffing in the public medical service of the Vienna Police Department, the NPM asked the Federal Ministry of the Interior for up-to-date information.

The Federal Ministry of the Interior stated that the measures taken had resulted in a significant rise in the number of public medical officers in the Vienna Police Department. A total of 18 full-time and ten part-time doctors have made up the medical staff since September 2022. Personnel measures are being continuously implemented to achieve the optimum staffing level for regular service operation.

**2022 successful
personnel measures
implemented**

The NPM welcomed the increased number of public medical officers in the Vienna Police Department. In the opinion of the NPM, the Federal Ministry of the Interior transparently demonstrated that the present staffing level enables the flexibility in shift planning required to avoid long waiting times for the examination of fitness to undergo detention in the police stations of the Vienna Police Department.

The poor availability of medical personnel in rural areas was criticised on several monitoring visits to police stations in the Liezen district. This was problematic in particular in terms of conducting examinations of the fitness to undergo detention, but also for the decision as to whether a person should be presented to a psychiatric ward pursuant to Section 8 Hospitalisation of Mentally Ill Persons Act (Unterbringungsgesetz).

**Situation in rural
areas**

The NPM initiated investigative proceedings and referred to the *ex-officio* investigative proceedings on this topic from 2017 (see NPM Report 2018, p. 155). At the time, it was communicated that a follow-up model to the previous district medical system could not be found. Every solution had failed because of the additional financial cost that the *Land* would have had to bear. The approach of creating a pool of doctors also found no support from the *Land* Styria. The *Land* did not propose any alternative suggestions either. Styria Police Department was most recently promised a date in the middle of October 2017.

These investigative proceedings were not complete at the time of reporting. The NPM intends to present this in next year's annual report and to continue observing the topic of the shortage of doctors in the area of short-term police detention.

2.7.5 No medical examination despite long detention

St. Johann im Pongau police station

On the monitoring visit to St. Johann im Pongau police station, the commission noted that an arrested person who was injured was not medically examined despite being detained for more than 39 hours. Section 7 (3) of the Detention Regulation (*Anhalteordnung*) stipulates that all detainees shall be medically examined without undue delay, and within 24 hours of admission at the latest.

The NPM emphasises that the CPT (CPT/Inf/E (2002) – Rev. 2010, German, p. 12, no. 40) considers three rights to be particularly important for persons in police custody. In addition to the right to access to legal representation and the right to have a person notified of the arrest, these include the right to access to a doctor.

Prompt attendance by medical staff

Detainees in police stations are not usually examined by a public medical officer if they are released after a few hours or are transferred to a correctional institution. However, if a detained person remains in police custody for longer, the prompt attendance by a doctor shall, in the view of the NPM, be ordered regardless of whether the detainee is injured or ill. If the examination is refused, the consulted doctor shall document the same.

In the case in question, the Federal Ministry of the Interior conceded that there had been a delay, as the 24-hour window from admission to the medical examination of fitness to undergo detention was exceeded. The problematic availability of medical staff and the assumption by the law enforcement officers that the arrested person would not have cooperated in an examination were the reasons given. The Federal Ministry of the Interior emphasised that the repeated offer of medical care should have been documented in any case. Attendance by or at least consultation with a doctor by telephone should also have been attempted and documented.

The Federal Ministry of the Interior stated that the head and the officers of St. Johann im Pongau police station have been urgently briefed about the importance of full and transparent documentation of detention. Furthermore, they have been instructed that in future, the attendance by a public medical officer shall be attempted and documented even if this is difficult and the detained person refuses to cooperate at the outset.

Awareness of staff increased

The NPM welcomes the awareness measures and hopes that examinations of the fitness to undergo detention will be performed in time in future and that attempts to reach medical staff will be fully documented. This case also highlights the problem that doctors cannot be reached in rural areas at the weekends (see chapter 2.7.4).

The failure to consult a public medical officer during a long period of detention constitutes maladministration for the NPM. As an awareness measure was taken, the NPM considered the maladministration rectified.

- ▶ *When persons are detained in a police station for a longer period of time, they shall be examined by a doctor to determine their fitness to undergo detention without delay, and within 24 hours of their arrest at the latest.*
- ▶ *The attendance by a doctor to examine the fitness to undergo detention shall be ordered in time in police stations. The order shall be transparently documented.*

2.7.6 Federal Ministry of the Interior refuses to support investigative proceedings

The NPM regularly criticises the lack of confidentiality of examinations by the public medical officer. In 2017, the NPM recommended that the Federal Ministry of the Interior provide separate examination rooms, or at least implement technical measures to guarantee a confidential examination by the public medical officer (see NPM Report 2017, p. 161 et seq., NPM Report 2021, p. 171 et seq.).

Confidentiality of examination by the public medical officer

On the monitoring visit to Van-der-Nüll-Gasse police station in October 2021, the commission recommended that the public medical officer perform the examinations of detainees in a suitable room without the presence of law enforcement officers.

The NPM asked the Federal Ministry of the Interior to show how many examinations by a public medical officer had been performed in the arrest area of the station over a four-month period, and in how many of these examinations law enforcement officers had been present. In addition, the NPM wanted to know whether and, if so, which precautions were taken to guarantee the confidentiality of the examination.

The Federal Ministry of the Interior first referred to the information it had provided regarding another monitoring visit to Fuhrmannsgasse police station in 2022 and stated that the requirements set forth in the decree were complied with. As the Ministry did not address the specific questions, the NPM followed up on the matter in June 2022. The second statement of opinion only arrived four months later. In it the Ministry stated that it did not want to record such information and referred again to the response to the visit to Fuhrmannsgasse police station.

Hesitant reaction by the Federal Ministry

The NPM was aware that this was a considerable information request. However, unlike Fuhrmannsgasse police station, in the case of Van-der-Nüll-Gasse police station, there were no (previously presented) evaluation results. Due to the lack of more detailed evidence for an approach to examinations by the public medical officer that is not compliant with the decree, the NPM was unable to draw any final conclusions itself in the matter. It objected, however, to the failure to provide support pursuant to Section 148b (1) Federal Constitutional Law in connection with the intimacy of medical examinations.

Federal Ministry ultimately refuses to provide information

2.7.7 Staff shortage at Hohe Warte police station

Staff shortage causes excessive overtime

During their visit to Hohe Warte police station, the commission criticised the lack of officers because of the high workload and recommended adjusting the actual staffing level (38) to the systematised level (49).

The NPM understands that the staffing level in a police station can deviate from the planned target number for various reasons (sick leave, assignments, training, etc.) from time to time. However, an above-average number of overtime hours should at least be avoided through organisational measures, as stress and overload can also have a negative impact on the situation of detained persons.

The NPM shares the view that not all of the officers have to be available all of the time in emergency organisations. It therefore considers it acceptable that the deviation of the actual staffing level of up to 20% does not constitute a problem if the workload in the station does not exceed the average amount.

Staffing negative deviation should not exceed a fifth

Regardless of the actual workload situation, the NPM considers the situation to be critical if more than a fifth of the staff is missing. The NPM assumes that the systematisation of a police station is based on corresponding requirements planning. In Hohe Warte police station, the NPM criticised that at -22%, the actual staffing level was considerably below the target figure on the day of the visit. The Federal Ministry of the Interior did not follow the recommendation to increase the staffing.

- ▶ ***The staffing level in the police stations should be equal to the planned number. Understaffing causes stress and overload. Both can have a negative impact on detainees.***

2.7.8 Positive observations

The commissions document their observations in a visit report on every monitoring visit. They also observe positive aspects such as examples of best practice and improvements and communicate these in the concluding meeting. In several cases, it was important to the NPM to inform the Federal Ministry of the Interior as the supreme body about positive impressions in writing. The Ministry and the police stations welcome this form of constructive cooperation.

Confidence to act thanks to clear regulations

During the monitoring visit to Tannengasse, the NPM commended the approach used by the Vienna Police Department in the detention of persons with (alleged) infectious diseases in police stations. The NPM praised the many regulations for dealing with persons who are affected by infectious diseases presented by the Federal Ministry of the Interior, which was important in relation to COVID-19. The NPM was emphatically positive about the possibility for officers to inform themselves when they have questions and to recommend changes.

Frequently, the commissions praised the exemplary willingness to cooperate, the harmonious working atmosphere, the faultless documentation of official acts and detention, clean and well-equipped cells as well as barrier-free and contemporarily designed police stations.

In Tannengasse police station, the commission applauded the internal documentation list for the circumstances of detention including the time as a best practice example. The commission praised the good staffing level, the hygienically faultless arrest area, the proportionate occupancy of the specially secured cell including the proper reporting of measures and the use of body-worn cameras. The commission also noted positively that the interviewed detainees described their treatment by the officers as correct and pleasant.

Tannengasse police station

The commission also found words of praise for Kärntnertorpassage police station. This barrier-free station has its own initial treatment room for the protection of privacy. The law enforcement officers routinely inform homeless persons about protected places to sleep and basic welfare support. The NPM also commended the cooperative and media-based networking with officers of the *Wiener Linien* (Vienna's public transport operator) in locating perpetrators.

Kärntnertorpassage police station

Sattendorf police station made a positive impression on the commission for several reasons. The barrier-free accessibility was implemented in an exemplary manner in this station, which can be accessed most comfortably. Unlike many rural stations, the police station also has good police medical care from the public medical officers. The commission praised the high acceptance of online training during the pandemic and the distribution of information sheets in a wide range of languages when required.

Sattendorf police station

On the monitoring visit to Fuhrmannsgasse police station, the commission approved of the willingness to cooperate, the hygienically faultless condition of the station, the barrier-free accessibility and the observed correct and pleasant way in which a detainee was treated. The commission commended the cells painted with washable paint as a best practice example. It praised the fitting of all cells with dimmable light switches, the proportionate use of the specially secured cell and the employee support.

Fuhrmannsgasse police station

In Friesach police station, the commission praised the great willingness to cooperate and dedication of the friendly officers, each of which had completed training on the topic of dementia. Due to the openness of the station head, the NPM assumed that the recommendations for improvement with regard to barrier-free accessibility would be implemented immediately.

Friesach police station

The commission was impressed by the objective and unbiased account of an incident by an officer at Saalfelden police station. In addition to his willingness to cooperate, the commission praised the meticulous documentation of detention and the complete barrier-free accessibility of the

Saalfelden police station

police station. In addition, the commission noted the clear marking of the alarm button in the clean detention room positively.

**St. Michael im
Lungau motorway
police station**

On the monitoring visit to St. Michael im Lungau motorway police station, the commission applauded the provision of a detainee with a leaflet about his information and notification rights in his native tongue. Furthermore, Salzburg police detention centre was informed in order to be able to quickly organise an interpreter. The commission considered it an example of best practice that the detainee, who was arrested pursuant to the Aliens' Police Act (*Fremdenpolizeigesetz*), was able to take a shower and change his clothes in the police station if necessary.

**Klagenfurt Viktring
police station**

In addition to the balanced ratio of female and male officers and the positive working atmosphere in Klagenfurt Viktring police station, the commission praised that the processing of guidelines was optimised with an internal check list.

**Mistelbach police
station**

The commission considered positive the good cooperation of Mistelbach police station with existing youth welfare facilities. The NPM endorses the regular networking meeting with medical facilities, homes, and institutions and facilities for persons with disabilities.

2.8 Coercive acts

Introduction

When the police exert individual coercion on or issue a command to a person while enforcing administrative laws, they are performing acts of direct administrative power and coercive measures. Within the framework of their OPCAT mandate, the NPM commissions have been monitoring and observing the behaviour of the police when exercising acts of direct administrative power and coercive measures for over ten years.

The NPM monitored 21 acts of direct administrative power and coercive measures in the year under review. The majority of which included demonstrations (10) and football games (11). In addition, police operations at events and border controls carried out by the immigration police and border police unit (PUMA) were accompanied. In 2022, the NPM observed that the police acted correctly and professionally in the vast majority of the acts of direct administrative power and coercive measures.

21 police operations monitored

The NPM did not monitor any forced returns by air in 2022. The Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*) sent the NPM monitoring reports of 28 forced returns by air to many countries, as well as two observations of forced returns by bus to Bosnia-Herzegovina and Moldova. The flights were to Armenia, Bangladesh, Egypt, Gambia, Georgia, India, Nigeria, Pakistan, Serbia, Turkey and Uzbekistan. Return flights inside the EU or the EEA were to Bulgaria, France, the Netherlands, Romania, Sweden and Switzerland. The Federal Ministry of the Interior also provided regular information on planned checks under immigration law with relevance for reception conditions under the Basic Provision Agreement (*Grundversorgung*).

2.8.1 Notification of police operations

The Notification Decree (*Verständigungserlass*), that is, the decree that regulates the criteria according to which the NPM is notified of police operations, was explained in detail in the Annual Report 2017 and more recently in the NPM Report 2020 (see pp. 165 et seq.). This was a topical subject again in the year under review.

On 12 December 2021, the responsible commission monitored a demonstration in Innsbruck against the COVID-19 measures. There was another demonstration for "Solidarity Against Conspiracy Ideologies" (*Solidarität gegen Verschwörungsideologien*). Neither the NPM nor its commission was informed by the Federal Ministry of the Interior about either of these two demonstrations, as they were classified as peaceful.

No notification despite risk assessment

As discussed in the Annual Report 2020, the NPM waived being notified of every demonstration, however it is all the more important to be informed of the risk assessment carried out by the police, whose duty it is to classify events as peaceful, semi-peaceful and violent. According to the agreement, the only instance in which the NPM is not notified is peaceful events.

The Federal Ministry of the Interior conceded that in the case in question, notification would have been appropriate due to the opposing objectives and possible meeting of the respective participants in the two demonstrations. Tyrol Police Department used the criticism to notify the NPM of future events and gatherings under similar conditions.

A further point of criticism at this event was that the media representatives were refused access to certain places. The Federal Ministry of the Interior explained that this decision was related to road safety. The NPM, in contrast, is of the opinion that it must be possible to guarantee the safety of road users and still give media representatives access to certain areas.

2.8.2 Demonstrations

Temporarily detained to establish identity

A commission observed the "March For Life" (*Marsch fürs Leben*) demonstration in Vienna in October 2021. Because of aggressive behaviour, the police detained some participants in the demonstration to establish their identity. They had to stand for an hour with their face to the wall. The identities were established based on the criminal offences "hindrance or disruption of a gathering", "defamation of religious symbols" and due to violations of administrative criminal law.

Principle of proportionality

As stated in the decision of the Vienna Federal Administrative Court of 30 September 2021 (VGW-102/013/4166/2021), the isolation from other participants in a gathering is neither degrading nor inhumane. However, stopping participants for the purpose of establishing their identity should always be based on the principle of proportionality.

In the case in question, the way in which the arrested persons were treated was, in the view of the NPM, not proportionate to the offences they were accused of.

Tactical communication vehicles and mobile communication

The positioning of the tactical communication vehicle is of increasing importance at some demonstrations, as has been the case at the "For Our Freedom" (*Für unsere Freiheit*) demonstration and the "Rave Against the Right" (*Raven gegen rechts*) rally on 9 January 2022 in Innsbruck. In this specific case, the demonstrators responded to tactical communication announcements with loud counter-reactions (whistles, chants, etc.). That not only made it harder to hear the announcements, but also demonstrated that the demands from the tactical communication vehicle are not always suitable for de-escalating the heated atmosphere.

While monitoring the demonstration in Innsbruck on 15 December 2021, the commission recommended the purchase and use of mobile communication equipment in a rucksack in addition to the use of the tactical communication vehicle. The Federal Ministry of the Interior subsequently promised to purchase the same and promptly initiated an examination of the available products with the relevant suppliers.

During the same demonstration, the commission criticised that the regulations and maps on the Tyrol Police Department website, which are essential for the legality of official acts, were changed. With the help of screenshots, the commission was able to document that during the demonstration, only public notices regarding the use of video surveillance could be found on the Police Department website with a map, while the street access ban was not available with a map. The Federal Ministry of the Interior explained this approach with the argument that the upload depends on the file size and the capacity of the data cable.

In the view of the NPM, it should be technically possible to execute uploads in order to continue displaying important information that is essential for the legality of official acts (e.g. street access ban including map, public notice regarding video surveillance). In this respect, the NPM criticised the changes on the website of the Tyrol Police Department during the demonstration.

**Public notices
on the website**

Not all of the participants complied with the obligation to wear a mask during the demonstrations in Innsbruck as stipulated in the COVID-19 regulations. For the commission, the question arises as to whether a more emphatic request for compliance with the obligation to wear a mask would have been necessary. According to information from the Federal Ministry of the Interior, this could have resulted in an escalation of the already very tense situation among the participants of the gathering. In both demonstrations, the NPM assessed the concrete intervention of the law enforcement officers with regard to the compliance with the obligation to wear an FFP2 mask as proportionate and expedient.

**Reference to
COVID-19 obligations
to wear a mask**

During an official act, a gender-diverse person was subsequently searched at the Innsbruck police detention centre. The relevant provisions are set forth in the Austrian Security Police Act (*Sicherheitspolizeigesetz*), in the Directive regarding Interventions by Members of the Public Security Services (*Richtlinienverordnung*) and in the Detention Regulation (*Anhalteordnung*). Searches shall only be performed by a person of the same gender. After the person appeared to be male and also stated that they would like to be searched by a male law enforcement officer, the law enforcement officers observed when the outer clothing was removed that the person was still a biological female due to their primary sexual characteristics. They thus refrained from continuing the search of the undressed person. The person was subsequently placed in the women's section of the police detention centre. The NPM noted that the law enforcement officers in Innsbruck police

**Searching a person
of diverse gender**

detention centre acted correctly within the framework of police detention enforcement. However, due to the sensitive subject matter, the NPM recommended continuing to provide law enforcement officers with information on gender diversity and how to deal with these persons.

- ▶ ***The opportunities of the tactical communication vehicle should be used more efficiently in order to regularly repeat necessary announcements on the one hand, and to support a de-escalating approach by law enforcement on the other.***
- ▶ ***Law enforcement officers should continue to be provided with information on gender diversity and how to deal with these persons in order to increase their knowledge of what is correct.***
- ▶ ***Information on the police website should be provided in time to guarantee that important information required for the legality of official acts (e.g. street access ban including map, announcement of video surveillance) is up to date.***

2.8.3 Football games

Excessive use of pyrotechnics The Europa League game between Rapid Wien and Dinamo Zagreb took place at the Allianz Stadium in Vienna on 21 October 2021. At the game, the commission observed excessive use of pyrotechnics, which also resulted in the serious injury of a Dinamo fan. The NPM subsequently criticised the use of pyrotechnics and the inadequate security checks of the fans at the entrance.

Search warrants The Federal Ministry of the Interior explained that there is no legal stipulation for the mandatory search of visitors and their belongings. Section 41 of the Austrian Security Police Act (*Sicherheitspolizeigesetz*) empowers the police force, due to a regulation, to search persons on a voluntary basis. If they refuse, this person could be prevented from entering the stadium. However, because there were over 22,000 visitors, it was not possible to search all of them, which is why the police had refrained from doing this.

However, the NPM is of the opinion that the intention of this provision in the Austrian Security Police Act aims to prevent bringing fireworks into the stadium. It is not necessary to search all of the visitors though. The NPM is also aware that bringing pyrotechnics into the stadium can never be fully ruled out. However, the currently applicable legal bases suffice to at least conduct random searches based on that regulation; especially at games that carry a certain amount of risk.

Pyrotechnics are an international problem However, it should be noted here that, according to the Federal Ministry of the Interior, the illegal use of pyrotechnics at major sporting events is an international phenomenon for which no long-term solution has been found in any (European) country to date.

The National Football Information Office in the Federal Ministry of the Interior, which was set up pursuant to the Council of Europe Decision 2002/348/JI, is in permanent contact with the offices in other countries throughout Europe. The Ministry thus reported that even with the deployment of specifically trained police dogs and searching the stadiums, this phenomenon could not be effectively combatted to date.

Pursuant to Section 41 (1) of the Austrian Security Police Act, a search warrant shall only be ordered if violent incidents are not merely isolated events or if a larger number of dangerous attacks against the life or health of persons occur.

The Federal Ministry of the Interior thus argues that, in principle, the use of pyrotechnics is an administrative offence and does not constitute violence or even dangerous attacks, which is why a search warrant based solely on expected administrative offences (from pyrotechnics) is not proportionate. In this respect, the security authorities shall conduct a risk assessment in individual cases and as warranted, taking the fan base and the local circumstances into consideration.

Nevertheless, according to the Federal Ministry of the Interior, the Austrian security authorities are continuing to develop new operative approaches in addition to the order of search warrants after assessment of the respective situation, in order to avoid the abusive use of pyrotechnics in stadiums and thereby integrate international knowledge on the matter.

While monitoring another football game between WSG Tirol and Austria Wien, a commission addressed the notice above the security zone. It identified that the notice for the security zone had faded due to the intensive sunlight and was therefore illegible. The authority reacted to the criticism and replaced the notice.

Illegible notice

Time and again, the commissions succeed in addressing issues that need clarification and solving misunderstandings through direct contact with authorities while observing acts of direct administrative power and coercive measures. This was also the case with the football game between SCR Altach and FC Austria Lustenau. Due to a misunderstanding, only one page and not the second page of a search warrant for video and audio recordings was properly communicated. The representative of the authorities assured that the announcement would be made on the first page in the future in order to avoid such mistakes.

- ▶ ***At games that carry a certain risk, the police should make increased use of a search warrant and thus search persons and their belongings in order to prevent fans from bringing pyrotechnics into the stadium.***
- ▶ ***Security authorities should regularly check the quality of notices that contain important information on search warrants.***

2.8.4 Border controls by the immigration police and border police unit (PUMA)

Positive observations The NPM reported positive observations of the border controls carried out by the immigration police and border police unit (PUMA). For example, a commission observed a border control under immigration law in the Zell am See district in May 2022 and praised the smooth process. The commission reported, in particular, that the deployment strength of the police was appropriate considering the size of the objects and the number of persons to be checked. A law enforcement officer was able to speak Arabic to the persons. Overall, the collaboration of the persons involved, with their different responsibilities and duties, was perceived as very constructive and clearly structured. The process ran smoothly.

The feedback on the observation of a PUMA key operation in Vorarlberg on 21 January 2022 was also positive. The commission noted that the processes were compliant with the legal requirements and the execution was correct, pleasant and precise.

2.8.5 Other positive observations

Operations at football games In 2022 again, correct and well-organised police operations were observed. For example, a commission observed the police operations at the UEFA Champions League football games FC Salzburg against FC Bayern München on 16 February 2022 and FC Salzburg against Liverpool on 27 July 2022 at the Red Bull Arena Salzburg. All police measures for ensuring a coordinated operation during admission as well as leaving the stadium after the final whistle were considered to be in moderation and well-organised. The commission observed an arrest at a football game between Red Bull Salzburg and Wolfsburg on 5 October 2021. The commission assessed the way in which the arrested man was dealt with, from the brief restraint to the use of handcuffs and accompanying him to the police station, as adequate. The security forces acted in a de-escalating manner and performed the official act objectively and correctly.

The commissions noted that there was a visible police presence both before and after an Austrian Bundesliga game between LASK and SV Ried on 2 April 2022 in Pasching, which in the opinion of the commission had a preventive impact. While observing a UEFA Champions League game between FC Salzburg and AC Milan, the commission emphasised the pleasant, polite and substantive cooperation with the law enforcement officers.

A commission also observed acts of direct administrative power and coercive measures at a major sporting event between Red Bull Salzburg and Chelsea on 25 October 2022. In total, 438 law enforcement officers were deployed

for some 29,520 spectators. The commission praised the observance of the principle of proportionality when checking for the possession of pyrotechnics.

After fewer events took place in recent years due to COVID-19-related restrictions, they are now being held more frequently again. For example, the Nova Rock Festival in Burgenland. In June 2022, the commission monitored the police operation during this festival in Nickelsdorf, which was perceived as positive. In this context, the commission praised the calm and competent police presence and the good cooperation with the Hungarian emergency personnel.

Events

In Salzburg, the commission monitored a "Sunday Stroll Salzburg Wakes Up" (*Sonntagsspaziergang Salzburg wacht auf*) on 27 February 2022 and saw a coordinated operation with an appropriate number of police officers. At the demonstration on 5 December 2021 in Kufstein, the law enforcement officers endeavoured to communicate the obligation to wear a mask in a de-escalating manner and still enforce the same. At the demonstrations "For Our Freedom" (*Für unsere Freiheit*) and "In Honour and Remembrance of Andreas Hofer, the Tyrolean Freedom Fighter" (*Zu Ehren und im Gedenken an Andreas Hofer, den Tiroler Freiheitshelden*) on 20 February 2022, the commission noted positively that the police drew attention to the COVID-19 regulations in individual conversations and several contact teams were deployed. At the demonstration "1,000 Crosses For Life" (*1.000 Kreuze für das Leben*) in Salzburg, the commission reported an orderly operation. A positive aspect was that police presence was not directly perceivable and that the deployed units remained in the background.

Demonstrations

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Editor

Austrian Ombudsman Board (*Volksanwaltschaft*)

1015 Vienna, Singerstrasse 17

Phone: +43 (0)1 51505-0

Web: <https://www.volksanwaltschaft.gv.at>

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