

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

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

2021

Protection and Promotion of Human Rights

Annual Report 2021

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

Protection and Promotion of Human Rights

Preface

For almost ten years now, the Austrian Ombudsman Board (AOB) and its commissions have been monitoring public and private institutions and facilities where the freedom of persons is or can be restricted. These include some 4,000 institutions and facilities in Austria, for example correctional institutions, police stations, psychiatric institutions and facilities, retirement and nursing homes, crisis centres and shared accommodation for children and adolescents. Furthermore, the AOB also monitors institutions and facilities for persons with disabilities and observes the administration in exercising direct administrative power and coercive measures, for instance during forced returns, demonstrations and police operations.

The AOB was entrusted with the constitutional mandate to perform this monitoring work effective 1 July 2012 – with the implementation of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Together with its expert commissions, the AOB constitutes the so-called National Preventive Mechanism (NPM). To date, six regional commissions monitored institutions and facilities on a regular basis regardless of whether there were specific incidences or complaints. Another commission, the Federal Commission for the enforcement of penalties and measures, was established effective 1 July 2021.

The objective of the independent visits is to detect deficits in the system as soon as possible and thus protect persons from abuse and inhumane treatment. This report presents the results of the activities of the NPM in the area of such preventive human rights monitoring in 2021. The commissions carried out more than 500 monitoring visits throughout Austria in the year under review, most of which were unannounced. In the following chapters, concrete observations and facts are used to highlight where human rights are at risk or are already being violated, where improvements are urgently needed and which measures are required to counter or prevent this happening in the future.

Human rights are usually violated in situations in which there is an imbalance of power or where persons cannot make their voice heard. The COVID-19 pandemic was an additional challenge in the past two years. The pandemic-related measures served to exacerbate already existing deficits. Many restrictions in both private and public life were necessary again in 2021 in order to get the increasing numbers of infections under control. At the same time, these restrictions caused massive infringements of human rights, which were not always proportionate. The basic rights and personal freedom of persons in institutions and facilities were in some cases more severely restricted than for the rest of the population. However, not only the residents of the institutions continue to suffer under some of the enduring restrictions; the staff, which was already under pressure before the COVID-19 pandemic, was and still is under additional stress.

The AOB analyses the observations of the monitoring visits by the NPM commissions. The results of the examinations then form the basis of concrete recommendations, for example on how human rights violations can better be prevented in the future. They provide orientation to the institutions and staff working there as well as those with responsibility on the question of which human rights standards have to be guaranteed in the respective institutions. In dialogue with those responsible, the NPM was thus already able to effect many improvements.

Some recommendations are easier to implement than others. Many of the deficits identified could be quickly rectified after talking to those responsible in recent years. Follow-up visits to already monitored institutions and facilities highlighted noticeable improvements for the residents in many cases. In other areas, however, the recommendations are limited, particularly when a new legal basis has to be created or improved financial and human resources have to be guaranteed. For this reason, the present report is also an appeal to politicians, the parliament and regional governments to provide the necessary framework to guarantee that human rights are observed in Austria in the long term.

The members of the AOB would like to thank the NPM commissions for their dedication and the Human Rights Advisory Council for its advice and support. A word of thanks is also extended to all the AOB staff who show great commitment contributing to the protection of human rights in Austria as part of their everyday work.

This report will also be sent to the UN Subcommittee on Prevention of Torture.



Werner Amon



Bernhard Achitz



Walter Rosenkranz

Vienna, March 2022

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Introduction

This report provides information on the work of the National Preventive Mechanism (NPM) in 2021. Even though the year under review was characterised by the effects and measures taken in connection with the COVID-19 pandemic, the commissions were still able to perform their monitoring work without any restrictions.

A word of thanks is not only extended to all of the past and newly appointed members of the commissions for their dedicated work under difficult conditions. The AOB would also like to commend the monitored institutions for their willingness to cooperate; this enables and supports the commissions in conducting extensive monitoring visits as much as possible.

Thanks to commissions and institutions and facilities

Every three years, the AOB has to appoint half of the positions for the commissions' heads and members after hearings by the Human Rights Advisory Council. Such a (re)appointment process took place in 2021. After a public invitation to apply and a comprehensive selection process, the new and the reappointed members of the commissions assumed their work on 1 July 2021.

New composition of the commissions

A short phase of relaxed COVID-19 protective measures was used to hold a dialogue with the commissions. During this exchange, the monitoring priorities were presented and the newly appointed members of the commissions were able to gain detailed insights into the individual areas of the monitoring work.

Dialogue and exchange with the commissions

In addition to the six existing regional commissions, a new Federal Commission for the enforcement of penalties and measures was set up by resolution of the AOB effective 1 July 2021.

New Federal Commission

The commissions conducted a total of 570 monitoring activities in the year under review, 541 of which were visits to institutions and facilities and 29 monitoring of police operations. The number of visits and observations thus exceeded that of the years 2018 and 2019. In the NPM's opinion, this is attributable to an increased need for monitoring during the pandemic and the associated restrictions of the freedom of movement.

570 monitoring visits

The observations from the monitoring work of the commissions and resulting recommendations are depicted at the end of the relevant chapter of this report. The list of all recommendations made since 2012 is available on the AOB website.

1 Overview of the National Preventive Mechanism

1.1 NPM Mandate

With the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz* – Federal Law Gazette 1/2012), the AOB was entrusted with the mandate of National Preventive Mechanism (NPM) in accordance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) for the protection and promotion of human rights. 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 programmes for persons with disabilities, as well as the concomitant and observatory monitoring of public administrative coercive acts.

Mandate

The AOB fulfils these three areas of responsibility together with its NPM commissions. The commissions are led by recognised experts in the area of human rights; the members of the commissions guarantee a multi-disciplinary background. Currently, the NPM has six regional commissions as well as one Federal Commission for the enforcement of penalties and measures, which monitors facilities of the penitentiary system as well as the forensic institutions all over Austria.

Seven commissions

The commissions usually perform their work unannounced. All of the monitoring visits to institutions and facilities as well as the observation of coercive acts are conducted on the basis of a monitoring framework and methodology that was jointly developed by the NPM (https://volksanwaltschaft.gv.at/downloads/1q79s/Pr%C3%BCfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH_20160701.pdf). The commissions draw up reports on their visits, provide their human rights assessments and make recommendations on how to proceed. The Human Rights Advisory Council also supports the NPM 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 the Federal Ministries, the *Laender* and civil society.

Human Rights
Advisory Council

Despite the continuing pandemic-related restrictions in the year under review, the commissions conducted 570 monitoring visits in total in 2021 (2020: 448). In addition to their monitoring and control work, the commissions also held 13 round-table meetings with institutions and facilities or senior administrative departments.

Intensive monitoring
and control despite
the pandemic

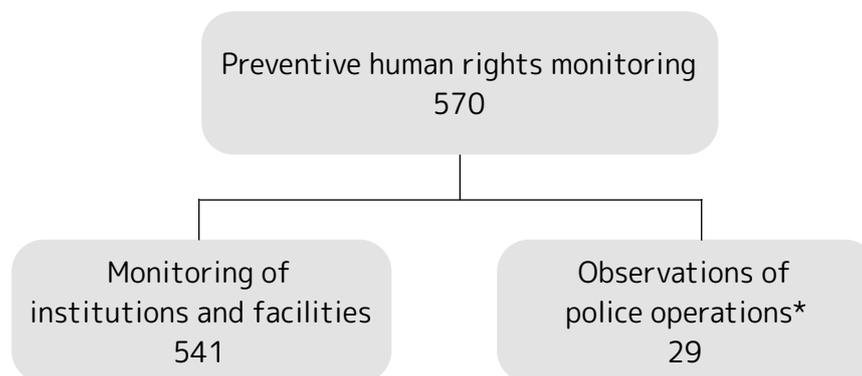
Involvement in police and prison officer training

AOB staff and members of the commissions were also involved in basic police and prison officer training. A total of 33 basic police training classes were instructed throughout Austria in 2021. All of the training was in person and took place in the Security Academy (SIAK) training centres in Eisenstadt, Traiskirchen, St. Pölten, Ybbs, Graz, Krumpendorf, Salzburg, Feldkirch-Gisingen and Absam. In contrast, the eleven instruction units held throughout the year under review as part of the prison officer training could only be held virtually except for one.

1.2 Monitorin in numbers

The commissions conducted 570 visits throughout Austria in 2021, of which 95% were in institutions and facilities, and 5% at police operations. The majority of the visits were unannounced. The monitoring visits lasted three hours on average.

Monitoring activities of the commissions in 2021
(absolute numbers)



* these include: forced returns, demonstrations, assemblies

541 monitoring visits in institutions and facilities

As in the previous years, the vast majority of the 541 monitoring visits in institutions and facilities were in so-called “less traditional places of detention”. These include over 4,000 retirement and nursing homes, child and youth welfare facilities as well as institutions for persons with disabilities. The commissions conducted 360 monitoring visits in these types of facilities, of which 76 were in institutions for persons with disabilities.

Many follow-up visits

In many cases, facilities were visited several times. For this reason, the total number of visits is not equal to the number of institutions visited. Follow-up visits serve to determine whether identified deficits have been rectified or urgently needed improvements have been made. Correctional institutions and police detention centres, in particular, are monitored several times a year.

Furthermore, the commissions also observed 29 police operations in the year under review, in particular at demonstrations and major police operations.

Observations of 29
police operations

In addition to this monitoring and control work, the commissions held 13 round-table meetings with institutions and senior administrative departments.

13 round table
meetings

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

| Number of visits in 2021 by <i>Laender</i> and according to type of institution and facility | | | | | | | | | |
|--|---------------|----------------|----------------|------------|--------------------|-----------------|---------------|-----------|-------------|
| | pol. stat. | pol. det.c. | ret. nur.h. | youth | inst.f. disabl. | psych. wards | corr. inst | others | pol. op. |
| Vienna | 16 | 4 | 21 | 49 | 16 | 12 | 3 | 4 | 6 |
| Burgenland | 10 | 0 | 5 | 4 | 6 | 1 | 0 | 0 | 1 |
| Lower Austria | 56 | 0 | 29 | 30 | 21 | 11 | 9 | 2 | 3 |
| Upper Austria | 5 | 3 | 5 | 5 | 6 | 7 | 5 | 10 | 1 |
| Salzburg | 6 | 1 | 11 | 2 | 5 | 2 | 1 | 0 | 4 |
| Carinthia | 7 | 0 | 4 | 3 | 4 | 4 | 0 | 2 | 1 |
| Styria | 15 | 1 | 16 | 5 | 3 | 11 | 5 | 3 | 3 |
| Vorarlberg | 1 | 1 | 5 | 4 | 3 | 3 | 1 | 0 | 0 |
| Tyrol | 5 | 2 | 18 | 10 | 12 | 7 | 3 | 0 | 10 |
| TOTAL | 121 | 12 | 114 | 112 | 76 | 58 | 27 | 21 | 29 |
| <i>(of which unannounced)</i> | <i>120</i> | <i>11</i> | <i>102</i> | <i>83</i> | <i>54</i> | <i>39</i> | <i>21</i> | <i>21</i> | <i>18</i> |

Legend:

| | |
|----------------|--|
| pol.stat. | = police stations |
| pol.det.c. | = police detention centre |
| ret.nur.h. | = retirement and nursing homes |
| youth | = child and youth welfare facilities |
| inst.f.disabl. | = institutions and facilities for persons with disabilities |
| psych.wards | = psychiatric wards in hospitals/medical facilities |
| corr.inst. | = correctional institutions |
| others | = 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 corresponds with the different number of types of institution on the one hand, and 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 by individual <i>Laender</i> | |
|---|------------|
| <i>Land</i> | 2021 |
| Vienna | 161 |
| Lower Austria | 131 |
| Styria | 67 |
| Tyrol | 62 |
| Salzburg | 47 |
| Upper Austria | 32 |
| Burgenland | 27 |
| Carinthia | 25 |
| Vorarlberg | 18 |
| TOTAL | 570 |

Deficits identified on around 63% of the monitoring visits

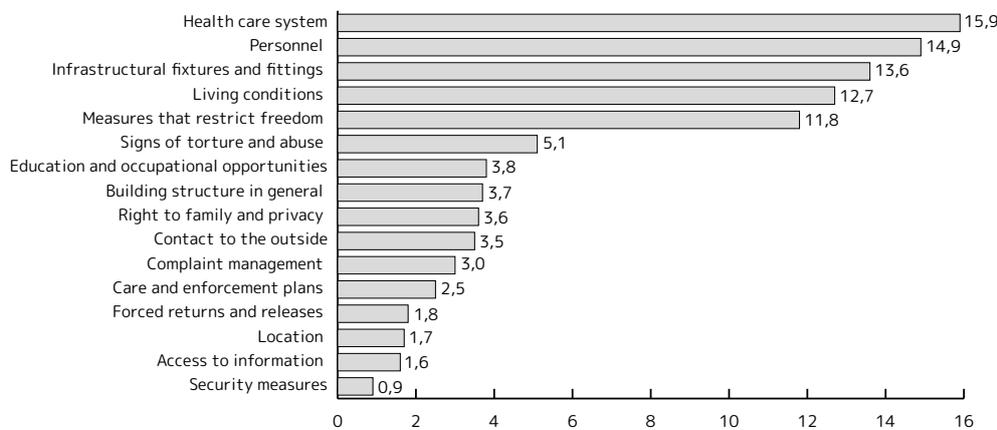
The observations from all 570 monitoring visits are documented in detail in commission reports. The commissions felt compelled to criticise the human rights situation on 351 of their visits to institutions and facilities. There were, however, no grounds for criticism on 210 of the monitoring visits (190 institutions and 20 out of 29 police operations). All in all, the commissions identified deficits in 63% of the visits.

| Proportion of the visits in 2021 | | |
|--|----------------|-------------------|
| Visits | with criticism | without criticism |
| Monitoring institutions and facilities | 65 % | 35 % |
| Observation of police operations | 31 % | 69 % |
| Visits in total | 63 % | 37 % |

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 here that several areas are monitored on almost every visit and the criticism thus relates to several areas. Neither the areas nor the

numbers deviate 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, 15.9% of the criticism was in relation to health care. Infrastructural fixtures and fittings were the grounds for 13.6% of the criticism. Living conditions were criticised almost as frequently (12.7%), whereby sanitary and hygiene standards, food and the leisure activities programmes are included. Measures that restrict freedom and insufficient human resources gave reason for criticism as well (11.8% and 14.9% respectively).

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



1.3 Budget

In 2021 a budget of EUR 1,450,000 was available to the heads and members of the commissions as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,305,000 were budgeted for the reimbursements and travel expenses for the members of the commissions, and around EUR 85,000 for the Human Rights Advisory Council. Around EUR 60,000 were available for workshops, supervision, protective equipment, 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 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” is responsible for coordinating the collaboration with the commissions. It also examines international papers and documents in order to support the NPM with information from similar institutions

1.4.2 The commissions

Six regular commissions

To perform its duties, the NPM deploys six multidisciplinary commissions which are organised according to regional aspects or subject matters. Every three years invitations to apply for half of the positions for heads of commission and commission members must be issued and filled after hearings by the Human Rights Advisory Council. This (re)appointment process took place in 2021. After a public invitation to apply and an extensive selection process, the newly and in some cases reappointed members of the commissions assumed their duties on 1 July 2021.

Federal Commission for the enforcement of penalties and measures

In addition to the already established six regional commissions, a Federal Commission was established and entrusted with the monitoring of facilities of the penitentiary system and forensic institutions (see Annex). 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 the penitentiary system combined with the low number of relevant institutions calls for one commission operating on the federal level. At the same time, this makes comparing the individual facilities of the penitentiary system and forensic institutions easier, and thus the development and submission of preventive recommendations in accordance with the working priorities. This commission also assumed its work on 1 July 2021.

1.4.3 Human Rights Advisory Council

The Human Rights Advisory Council supports the NPM 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 (see Annex). The Human Rights Advisory Council supports the NPM in defining monitoring priorities, determining deficits and cases of maladministration, providing recommendations, guaranteeing harmonised procedures and monitoring standards as well as the selection of commission members.

1.5 International cooperation

European Union

In January, the AOB organised together with the European Union Agency for Fundamental Rights (FRA) a dialogue to highlight human rights protection in Austria during the COVID-19 pandemic and to discuss how the autonomy of National Human Rights Institutions (NHRIs) can be strengthened. The event was transmitted via livestream with simultaneous interpretation into German/English.

Human rights protection in the COVID-19 pandemic

In a first group of topics, FRA Director Michael O’Flaherty, presented a report on strengthening the autonomy of NHRIs. In the ensuing dialogue, Ombudsman Werner Amon, Renate Kicker, Chairwoman of the Human Rights Advisory Council, and Brigitte Ohms, member of the Human Rights Advisory Council, discussed this report in the Austrian context. The European perspective was enhanced by contributions from the Slovenian Ombudsman, Peter Svetina, and the head of the European Network of National Human Rights Institutions (ENNHRI), Debbie Kohner.

FRA report on strengthening NHRIs

The second group of topics was dedicated to the key role that NHRIs play in the area of human rights protection. The focus was on the hitherto unknown pandemic situation, which will continue to have considerable effects on citizens in the future. Ombudsman Bernhard Achitz and Ombudsman Walter Rosenkranz reported on the main topics that the pandemic causes for the complaints work in Austria. Together with Michael Lysander Fremuth, Scientific Director of the Ludwig Boltzmann Institute for Human Rights, and Reinhard Klaushofer, head of the Austrian Human Rights Institute, they formulated an interim conclusion on human rights protection in Austria in the COVID-19 pandemic.

Council of Europe

In November 2021, Ombudsman Rosenkranz welcomed a delegation from the CPT (European Committee for the Prevention of Torture) which was conducting its seventh periodic state visit to Austria. The CPT operates on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which was ratified by all 47 Member States of the Council of Europe. Needless to say, the NPM cooperates with all monitoring mechanisms whose recommendations constitute a good basis for continued efforts to improve human rights protection.

Current developments were explained, initiatives presented and problem areas highlighted as part of the dialogue with the delegates from the CPT. Questions were also answered on compliance with human rights standards in correctional institutions, medical facilities, care facilities as well as

Dialogue on the occasion of the CPT periodic visit to Austria

police stations and police detention centres. The Chairwoman of the Human Rights Advisory Council presented topics that are currently being discussed by the Council.

The findings described in the CPT country report and the CPT standards form an important basis for the work of the NPM. The members of the CPT are appointed for a term of four years by the Committee of Ministers, the decision-making body of the Council of Europe. The NPM sees a commendation in the fact that Ms. Rowhani-Wimmer, who has been a commission member since 2012 and is an experienced legal expert as well as an authority in medical law and human rights, was now also appointed Austrian representative of the CPT for the functional term 2022–2025.

NPM Forum In 2021 the annual conference of the Council of Europe’s NPM Forum addressed the role of NPMs in the effective implementation of the rulings of the European Court of Justice (ECJ) on human rights and the recommendations of the CPT. The main focus of the conference was on abuse and allegations of abuse by the police.

Conference topic: Abuse by law enforcement authorities The conference provided insights into a topic that continues to be a systemic problem in many Member States. The CPT reported that in actual fact credible allegations of torture are reported in almost a third of the Member States and allegations of abuse in more than half. Countering torture and abuse by law enforcement authorities thus remains a priority for NPMs. This can only be effectively countered if the efficacy of the monitoring activity is extended and the problem of impunity is addressed.

Council of Europe’s NPM newsletter To promote closer cooperation, the Austrian NPM regularly contributes reports and articles to the Council of Europe’s NPM newsletter. The newsletter provides an overview of the relevant information in the Member States. In the period under review, Austria contributed articles on monitoring retirement and nursing homes in the COVID-19 pandemic as well as on preventive monitoring and control in private institutions and facilities.

OSCE Office for Democratic Institutions and Human Rights

ODIHR training for the Austrian NPM The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) organised a training programme especially for the Austrian NPM during the period under review. The two-day training focused on the application of direct coercion and the use of weapons and tasers in correctional institutions and by the police.

Use of weapons and measures that restrict freedom After an initial overview of the legal framework on the use of weapons by law enforcement officers in Austria, international standards were explained and alternatives to the use of weapons discussed. In the area of coercive measures and the application of measures that restrict freedom, the trainer emphasised that such measures invariably foster an atmosphere

of mistrust and should thus be replaced by de-escalating measures where possible.

CPT recommendations on the use of service weapons and methods to restrict freedom as well as the medical risks involved in using tasers were addressed, in particular on persons who belong to a vulnerable group, such as adolescents or persons who are under the influence of medication. In conclusion, the trainers emphasised the importance of complete, transparent documentation.

Use of taser

Another seminar provided online by the ODIHR addressed the topic of sexual and gender-based violence in detention. This topic has been given little attention to date even though places of deprivation of liberty as closed systems provide a special breeding ground for this type of violence. ODIHR wants to increase awareness of this issue with a publication and the online seminar, in order to place sexual and gender-based violence more in the focus of NPMs.

ODIHR seminar on gender-based violence in detention

In close cooperation with the permanent representations from Switzerland and Denmark at the OSCE, ODIHR organised another workshop on the prevention of torture in judicial systems and the role and responsibility of the police and law enforcement. Exerting a certain amount of pressure on the police to be able to present a certain number of convictions would foster abuse and even torture. Different case studies from Norway, Hungary and Kazakhstan were used to illustrate how interrogation techniques are still oriented towards getting a confession and thus produce incorrect results.

Webinar on preventing torture in judicial systems

Together with the Association for the Prevention of Torture (APT), ODIHR organised a dialogue on the topic of the "Rights of senior citizens when they are deprived of their liberty". The UN Special Rapporteur for the rights of senior citizens contributed to this dialogue as did a member of the European Committee for the Prevention of Torture (CPT).

Dialogue on the rights of senior citizens in detention

SEE NPM Network

The Austrian NPM is a member of the South-East Europe NPM Network (SEE NPM Network). In its capacity as chair of the SEE NPM Network, the Hungarian NPM organised two meetings in 2021.

The first meeting was held virtually and concentrated on the effects the pandemic had on preventive monitoring activities. NPMs in attendance reported about similar experiences and approaches. At the beginning of the pandemic, the NPMs felt they had to discontinue their monitoring visits but quickly adopted other alternatives such as maintaining contact via Skype or video telephony. Representatives of the Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture

Online dialogue on monitoring experiences in the pandemic

(CPT) confirmed this approach but stressed that they had reassumed the visits in the *Laender* in 2021.

Budapest meeting on interviewing techniques for vulnerable groups

The second meeting of the SEE NPM Network was held as a hybrid event both in Budapest and online. The focus of this meeting was interviewing techniques for NPM work. Participants discussed different ways of interviewing affected parties and emphasised in particular the special requirements that have to be considered when interviewing vulnerable groups (e.g. persons seeking political asylum, persons with psychosocial impairments, LGBTQ persons or children). Pandemic-related issues were also addressed in this context.

Network of German-speaking NPMs

Since 2014, the Austrian NPM has been partner of a programme for exchanging experience and ideas between NPMs from the German-speaking countries (Germany, Austria, and Switzerland). The National Agency for the Prevention of Torture in Germany invited participants to a mutual exchange of experience and ideas within this framework in Berlin in 2021.

Meeting recapitulates the focal points of the pandemic

This meeting also put a focus on NPM working methods during the COVID-19 pandemic as well as a dialogue on the challenges, recommendations and examples of good practice. The colleagues from Switzerland addressed the problem of mandatory testing and the effects of the pandemic on persons in closed psychiatric wards. The participants from the German NPM focused their reports on long-term isolation and the preventive quarantine approach.

On behalf of the Austrian NPM, Ombudsman Achitz reported about the special situation in care facilities and institutions for persons with disabilities. He emphasised the human right to contact, which is particularly important for older persons and persons with disabilities, as they quickly reach their limits when they are not familiar with the available modern technology (e.g. video telephony). Other contributions by the Austrian NPM included the often disproportionate restrictions in correctional institutions that are used to prevent smuggling in synthetic drugs, as well as an overview of the situation in the police detention centres during the COVID-19 pandemic.

Bilateral cooperation

Guest speaker in the Human Rights Law Clinic of the University of Bern

The Department of Public Law and Penal Law in the Faculty of Law at the University of Bern initiated the "Human Rights Law Clinic", at which students work on real cases. Two experts from the Austrian NPM held a guest speech on the work of the Austrian NPM with a focus on the police; in particular on the mandate to observe demonstrations for the purpose of monitoring police operations.

The Austrian NPM was also at the annual conference on the promotion of health in detention. The conference focused on the issues of “Deprivation of liberty in COVID-19 times – challenges and opportunities”. The Austrian NPM held a speech on the special problems experienced by migrants in detention.

Conference on the promotion of health in detention

The 6th Prison Medicine Days, an important forum for medical experts and carers working in detention, provided an opportunity for international dialogue. The subject focus of the event was on preventive medical concepts, law and ethics in prison medicine, addiction medicine and care as well as the issue of dealing with older persons and disability in detention. In his lecture, an expert from the Austrian NPM highlighted the challenges for health care in detention in the COVID-19 pandemic.

Guest speaker at the 6th Prison Medicine Days

The 14th EUROPAD Congress addressed heroin addiction and the associated clinical problems. An expert from the NPM explained the most important human rights standards, the preventive human rights monitoring bodies as well as the mandate, principles and work of a National Preventive Mechanism.

14th EUROPAD Congress

A total of 41 NPMs from all over the world supported an initiative of the Association for the Prevention of Torture (APT) on International Women’s Day and signed a joint statement on the risks of discrimination, abuse and maltreatment of women in prisons. The problems faced by women in detention were exacerbated even more by the COVID-19 pandemic, as the restrictions introduced in detention centres had a negative impact on female detainees in particular. In their joint statement, the NPMs demanded sustainable, state measures be taken for the protection of women in prisons. It was the first time that such a broad spectrum of national and local supervisory authorities took a unified stance on this issue. The Austrian NPM also signed the statement.

Statement on the protection of women’s rights in detention

1.6 Report of the Human Rights Advisory Council

The Human Rights Advisory Council met five times in plenary meetings in 2021 and – because of its involvement in the (re)appointment of half of the heads and members of the NPM commissions – in two extraordinary meetings. 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 visit reports of the commissions and analysed the resulting deficits and problem

Monitoring priorities of NPM commissions

areas from a preventive human rights perspective. On this basis, the Human Rights Advisory Council prepared its statements of opinion on the monitoring priorities defined for 2021 in all three areas of activities of the NPM and formulated its own recommendations on new monitoring priorities for the NPM commissions.

Statement of opinion In the year under review, the Human Rights Advisory Council made detailed statements of opinion based on material presented by the NPM and its own initiative, which were published on the AOB website.

- Statement based on material presented by the NPM: supplemental questions regarding violations of the obligation to wear a face mask and to maintain social distancing in large groups
- Statement on the initiative of the Human Rights Advisory Council: children and adolescents in institutions and facilities during the COVID-19 pandemic

Other topics In addition to these statements of opinion, the working groups of the Human Rights Advisory Council also worked on the following topics in the year under review:

- Involvement in creating an easy-to-read translation of the statement of opinion on barring orders and prohibitions to enter in-patient care facilities (title: *“Was darf die Polizei?”* – “What is the police allowed to do?”)
- Medical care of administrative detainees
- Criteria for the appointment and withdrawal of the heads and the members of the NPM commissions (particularly in light of international standards)
- Reflection on the visit reports of the commissions
- Mandate and working methods of the Human Rights Advisory Council

In 2021 half of the heads and members of the NPM commissions were (re)appointed. The Human Rights Advisory Council was involved in both the invitation for applications and the hearing process through the participation of the Chairwoman and members of the Human Rights Advisory Council. Based on the written applications and the personal impressions made during the hearings, the Human Rights Advisory Council provided statements of opinion on the suitability of the applicants both in terms of the head positions to be filled and the members of the commissions.

Internally the Council discussed other topics such as the long called for establishment of an independent police complaints office, the documentation and prevention of violent incidents in correctional

institutions or the legal precautions that need to be taken to prevent any discrimination of persons with disabilities in the event of pandemic-related triage.

The Human Rights Advisory Council is taking the occasion of its upcoming 10th anniversary as an opportunity to perform a strategic stocktaking of what has been achieved to date as well as the current challenges for the NPM and thus for the advisory function of the Human Rights Advisory Council. Conclusions will be drawn for the future priorities of the work.

2 Findings and recommendations

2.1 Retirement and nursing homes

Introduction

In 2021 the NPM commissions visited 114 public, non-profit or profit-oriented short- and long-term nursing homes. The vast majority of the visits were unannounced (102 visits).

114 monitoring visits

The way in which homes dealt with COVID-19 continued to occupy the NPM in the second year of the pandemic. Due to their advanced age and/or existing conditions (e.g. diabetes, cardiovascular diseases), the residents of retirement and nursing homes belong to a highly vulnerable group of persons with a considerable risk of a life-threatening progression of the disease. Furthermore, shared accommodation and bodily contact when receiving care increased the risk of spreading clusters of infection. Contact tracing was thus carried out when there were outbreaks. A total of 4,237 of the 13,365 persons who died of a COVID-19 infection in Austria in the pandemic years of 2020 and 2021 lived in retirement and nursing homes (see query response of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection of 31 January 2022 to 8833/J (XXVII.GP)). The highest number of deaths in nursing homes associated with COVID-19 was recorded in the period from November 2020 to January 2021, that is, shortly before the availability of COVID-19 vaccines was given priority in these institutions. Thanks to strict protective measures and immune protection brought about by the booster vaccination of residents, both the numbers of infections and deaths in nursing homes fell substantially from the middle of February only rising with the fourth wave again in November 2021. The COVID-19 vaccinations as well as hygiene and infection control measures certainly prevented many deaths in long-term care facilities in the year under review. In contrast to the previous year, there were no visiting bans imposed in care facilities in 2021 (see chapter 2.1.3).

High vaccination coverage saves lives

On the visits, the commissions repeatedly encountered stressed care staff. Although the pandemic drew the attention of the media and politicians to the system relevance of long-term care, the long-announced care reform has not been tackled. Not a single sustainable measure was taken to improve the working conditions in the past two years. The divide between justified expectations of humane care and the reality of insufficient, overloaded human resources continues to widen. The care needs of the residents are increasing; however, finding qualified staff is difficult for the homes. The number of available beds has to be reduced; there is barely enough time for leisure programmes and accommodating individual needs and implementing holistic care concepts. This results not only in the inadequate care of

Personnel situation remains strained

residents but also in a high mental and physical workload for the care staff. Whereas appreciation for care might exist verbally, there continues to be a lack of concrete incentives to make the profession more attractive for future staff (see 2.1.1).

2.1.1 Implemented recommendations

On the positive side, many recommendations and suggestions for improvement by the NPM were implemented again in 2021.

Homes in Salzburg For example, the documentation of falls was improved at a home in Salzburg and all of the staff underwent training in fall prevention as well as in dealing with challenging behaviour. The on-call duty of a health and nursing professional was set up for the night shift. The home has a large number of residents with high activity levels. On an evening visit, Commission 2 observed that the residents were always given the opportunity to exercise their urge to move. Evening snacks were offered. There was still plenty of activity in the home even at around 8.00 p.m. It is also positively noted that the psychosocial area has a very high priority.

Home in Vorarlberg A visit in Vorarlberg resulted in the home operator engaging a psychiatrist to check the prescription of medication, which Commission 1 had deemed incomplete and incomprehensible. In addition, it was ensured that the residents could always open exits and entrances without a key in order to be able to leave the home. The internal WLAN coverage in the building was improved and five tablets purchased in order to be able to guarantee video telephony.

Another home in Salzburg reacted to the recommendations of the NPM by adequately staffing the night shift, providing comprehensive supervision, and conducting an evaluation of mental stress in the workplace. Documentation and care planning were also completed and a support programme introduced for residents when they first move into the home. This entails persons coming into the home during the day to acclimatise prior to moving in. A caregiver was hired at 50% capacity for this purpose.

Homes in Lower Austria On the follow-up visit to a home in Lower Austria, Commission 5 observed that all of the suggestions for improvement had been implemented. Fixed shower days were abolished, almost all medical documentation is now prepared by the doctors themselves, the entrances are no longer locked or have a high bar but are secured with anti-wandering watches. An anonymous questionnaire for internal quality control is available for trainees.

A home in Lower Austria took numerous measures to counter staff shortages. The weekly working hours of the existing staff were increased, staff aids in the form of individual services from clinics organised, and two care assistants recruited. Furthermore, contact was taken up with training

facilities for the potential allocation of trainees, and increased supervision was offered for the existing staff.

A retirement home in Tyrol updated and improved the entries in the fall risk table, evaluated the relocation of the decentralised service room on the ground floor and implemented monthly consultant care by a medical specialist in psychiatry. The latter was also implemented in another Tyrolean home, providing a psychological service for the care staff to counter the pandemic-related additional stress situations amongst others.

Home in Tyrol

A home in Vienna implemented a colourful refurbishment of the rooms (moving away from the three-bed room concept) as well as complete IT documentation and later evening mealtimes. There was also praise for the new kitchen project where the residents of the nursing unit can watch the chef preparing the meals from the recreation room. Individual opportunities for personally organising longer evenings (staying up later) indicate an improvement from the previous rigid way of life.

Homes in Vienna

The problem of looking after the residents of apartments on night shifts at a large home operator in Vienna could at least be de-escalated: an additional night shift was implemented in those buildings that only have a residential care area and thus have a large number of residents to look after. This is provided from 9.00 p.m. to 6.00 a.m. in the form of a qualified care assistant. In this way, 2.5 fulltime equivalents were created respectively in the assisted living staffing plan of six of this operator's homes.

With regard to the core mandate of the NPM, i.e. measures that restrict freedom, the suggestions for improvements made by the commissions were regularly implemented. Reports to the representatives of the residents that had been incomplete or incorrect were evaluated and corrected where necessary, and training on the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) was held.

Measures that restrict freedom

Finally, the homes implemented many structural measures in 2021. These included the removal of thresholds at the entrances to the terraces in a home in Salzburg meaning that these could now be freely accessed on foot or in a wheelchair. Rooms were also reallocated to optimise the removal of dirty laundry and incontinence material, and care baths were redesigned.

Structural measures

2.1.2 Structural deficits cause severe human rights violations

Occasionally the observations made by the commissions on preventive monitoring visits to homes that look after those in need of care result in closure by the authorities. It is concerning that serious structural deficits can reach levels that endanger the health and violate the human rights of the residents without being noticed by the operator or supervisory

Dangerous care in Upper Austrian home

authorities. Commission 2 found such alarming conditions in violation of human rights in a home that was operated as shared accommodation in Upper Austria.

There was only one health and nursing professional in the entire home. The rest of the staff were 24-hour personal caregivers without training equivalent to Austrian qualifications and they alternated every two weeks. They were paid – as “new self-employed” – by the day without any right to holidays or sick leave even though they were de facto in a dependent working relationship with the home and their work in no way differed from that of the other employees.

The rooms in the shared accommodation were small, worn, sparsely furnished and equipped with old nursing beds. The plaster was crumbling from the walls in some places, there were cracks in the floors and they were dirty. There were no open areas for common activities, no care baths, no access to green areas or gardens, no space for intensive care activities and no turning radius for wheelchairs.

Home closed Neither fall nor decubitus nor dehydration prevention was implemented. Care assessments for pain, incontinence or levels of dementia were missing completely. There was no written care process, merely partly defined instructions. Medication sheets were not signed by doctors. There was neither a narcotics box nor a narcotics book. There was no written COVID-19 hygiene concept. Commission 2 informed the competent authority immediately, which organised the closure after making a local visit.

Sex attacks by a resident suffering from dementia Commission 2 observed an inadequate reaction to the sex attacks by a resident suffering from severe dementia in a Salzburg home. The care documentation contained many entries regarding his uninhibited sexual behaviour towards three residents, some of whom also suffered from dementia, and a caregiver. Charges were already filed in 2019 and there was a pending court case.

The resident’s behaviour did not change in the following years; the victims were given no protection. In the summer of 2021 Commission 2 did not find any medical preventive measures in the documentation that would have been suitable to stop the continued sexual victimisation of very old women who are unable to defend themselves. The intervals between the neurological examinations of the resident (there were three examinations in four years) were too long for a latent hyper sexuality. Furthermore, a psychiatric diagnosis as part of the existing BPSD (Behavioural and Psychological Symptoms of Dementia) would have been expedient.

The risk of continued attacks was not addressed in the care diagnoses. In particular, however, the protection of the victims was neglected. The resident continued to live on the same floor close to two of the women he

harassed. In 2021 there were no entries in the care report of one of the two women, who suffers from dementia-related disorientation and requires care level 6. Neither of the two victims of violence received any psychological support.

Commission 2 criticised that there was neither a sex education concept nor case supervision to determine how the women could be better protected. This situation is to change according to a statement from the operator. At the beginning of 2022 case supervision was initiated in the affected care team and a sex education concept drafted. The NPM was ensured that ongoing training would take place on the topic.

There were no anonymous complaints channels and no transparent and continuous fall or pain assessments in another home in Salzburg. Furthermore, there was no regular psychiatric-neurological care of the residents. In this case, Commission 2 recommended examining and optimising the psychotropic medication, some of which had been prescribed over a long time. It also recommended consultant work by a psychiatrist or neurologist. In another home in Salzburg, it was noticeable that only one medication-based restriction of freedom and no electronic or mechanical restriction of freedom had been reported over three years in a facility with over 40 beds. This appeared to be implausible, which is why Commission 2 planned a follow-up visit.

No anonymous complaints channels

In 2021 Commission 5 visited a care facility that required leaving the doors of the residents' rooms open at all times during the day. This rule applied even when care in intimate areas was provided. In addition to the blatant violation of the private and personal space of the residents, COVID-19 protective measures were breached.

Private and personal space violated

2.1.3 The second year of the COVID-19 pandemic

The NPM dealt with the effects of the pandemic in almost all care institutions and facilities again in 2021. In the first quarter of the year the commissions observed the preparation and concrete execution of vaccination campaigns and spoke with those in need of care about this. Every COVID-19 vaccination constitutes medical treatment pursuant to Sections 252 to 254 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). Persons with decision-making capacity give their consent to the medical treatment themselves. If required, persons close to them (support group) shall be involved to obtain their consent or refusal. Persons who do not have decision-making abilities require the consent of a person authorised by the patient to take care of their affairs or an adult guardian whose authorisation includes medical treatment. The significance and risks involved with the vaccination also have to be explained to persons without decision-making abilities at the time of the treatment insofar as this is

Vaccination decreases infection and mortality rate drastically

possible. Accordingly, the explanatory work, the involvement of relatives or representatives as well as the vaccination documentation required time and bound the relevant human resources. At the same time, the elderly residents displayed a very high willingness to be vaccinated. For example, 99% of the residents and staff of a home in Tyrol had already been vaccinated at the time of the visit. In another Tyrolean home, 100% of the residents as well as 80% of the staff were vaccinated. However, as early as in the first quarter of 2021 the commissions also spoke with long-term care staff who were sceptical about vaccination.

Many homes came through the crisis well

The commissions assessed the crisis management in the second year of the pandemic as positive in many homes. For example, the management reacted quickly to new cases of the illness, had sufficient PPE available, unlike at the beginning of the pandemic, and had gained confidence in handling COVID-19 protective measures. One home in Vienna provided an occupational doctor and a palliative medical specialist during the pandemic to support the team on the one hand, but to ensure the care of the residents at the end of their lives on the other. In the homes of a large Viennese operator, the staff of a security company sat with the residents who were unable to maintain social distancing and hygiene rules due to their conditions. This staff, which of course did not carry out any care work, was specially trained, worked with the residents, accompanied them to the bathroom or brought them drinks when desired.

During the lockdown, a 24-hour hotline for mental problems and the questions from the staff was set up in a private home in Vienna. There was a positive resonance to this offer according to the management. Overall, it became evident that smaller homes or those that were able to isolate emerging clusters of infection due to their shared accommodation structure were more likely to make it through the crisis better. In this context, strict compliance with all protective measures and hygiene standards also helped, as was explained to the commissions in many homes.

Challenges in the second year of the pandemic

Nevertheless, there were clusters of infection in some homes towards the end of 2020 and in the first few weeks of 2021 before the vaccinations became available. For example, in a Lower Austrian home 85 of the 108 residents tested positive for COVID-19, twelve of whom passed away. A total of 40 elderly persons died of COVID-19 in a home in Vienna. The caregivers explained to the commission in a very personalised way how extremely stressful it was for them too to deal with so many deaths.

COVID-19 cluster in Styrian nursing home

The situation was particularly dramatic in a Styrian home. After an outbreak of COVID-19, almost all of the residents and 75% of the staff became infected with the virus. The daughter of one of the residents affected contacted the NPM and reported about the deficits in COVID-19 prevention and the care of the residents after the outbreak of the cluster.

The residents were then moved to another home belonging to the same operator, in which Commission 3 made an unannounced visit on 3 January 2021. Indeed, serious deficits and an urgent need for information and improvement were evident on this monitoring visit. First of all, Commission 3 observed that no early measures were taken to protect the residents and staff against COVID-19 infection. Even after the first cases of infection became known, the home operator reacted late and unprofessionally in the view of the Commission, thus the risk of further COVID-19 infections was trivialised. Many of the residents had to be treated in hospital after the outbreak; almost half of them passed away.

The move to the temporary alternative home was chaotic, largely unprepared and poorly communicated. Many residents were relocated to the new home in the clothes they happened to be wearing at the time. Personal possessions, medical utensils such as hearing aids or dentures as well as clothing were not moved for weeks in some cases. One resident told the commission that he must receive constant additional oxygen due to his severe lung disease. However, when he was moved from the hospital where he was treated for COVID-19 to the temporary home, the urgently needed oxygen was not there. Prior to the relocation and before the planned move back to the original home neither the residents nor their relatives received concrete information. The staff also claimed that they felt they were left alone with the situation. These difficult conditions resulted in half of the staff resigning or being on sick leave for extended periods. This caused bottlenecks in the nursing and care of the residents.

Chaotic move to alternative home

A transparent and complete clarification of the incidents in the Styrian home appeared necessary to the NPM. The supervisory authorities and the Styrian care and patients' advocate were involved and conducted prompt monitoring visits. As was reported in the media, the competent public prosecutors' office filed proceedings against several of those responsible for the nursing home on suspicion of neglect and danger to persons with infectious diseases. These accusations are still the subject matter of criminal investigations.

Investigations by commission of experts

The *Land Styria* tasked a commission of experts with clearing up the incidents and defining measures for improvement. These were presented in Styria on 15 October 2021 as part of a care summit and included measures in the medical, hygiene, care and legislative area. In the hygiene area for example, the importance of recruiting a hygiene specialist when a specific occupancy of beds is reached, as well as the creation and regular evaluation of a hygiene plan were emphasised. Furthermore, monitoring visits should be conducted by the *Land Styria* – and not by the respective district authority.

In July 2021 both homes were taken over by a new operator who assured the NPM of their efforts to initiate processes for structural quality

improvement. The first measures to stabilise the staff situation and draft a COVID-19 prevention concept have been taken.

Occupational programme maintained only in some cases

It was a challenge for all homes to maintain occupational programmes and activities for the residents during the lockdowns. This worked well in some homes but less so in others, which was also attributable to the already existing staff shortages before the COVID-19 pandemic and the added absenteeism due to sick leave and quarantine of the staff. The shift to individual care was received well, for example in a home in Salzburg where the member of staff responsible for animation was able to continue providing individual care and occupation according to the preferences of the residents in the mornings from Monday to Friday during the lockdowns.

Visiting regulations

The visiting regulations for retirement and nursing homes continued to be the subject matter of visits by the commissions and many individual complaints to the Austrian Ombudsman Board in the year under review. Strict hygiene rules as well as mandatory testing and the obligation to wear a face mask still applied for external visitors in 2021. Thanks to the high vaccination coverage among the residents, it was possible for relatives and other visitors to enter the homes – unlike the situation in 2020 – with restrictions throughout the year. The number of visitors was very restricted, however, in the first eight weeks of 2021 (one person per week). The pertinent Regulation of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection was subsequently relaxed, thus allowing two visits per week initially, and from May 2021, daily visits (maximum three persons). The condition was that visitors had to wear an FFP2 mask indoors and observe the so called “3G rule”, i.e. the visitors had to be vaccinated, recovered from a COVID-19 infection, or tested. Admission for unvaccinated relatives was thus also open to care facilities. With the fourth wave at the beginning of November 2021 caused by the delta variant, admission was once again restricted; this time to persons who had proof of vaccination or recovery (“2G rule”), especially considering that booster vaccinations were still at the early stage in some cases.

„2G plus rules“

In view of the increasingly precarious infection situation and related high occupancy rates in general wards and ICUs in the hospitals, the “2G plus rule” came into force on 21 November 2021. In order to enter care facilities, visitors had to present a negative PCR test no older than 72 hours (48 hours in Vienna) in addition to the proof of vaccination or recovery.

Test infrastructure not always adequate

The consequence was not only conflict with relatives who were critical of vaccinations but also with those who attempted to present the required test on the visiting day and then failed to do so because the necessary test capacities were not available nationwide. Only Vienna had set up an easily accessible and resilient test infrastructure. Thanks to the “Gargle with us!” (“*Alles gurgelt!*”) programme, the number of free PCR tests per person per

week was not limited and the results are usually available within 24 hours. Many relatives complained about this because they only had limited or no access to PCR test kits outside of Vienna, or it could not be guaranteed that the tests could be analysed in time to visit the homes. These difficulties were stressful for elderly relatives, as they prevented them from seeing their spouses regularly. In some *Laender*, the AOB initiated investigative proceedings regarding the inadequate test infrastructure (see Annual Report 2021, volume "Monitoring Public Administration").

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection reacted to the limited PCR test capacity situation with exceptions within the framework of the 5th COVID-19 Preventive Measures Regulation (*COVID-19-Schutzmaßnahmenverordnung*). If persons can plausibly justify that a PCR test cannot be presented due to lack of availability or the test not being analysed on time, the operator is allowed to admit persons as an exception provided they have "3G" proof (vaccinated, recovered or tested).

What certainly also gave rise to a lack of understanding and concern was the fact that an additional PCR test was required from – in some cases triple – vaccinated relatives when visiting care facilities but the vaccination coverage among the staff at said facilities was in some cases still considerably lower than that of the residents in late autumn and winter 2021. The Federal Government discarded the plans announced in the media to introduce a work-related mandatory vaccination. Thus, fulfilling the "3G rule" was also sufficient for the staff working in care facilities. The Bioethics Commission had already argued in November 2020 that the COVID-19 vaccination should be recognised as an occupational qualification for the duration of the pandemic as a general rule. Movements critical of vaccination attempted several times to mobilise care staff to strike against COVID-19 protective measures, in some cases successfully. The Supreme Court, for example, declared the firing of an employee who worked in a retirement and nursing home and refused to be tested in breach of the test obligation permissible (8 Ob A 42/21s). The fear of exacerbating the already strained care staff situation caused by the pandemic was likely crucial in moving away from mandatory vaccination that only affects a few professions.

Concern due to unvaccinated staff

On the contrary, the NPM commissions observed that unvaccinated staff – mostly from the surrounding countries – was hired in the second half of 2021 although the operators of the homes were aware that even a low percentage of unvaccinated members of this occupational group make the care of those in need of the same considerably more difficult and breeds conflict among the staff. Whether and in how far the introduction of the general mandatory vaccination from 1 February 2022 will be able to close vaccination gaps with health staff remains to be seen.

No data on the vaccination coverage of health personnel

The NPM does not have precise data on the vaccination status of those employed in long-term care. On request by the NPM, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection reported that no data on the vaccination coverage of care personnel or residents can be provided. The reason for this is, amongst others, the complexity of recording data on the “fully vaccinated” status, which results from the methodology based on the latest scientific developments respectively (incl. the vaccination-relevant timeframes as well as consideration of the “recovered” status). The observations of the commissions can only be snapshots too.

For example, the organisation of vaccinations in a home in Tyrol was assessed very positively. However, at the time of the visits only some 20% of the staff was willing to be vaccinated compared to 95% of the residents. How many caregivers had been vaccinated by the end of 2021 was not conclusively clarified for the NPM. The Austrian Healthcare and Nursing Association (*Österreichischer Gesundheits- und Krankenpflegeverband*) estimated that around three out of ten of the roughly 130,000 employees working in the care sector had not been vaccinated against SARS-CoV-2 by the end of 2021. It was stressed that the willingness to be vaccinated was higher in the acute area whereas there was more reticence in long-term care. The Austrian Healthcare and Nursing Association therefore initiated the *“Sicher leben, sicher pflegen”* (“Live safe, care safe”) campaign in December 2021. This was directed towards caregivers, who are still sceptical, uncertain, not yet convinced and want to “wait-and-see” and those in their orbit. It used information and dialogue to undertake target-group-related persuasive efforts to further increase vaccination coverage in in-patient and mobile care. The debate on a work-related legal mandatory vaccination intensified considerably in the last few weeks before the editorial deadline of this report (i.e. March 2022). A vaccination strategy based on persuasive efforts would be urgently required considering the professional responsibility involved.

- ▶ *Members of the health professions who look after seriously or chronically ill or very elderly persons, but also employees from social care professions and home economics working in care facilities are bound by a professional responsibility in relation to their vaccination decision, which shall be assumed for protecting those entrusted to their care.*
- ▶ *The same applies to institutions and facilities, which are responsible for ensuring that professionally cared for persons are not exposed to avoidable health risks.*
- ▶ *In addition to the implementation of the “2G plus rule” for the visitors to retirement and nursing homes, the availability of an easily accessible, free PCR test offer shall be ensured throughout Austria.*

2.1.4 Staff shortages – care reform still pending

According to a current study about working conditions in care professions published by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection (*Arbeitsbedingungen in Pflegeberufen, Sonderauswertung des Österreichischen Arbeitsklima Index, SORA Vienna, 2021*), 75% of the employees working in geriatric care consider it unlikely that they will remain in their profession until retirement. 16% are seriously planning to leave the profession. The reasons for this are both physical and mental strain at work. The physical strain fosters the desire to change profession whilst the mental strain reinforces the perception of not remaining until retirement. The emotional strain is most prevalent: 38% of those working in geriatric care feel very stressed by this. Time pressure is a considerable strain for every third employee in geriatric care; the frequent change in work steps and processes stresses 18% of the employees. The OECD also has been observing increasing time pressure for nursing staff in Austria since 2005: some 20% of those working in retirement and nursing homes consider their work requirements too high (see also OECD (2020), *Who Cares? Attracting and Retaining Care Workers for the Elderly*, OECD Health Policy Studies, 113). Due to the increasing work and time pressures but also due to the growing number of administrative tasks, nursing staff no longer have enough time to take care of the patients more intensively. They complain about receiving too little support from their superiors and not having enough time to align with colleagues. They say that this has to do with the too tightly calculated ratio of nursing staff to those in need of care.

Difficult working conditions

In an open letter in July 2021, employer and employee representatives, umbrella and professional associations jointly addressed the Government and stressed that in light of their responsibility for members, staff and those in need of care they can no longer accept merely being brushed off from year to year in relation to sustainable care reforms. The NPM shares this criticism; short- and medium-term effective measures should have long since been taken to recruit and bind qualified staff, and to enact national regulations for the financing of training and internships.

Open letter to the Federal Government

The main problem in long-term care is the often too tightly calculated staffing ratio. The NPM criticised this problem in 2021 in Burgenland in particular, which has the most restrictive and lowest staffing ratio in Austria according to Section 22 of the Burgenland Retirement and Nursing Home Regulation. However, the time-consuming and resource-intensive care of persons suffering from dementia requires more adequate staffing. The challenges of COVID-19 and visit management require additional staff as well. Burgenland announced to the NPM that it was taking the first big step towards increasing staffing and revision of the daily rate model for 2022.

Reduced bed capacities throughout Austria

Care staff already often worked to capacity before the health crisis caused by COVID-19. The strained staff situation and urgent need for care reform were thus already issues for the NPM in previous years (see NPM Report 2019, p. 22). In 2021 the observations of the NPM confirmed the serious effects of staff shortages.

The commissions thus encountered reduced bed capacities in facilities throughout Austria because adequately qualified staff was not available. In a home in Lower Austria, 16 FTEs were missing at the time of the visit meaning that no new residents could be admitted. The staff reported about very stressful work situations. The duty roster was no longer aligned with the actual staffing.

In a home in Lower Austria, four out of 20 beds were not occupied, and in a senior citizens' home in Salzburg only 67 out of 71 places could be occupied due to staff shortages. New admissions were not possible. The staff shortages and resulting empty beds are also an issue on almost every visit by Commission 3, which operates in Styria. Commission 1, responsible for Tyrol, also reported staff shortages in visited facilities, which this year were often attributable to quarantine or contact tracing regulations due to COVID-19.

On a visit to a home in Vienna, the commission observed that regarding the number of planned hours, 56.5 weekly hours were missing in the health and nursing area. In contrast, there was a plus in the area of department aids and in the care assistance area. However, this does not constitute a balance, as many tasks and the work in areas of competence can only be carried out by staff with graduate qualifications.

Facilities communicated their general concern to the commissions that the care sector is on the verge of collapse. Commission 4, responsible for Vienna, points out that unlike other *Laender* – with a few exceptions in the staffing of night shifts – the staff situation is currently sufficient. However, deterioration is possible in the future in view of the demography of those requiring care and also of the nursing staff.

Less care and occupation

Less staff usually also means less individual care. A woman working in a Lower Austrian home said: "The worst part is the insufficient personnel headcount. A lot of our residents need help with personal hygiene or support when eating, but there are not enough employees to do this". There are too few activities that provide a daily structure and diversity, if the staff that is planned to do this is not available.

However, it is during the time when visits are restricted by COVID-19 and thus when loneliness is a problem that there is a need to take more care of the residents. Occupational activities had therefore to be shifted to the smallest possible groups or even 1:1 care for safety reasons. This was evident, for example, on a visit to a private home in Vienna where more time

and staff were invested in organising leisure activities in very small groups. A home in Carinthia offers individual animation by caregivers; however, there is no more animation after 4.30 p.m. and an extension is not planned due to the personnel situation. In two homes in Vienna and one home in Lower Austrian, there are no or too few general caregivers; this means that this task has to be assumed by the already overloaded care specialists.

Commission 4 was able to observe the intensive and dedicated occupation of the residents in another Viennese home. According to the staff, residents and relatives, this was however an exception due to the optimum staffing on the day of the visit. It is usually not possible to take care of the residents personally, play together, go out into the garden or do exercises due to staff shortages.

Access to the outside is also severely limited as observed by the commissions in connection with staff shortages. In a private home in Styria, regular excursions were no longer guaranteed due to the staff situation, as was the case in a home in Tyrol. This was possible in a home in Vorarlberg; however, only with the help of a mobile aid service financed by and operating throughout the *Land*, and as in many other homes, with the support of trainees or persons in national or community service.

Access to the outside
limited

The insufficient staffing of night shifts is an ongoing issue for the NPM and also partly attributable to staff shortages. With regard to bedtimes, residents who need support still appear to adapt to the structures and the workload of the nursing staff. A resident in a home in Vienna told Commission 4: "I go to bed early because I do not want to stress the employees".

Night shifts
inadequately staffed

Due to the large number of residents with dementia-related behavioural disorders, the commission observed very high stress levels for the staff on night shift during an evening visit to a home in Salzburg. Two caregivers worked the night shift for 56 residents. Commission 2 was in the building until around 11.30 p.m. During this time the staff was constantly busy on four floors. There was hardly a minute in which one of the eight sensors at the beds of the residents did not go off. The NPM therefore urgently recommended relief, e.g. by setting up an additional late and early service. This is however not possible at the moment due to staff shortages.

The situation was similar in a home in Lower Austria where three persons were responsible for 108 residents during the night. The NPM considers the night shift staffing even more critical in a large home in Vienna: only three staff members are assigned to 284 residents, of whom 72 are spread across two care units. There is also a late shift from 7.00 p.m. to 9.00 p.m. in the apartment area, which has been well worthwhile. Nevertheless, a fourth caregiver would be necessary to be able to cover overlapping emergency situations and to provide additional care services such as toilet training, conversation or support at late mealtimes. The staff also appeared

overworked and exhausted on a visit to a home in Styria by Commission 3. Only two persons worked the night shift in the spacious home for 73 residents. Even if the staffing plans of the homes are complied with, additional FTEs would be necessary, as the residents are becoming older all the time and their care thus more extensive.

Representatives of the residents see alarming crisis

The representatives of the residents also pointed out the effects of staff shortages in the care sector. An increase in measures that restrict freedom has been observed, including those that have not been an issue for years, or fewer reports of such have been submitted to the representatives of the residents. There had already been a rise of some 50% in measures that restrict freedom in 2020 as well as an additional large number of unreported cases. This was attributable to the COVID-19 pandemic according to the representatives of the residents. In general, they see an alarming care crisis that has worsened due to the pandemic. Extremely high demands are being made of the personnel be it due to COVID-19 itself or additional administrative tasks such as COVID-19 test management. Many staff are exhausted but continue to work 40-hour weeks because of the lack of replacements.

Commission 5 confirmed that the increase in measures that restrict freedom is a consequence of understaffing, and the correct reporting of such measures is often "forgotten". During its visits the commission also observed that more sedative psychotropic medication is administered especially in the evening. The lack of specialised staff gives way to transgressions of competence in the professional groups of care assistance and home aid, and thus to work overload situations due to inadequately qualified staff.

Recruiting personnel is difficult

Even if – as is the case in many homes – the number of vacancies is increased or existing positions are filled after resignations, the operators say that it is becoming increasingly difficult to find qualified personnel. This applies, for example, to two retirement homes in Carinthia that reported a shortage in the area of third-level qualified care staff. The home is constantly looking for care staff but that is particularly difficult to find in this region. The staff situation is thus the reason why no new residents can be admitted. Another Carinthian home reported that there are hardly any applications for job openings and the staffing ratio can only be fulfilled with leasing staff. These workers are, however, not included in further training programmes and did not receive any dementia training despite the fact that the home is supposed to be specialised in residents suffering from dementia.

Two Lower Austrian homes in which one to two health and nursing professionals and five care assistance positions are not filled respectively – also due to resignations in connection with COVID-19 – reported how it is becoming increasingly difficult to recruit staff. In a home in Salzburg, two out of five health and nursing professionals were on long-term sick leave, which is difficult to compensate according to the home management.

Besides, burnout of fully trained care staff or them being headhunted by the hospital sector also plays a role in the shortage of care specialists. Commission 1 observed the problem in several Tyrolean homes and identified a high proportion of external personnel and leasing staff with, in some cases, alarming language barriers. Because of this, there were not only regrettable misunderstandings between the residents and care staff but also deficits in the documentation and in the care report. One Viennese home which also had many employees whose native tongue is not German is planning to set up its own training facility. German courses for staff with a migrant background are already being offered.

However, the commissions also made positive observations in relation to the personnel situation in 2021 when they visited homes with stable teams, little fluctuation or many employees from the local area who reported a strengthened sense of community during the pandemic. The commission found a locked living area in a nursing home in Vienna. The reason for locking the area was not due to a shortage of staff but the COVID-19 isolation and quarantine units and related increased staff requirements. In this way, the admission of residents with milder COVID-19 symptoms to the heavily overloaded hospitals could be reduced considerably and they could be given the opportunity to stay in their familiar surroundings.

Positive observations
on the personnel
situation

In order to prevent a growing number of employees from leaving the care profession, which in turn exacerbates the care crisis, appropriate working conditions must be put in place. The study mentioned above on the working conditions in the care sector identified the following positive factors for higher job satisfaction levels: positive feedback and a good relationship with residents and their relatives, appreciation and recognition by society and the public, codetermination and freedom to self-organise the work, independence and/or the option of working autonomously in a professional team, as well as further education opportunities. In addition, social security is a central factor. If the income will barely or does not suffice, nursing staff consider it less likely that they will practice their profession up to retirement. A total of 57% of those employed in geriatric care are satisfied with their income. The study concludes that, in particular, the qualitative job insecurity, that is, the possible loss of quality within the job, shall be considered. Nursing staff shall be treated with dignity in their physically and mentally demanding job.

- ▶ ***Human resources shall be significantly increased in order to promote the quality of life and maintain the physical and mental functions of the residents.***
- ▶ ***Working time, volume of work and remuneration for nursing staff shall be improved at last in order to improve job satisfaction and counter the care crisis.***
- ▶ ***The pandemic shall not be used as justification for permanent understaffing or extended working time in care facilities. Otherwise, the staff who are already overloaded will burn out even more.***

2.1.5 Protection against violence and dealing with allegations of abuse

Measures for practising de-escalation and the prevention of violence in retirement and nursing homes have always been a central topic for the NPM. Equally important is a good way of dealing with and thorough clarification and follow-up of violent incidents and allegations of abuse. The causes of violence in the care context are varied. Nevertheless, years of experience enabled the NPM to repeatedly observe that certain factors foster violence, attacks and abuse.

Breeding ground for violence and aggression

For example, understaffing can cause work overload, demotivation and a loss of empathy with persons in need of care. During the monitoring visits by the commissions, nursing staff repeatedly complain of stressful working situations, as well as excessive accumulated overtime and residual leave. A caregiver told Commission 5 that residents are washed and dressed during the night shift in order to cope with the high workload. In retirement and nursing homes in Tyrol, Upper Austria and Vienna too, the commissions observed understaffing and excessive overtime. Not least for this reason, the NPM regularly stresses the importance of a stable and adequately staffed care team, supervision and removal of the mental strain in the workplace.

Even despite strained working conditions, the commissions noted a high level of dedication and tireless commitment of the care staff. Nevertheless, such working conditions, the lack of opportunities to exchange experiences within the team and high staff fluctuation can provide a breeding ground for violence.

Serious accusations of abuse in a nursing home

Particularly serious allegations of violence and abuse in a nursing home in Lower Austria are currently an issue. The accusations, which were also reported in the media and are the subject matter of criminal investigations, include sexual abuse, the torture and neglect of defenceless persons, food deprivation, the arbitrary administration of medication and false accusations of damage to property. The four alleged perpetrators are caregivers who had worked together for months in the home and were perceived as a "tightly knit group". All of the residents affected by the violence suffer from dementia, which is why they were unable to make verbal statements on the accusations.

During a visit after these incidents had become known, Commission 5 identified structural deficits in the area of violence prevention. One of the caregivers interviewed claimed to be at the mental and physical "limit". Despite the high workload and personnel fluctuation, no ethic case meetings or supervision were established in advance. No efforts were made to discuss and develop solutions for the problem areas. The home had neither a

concept for protection against violence nor further training in the area of de-escalation and violence prevention.

In addition to a prompt follow-up visit, the NPM organised a personal meeting with the operator of the Lower Austrian care facility, which runs retirement and nursing homes throughout the country. The need to urgently initiate a structural change process and invest efforts in fundamental improvements in the area of violence prevention was stressed once again in this framework.

Even though many home operators recognise the importance of de-escalation and violence prevention measures in retirement and nursing homes, the commissions continue to encounter some facilities on their monitoring visits, which have no concepts or further training in this key area.

Lack of concepts for protection against violence and further training

Looking after persons in need of care and persons suffering from dementia requires technical expertise but also a basic ethical understanding and the professional application of care concepts. Whether an applicant has these skills and competencies should be thoroughly examined when hiring new care specialists. To this end, an intensive introductory training phase followed by regular further training in the area of violence prevention and care-related values as well as structurally provided opportunities to exchange experiences within the team are required.

In addition to violence prevention measures, the NPM also considers standardised procedures for the recording, clarification and follow-up of violent incidents essential. What is critical in this context is, first of all, the recognition that violence can be directed both towards residents in care facilities and the nursing staff. In any case, attacks, violence and aggressive behaviour should be taken seriously, documented, clarified and followed up on accordingly. A study commissioned by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection on working conditions in care professions (*“Arbeitsbedingungen in Pflegeberufen”*) from 2021 illustrated that roughly 20% of staff in the in-patient area are exposed to physical violence at least once a week and to sexual attacks at least once a month respectively. Positive examples of improvement in the resulting work-related stress focus on strengthening the individual resources and health competencies of care staff as well as learning a professional way to deal with conflict and violent situations.

Standardised recording of violent incidents

On a visit to the Lower Austrian nursing home in which the allegations of abuse were made, Commission 5 addressed the negative consequences of missing documentation of violent incidents. A resident kicked an employee in the head. The caregiver was seriously injured; she suffered sudden deafness and tinnitus. She was unable to work for several weeks and has had to permanently wear a hearing aid since then. However, the incident still was not recorded or documented. In order to be able to understand

the background of violent or aggressive behaviour, to develop dedicated strategies for de-escalation and countering aggression and thereby prevent future violent incidents from occurring, the structured recording, clarification and follow-up of such incidents is required as a first step.

In a care facility in Styria, Commission 3 appreciated in addition to further violence prevention measures that staff are actively offered the opportunity to take time off or receive support at the first signs of strain and overload. Regular visits by a psychological service, de-escalation training and mandatory supervision units also contributed to creating a positive and open working atmosphere. Following further attacks – as in the case of a caregiver who pulled a resident by her ear – the facility organised transparent clarification and follow-up of the case and subsequently terminated said caregiver’s contract.

Legal professional consequences for caregivers

If a violent incident occurs or there are allegations of abuse, consistent clarification and follow-up and the use of a transparent procedure on the part of the home operator are all the more important. For nursing staff, the abuse or use of violence against persons in need of care can mean criminal proceedings in addition to legal professional consequences. Pursuant to the provisions of the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*), a person must be “trustworthy” – among others – in order to be able to practice in a care profession. In light of the established jurisprudence of the Supreme Administrative Court of Austria, the requirement of trustworthiness means “being able to rely on the person practicing the health profession, complying with the professional obligations in every respect”. In the event of the loss or cessation of the trustworthiness, the right to practice the profession can be withdrawn by the authorities. Not only criminal actions but also breaches of professional duty, which by way of their nature and severity are comparable to certain criminal actions, can result in the loss of trustworthiness and consequently the (temporary or permanent) revocation of the right to practice the profession.

Scope of notification obligation pursuant to Act on Healthcare and Nursing Professions

The NPM also dealt with the notification obligation for care staff if they notice violence or abuse. Pursuant to Section 7 (1)(3) of the Federal Act on Healthcare and Nursing Professions, those working in the health and nursing professions are obliged to notify the Criminal Police or public prosecutors’ office, if in the performance of their professional duties there is reasonable suspicion that adults who are not responsible for their own affairs or do not have decision-making abilities or are helpless due to infirmity, sickness or mental impairment are being or have been ill-treated, tortured, neglected or sexually abused through acts punishable by a court of law. This notification obligation is dropped only if the professionals report the incident or suspicions to their employer and they in turn file proceedings with the Criminal Police or the public prosecutors’ office.

The NPM thus spoke out in favour of defining internal processes which make it clear for all involved how to handle reports or complaints and how and when the legal notification obligation is fulfilled. This clarification or these guidelines should also help to avoid transferring the risk of breaches of duty pursuant to the Federal Act on Healthcare and Nursing Professions.

- ▶ *The development and implementation of a violence protection concept, further education in the area of de-escalation and protection against violence as well as the securing of an adequate personnel situation including establishing supervision and ethical case meetings are basic measures in the prevention of violent incidents.*
- ▶ *Violent incidents and aggressive actions shall be fully documented, clarified and followed up on.*
- ▶ *The definition of internal processes should clarify how to handle reports of alleged abuse and when carers have fulfilled their legal notification obligation.*

2.1.6 Monitoring priority „pain management and palliative care“

About a third of the residents without cognitive impairments suffer from pain, and a large percentage of them accept this situation as being due to old age. Some 80% of those with cognitive impairments display clear symptoms of pain behaviour. Accordingly, there is a risk of undetected pain in all resident groups.

Undetected pain

The quality of life of residents in retirement homes is closely related to their pain situation. For this reason, the NPM wants to devote more of its attention to this topic in 2022. The preventive goal is the optimisation of pain management in retirement and nursing homes, whereby more attention should be given to persons with cognitive impairments or who are suffering from dementia as well as persons with (severe) mental illnesses who are unable to fully perceive and/or communicate their pain.

Focus on pain care

The NPM also sees the need for improvement in the area of hospice and palliative care in retirement and nursing homes. Many facilities in Austria have taken up the topic of passing away with dignity and created a special palliative care setting. The commissions have also found homes, however, that do not provide professional, cotemporary palliative care.

Palliative care

Hospice culture and palliative care in retirement and nursing homes is the evaluation benchmark for ensuring that quality of life and human dignity are safeguarded until the end. The WHO defines palliative care as a strategy for improving the quality of life of patients and their families who live with the problems associated with a life-threatening illness: through

Protecting quality of life

the prevention and relief of suffering, through early detection, precise assessment and treatment of pain as well as other debilitating illnesses of the physical, psychosocial and spiritual nature.

Extension to include palliative care For this reason, the pain care focus was extended to include palliative care. To this end, a data entry form was developed which should be completed on every visit in retirement and nursing homes. The results from the data captured by the commissions are evaluated and should be used to formulate recommendations by the NPM in order to provide the facilities orientation on which human rights standards shall be safeguarded.

2.1.7 New fall detection system Cogvis

Basic idea of fall prevention The Cogvis system is a 3D smart sensor that can detect and analyse movement in a room as well as trigger an alarm in a critical situation. The basic idea behind the system is fall prevention. It consists of a small box attached to the wall that triggers an alarm depending on the settings – for example, sitting down, standing up or a fall. Depth images are created with the help of infrared laser technology. The faces, clothes or other activities of the staff or the residents are not recognisable in these images. The residents can be identified by their room numbers. To date, the commissions have only been able to observe the system in a few homes and usually only in test operation, as the management and staff were not familiar with it.

Representatives of the residents reports The representatives of the residents informed the NPM that the system is being increasingly used and the facilities are reporting different experiences with it. It is a technically sophisticated product. With respect to the protection of the residents' personal rights, the representatives of the residents are looking very closely at the type of visualisation, that is, the image transmission used. According to the manufacturer, it is only triggered when the sensor is activated by movement in the room. "Permanent transmission" in real time is therefore neither possible nor intended, as is the identification of persons from images.

On principle, such an innovation is to be welcomed if it constitutes milder measures than those that restrict freedom. The NPM will have to gather more observations of the system in real time operation next year in order to make a conclusive assessment.

2.1.8 Positive observations

Positive overall impression In 2021 the commissions once again had a positive overall impression of many homes. For example, Commission 3 observed that fantastic work was actively performed going beyond all care standards in a medium-sized home in Styria. The residents were at the focus of all efforts on the part of the staff whose enormous dedication was evident in every detail. Occupation

and animation were run proactively and were perceivable as a real priority for the staff. The atmosphere experienced in the home was described as very positive and lively. The home is certified as a hospice and its dealing with the topic of dying and death is exemplary. The staff are more sensitised to this topic than is the norm. Staffing levels in the evening and during the night were highly praised.

The interviews with the residents, in particular, showed that in many other homes too there is a perceivably positive, often family-like atmosphere. Below are some further examples of good practice: the arts & crafts occupational opportunities and the garden activities in a care competence centre in Burgenland were considered positive. All of the rooms had access to the garden where there are vines, vegetable patches and terraces that can be personally designed and planted by the residents. The garden is designed for the special needs of persons in need of care who are suffering from dementia. A home in Lower Austria facilitates particularly good integration in the life of the community with the help of over 40 volunteers who organise cultural and other leisure activities. Commission 1 observed in a Tyrolean home that the good staff situation permits true resident-centred care, time for occupation and daily walks with the residents.

Arts & crafts
occupation, activities

The *Vitablick* project in a Burgenland and several Viennese homes was viewed very positively. This involves virtual 3D tours using VR glasses that show short films on different topics and places when worn. For example, there are tours of Schönbrunn Palace, the pilgrimage city of Mariazell, coffee houses, through landscapes but also on different professions. The films are designed to promote memory training and recall, and were received positively in practice.

Virtual reality

There is a “Promote continence” project in a home in Burgenland. Incontinence pads are not used. All of the residents can be accompanied to the toilet at all times. Two dedicated employees are entrusted with this task.

Promote continence

The individual, internally developed violence prevention concepts in two Lower Austrian homes left a positive impression. A questionnaire was completed by all care staff on different key topics and the results then summarised in a “violence prevention group” with representatives from each of the living areas. The staff clearly identified with the violence prevention concept later on, as they had made an active contribution to it.

Violence prevention

The crisis intervention team of a large Viennese operator deserves a positive mention. It consists of psychologists and a third-level qualified health and care expert specialised in psychiatric health and care. The team is available for acute, mental emergencies, such as suicidality of residents, and was set up to support the care staff. For example, the team provided important help

Crisis intervention

in overcoming the incidents surrounding a fire in an apartment in one of the buildings.

Privacy screen In a home in Vienna whose bright and homely furnishings are cutting edge there is a type of screen in the rooms that is pulled down as a privacy screen during personal hygiene and care measures. The privacy of the residents can thus be guaranteed without great effort.

Opportunity to make complaints The opportunity to submit complaints or suggestions was considered above average by Commission 1 in a home in Tyrol. Monthly resident meetings take place on every floor in which home and care management also participate. During these meetings, the residents are asked directly about their satisfaction regarding care, food, cleaning and volunteers. Wishes and complaints can be submitted.

Documentation Finally, the commissions found very good documentation in many homes: this was organised carefully, respectfully, in detail and individually.

2.2 Hospitals and psychiatric institutions

Introduction

The NPM commissions visited 58 medical facilities including psychiatric and somatic clinics or departments in the year under review. Due to the COVID-19 pandemic, the hospital staff was permanently under severe strain with a brief quiet phase during the summer. Non-essential operations had to be postponed once again. In November 2021 – at the peak of the fourth COVID-19 wave – hospital capacities clearly reached their limits in most *Laender*. Wards were closed and staff reduced to free up medical and nursing personnel for the care of COVID-19 patients. The disruptive demonstrations in front of hospitals and threats against medical and nursing personnel from vaccination critics at the same were an additional emotional strain.

Dealing with
COVID-19

The feedback from the commissions on the way institutions and facilities handled pandemic-related measures was largely positive. Psychiatric therapy programmes were maintained even during the lockdowns – while observing the necessary protective measures. Visits and activities including the parents of minor psychiatric patients could take place in most cases, or electronic contact (e.g. video telephony) was used.

2.2.1 Reform of hospitalisation law

In 2021 a proposed reform to solve diverse, long-standing human rights deficits in the Hospitalisation of Mentally Ill Persons Act (Unterbringungsgesetz) was initiated with the ministerial draft of the same and amendment to the International Private Law Act 2021 (Internationales Privatrecht Gesetz-Novelle 2021). The goal is to harmonise the Hospitalisation Act with the requirements of the UN Convention on the Rights of Persons with Disabilities (CRPD) and to ease the tension between the rights of children and adults in relation to hospitalisation. The inclusion of persons with experience in psychiatry in the working groups of the Federal Ministry of Justice was exemplary.

Ministerial draft

The NPM welcomes many aspects of the reform efforts. In particular, the strengthening of self-efficacy and self-determination of the patients as well as the emphatic consideration of the needs of minors during in-patient hospitalisation are viewed extremely positively.

NPM welcomes
planned reform

The effective implementation of the changes planned in the amendment requires additional resources. The NPM has repeatedly drawn attention to the urgently needed stepping up of human resources in the in-patient and office-based specialist areas. The manifest lack of personnel was also evident in 2021 (see 2.2.4 under “Staffing”). Furthermore, in the view

Necessary resources
shall be provided

of the NPM, the expansion of suitable non-hospitalised care and housing programmes for persons with mental illness shall be promoted to ensure the availability of care capacity after patients have been discharged from hospital.

The review deadline expired on 19 April 2021; however, a government bill was not enacted in 2021. The NPM recommends implementing the reform without delay. As some of those accommodated have spent several brief periods (but to no avail) in hospitalisation pursuant to the Hospitalisation Act due to acts of grievous bodily harm, it is disappointing that there has been neither an efficient reform nor the implementation of the draft legislation for modern detention of mentally ill offenders, which has existed for a long time.

2.2.2 Permanently under construction – child and adolescent psychiatry

Insufficient in-patient care places in child and adolescent psychiatry

In the past, the NPM has repeatedly pointed out the inadequate provision of care in in-patient child and adolescent psychiatry (see for example NPM Report 2017, pp. 51 et seq., NPM Report 2019, pp. 61 et seq. and most recently NPM Report 2020, pp. 51 et seq.). Furthermore, the NPM also highlighted that the expansion of in-patient transitional psychiatric programmes for adolescents in the transfer phase between childhood and adulthood is necessary.

The lack of medical specialists in the area of child and adolescent psychiatry was countered by declaring it a so-called “shortage subject”, thus creating a few additional training positions. However, this alone is not enough to meet the growing demand for specialised medical personnel and drive the expansion of child and adolescent psychiatry. The proportion of short-term placements has increased over the years and is particularly high among children and adolescents under the age of 18.

Vienna reduces occupancies again

Occupancies still had to be reduced because not enough adequately trained specialised staff was available in the care region of Vienna where extensive structural measures facilitated the gradual expansion of the in-patient care capacities (University Clinic at Vienna General Hospital, Hietzing Hospital, Floridsdorf Hospital).

Overcrowding in University Clinic for Child and Adolescent Psychiatry

In 2021 while monitoring the University Clinic for Child and Adolescent Psychiatry in Vienna, the NPM addressed the lack of treatment resources, which had been evident in overcrowding in the Hospitalisation of Mentally Ill Persons Act area.

From the NPM’s point of view, a further increase in the current training ratio would be necessary to intensify the growth in human resources and compensate for the lack of staff in the in-patient area (and beyond).

The revision of training in general health and nursing care due to the 2016 amendment to the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*) brought disadvantages with respect to the care staff in in-patient child and adolescent psychiatry (see 2.2.4 under "Staffing"). Aspects of child and youth care as well as child and adolescent psychiatry are not (no longer) explicitly planned as training elements in the basic training programme. This means that health and nursing professionals cannot be adequately deployed after their basic training in child and adolescent psychiatry. In order to obtain their professional qualifications, they have to be excused for another year, which further exacerbates the already existing lack of trained care staff. In the view of the NPM, specialisation – for example in child and adolescent care or in psychiatric health and care – should thus be included in the last (basic) year of health and nursing professional training.

Revision of training causes additional staff shortages

The Chief Executive Office of the City of Vienna responded to the criticism of the NPM by explaining that an additional ward for transitional psychiatry has been established at Floridsdorf Hospital and four additional beds under the Hospitalisation Act have been available for adolescents aged 16 to 18 years since August 2021. To further cover the increased demand for psychiatric treatment resources, staff is currently being successively recruited, to widen the occupancy to another ten general transition beds.

Floridsdorf Hospital: ward for transitional psychiatry

Furthermore, together with the Psychosocial Services Vienna, the University Clinic for Child and Adolescent Psychiatry at Vienna General Hospital took up a new form of treatment, home treatment, in March 2022, which should help to ease the bed situation. In the two-year project time frame, at least 50 mentally ill children and adolescents are to receive child and adolescent psychiatric treatment in their home environment and with the involvement of their families.

Home treatment as new form of treatment

Beyond that, three additional public health insurance permanent positions were created in the area of office-based child and adolescent psychiatry. There are thus a total of ten public health insurance permanent positions for child and adolescent psychiatry in Vienna. The recruiting process for these permanent positions in the 11th, 16th and 21st district has already started and should be carried out quickly. The supply of payment in kind is also being continuously expanded through contracting facilities with child and adolescent psychiatrists. These include the out-patient clinic "*Die Boje*", the SOS Children's Villages out-patient clinic, the Child Guidance Clinic with four locations, two child and adolescent psychiatric out-patient clinics of the Psychosocial Services Vienna, the centres for promoting development and the association "Responsibility and Competence for Special Children and Youths" ("*Verantwortung und Kompetenz für besondere Kinder und Jugendliche*").

Additional public health insurance permanent positions for child and adolescent psychiatry

- Plans to compensate bottlenecks in care On the issue of the training of health and nursing professionals, the Chief Executive Office of the City of Vienna points out that a modular type of training would be conceivable, in which the carers can plan the respective training path together with their management in a focused manner. A recommendation to this effect has been formulated. The General Directorate of the Vienna Health Association has provided the University Clinic at Vienna General Hospital with 15 positions for specialisation and further training. In addition, further training is being offered pursuant to Section 64 of the Federal Act on Healthcare and Nursing Professions on the subject of "Nursing and Care of Children and Youths with Special Psychosocial Needs" in the Vienna Health Association.
- Ministry announces sustainable improvements The Federal Ministry of Social Affairs, Health, Care and Consumer Protection explained in a statement to the NPM that various efforts are being made to achieve sustainable improvements in (in-patient) child and adolescent psychiatric care. The current third-level Health Care and Nursing Training Regulation (*FH-Gesundheits- und Krankenpflege-Ausbildungsverordnung*) already includes the possibility to set priorities in general training. Furthermore, in the training of health and nursing professionals, different measures such as maintaining the training authorisation of specialists in child and adolescent psychiatry as well as mutual crediting of the "Adolescence psychiatry" module are planned and have been agreed with the Austrian Medical Chamber.
- Regarding the increase in human resources for the medical special subject of child and adolescent psychiatry, the Ministry points out that another moderate expansion of the training ratio to 3:7 is being discussed for an amendment of the Regulation on Education and Training for Medical Practitioners 2015 (*Ärztinnen-/Ärzte-Ausbildungsordnung 2015*), which is currently being prepared. In addition, a dedicated concept for making the understaffed professions in the care of children and adolescents more attractive is being developed. Increasing the attractiveness was included in the contract on objectives management in health 2017–2021. Furthermore, the "Public Health" expert group is working on two launching measures (developing recommendations for the area of the socio-pedagogic facilities and for child and adolescent psychiatry).
- Centres for child and adolescent psychiatry further expanded in Styria The Regional Health Care Structure Plan for Styria 2025 and the concept for out-patient psychiatric care in Styria stipulate that ten child and adolescent psychiatric centres shall be set up for the further development of psychiatric care. These centres are designed such that they should consist of an out-patient clinic for child and adolescent psychiatry and a psychosocial counselling centre respectively, which are closely integrated. These regional structures should enable low-threshold, extensive, local psychiatric and psychotherapeutic care that is free for the patients.

Such child and adolescent psychiatric centres have already been set up in Graz, Liezen, Kapfenberg, Hartberg, Weiz, Feldbach, Leibnitz and Judenburg. The range of services includes psychosocial counselling, socio-psychiatric daily structures and mobile socio-psychiatric care. Medical specialists as well as experts from the area of psychology, psychotherapy, social work and occupational therapy and logo therapy work in these centres. However, these institutions are working to capacity, which means there can be longer waiting times for patients.

The Austrian Public Health Insurance Office, in agreement with the Medical Chamber, created three permanent positions for medical specialists in child and adolescent psychiatry from 1 January 2022 in addition to the existing structures. These positions are located in Graz, Bruck Mur and Leibnitz. Further permanent positions are planned.

Public health insurance permanent positions for child and adolescent psychiatry in Styria

In this way, the care of the insured can be improved and waiting times shortened, which also helps to ease the situation in the in-patient area. A long-standing demand of the NPM is thus being met, according to which those affected should be able to choose between out-patient facilities and doctors in the office-based area.

- ▶ *A legislative reform of the Hospitalisation of Mentally Ill Persons Act including human-rights-related analysis of the treatment of mentally ill persons who have to be admitted to medical facilities and departments for psychiatry as well as for child and adolescent psychiatry is necessary and requires additional resources.*
- ▶ *In the area of third-level educated care staff, the opportunity to specialise (in child and youth care and in psychiatric health and nursing care) is recommended already within the framework of basic training in order to set relevant priorities as early as possible.*
- ▶ *For the expansion of specialist medical capacities in the special subject of child and adolescent psychiatry, the NPM recommends an additional enhancement of the current training ratio.*
- ▶ *The treatment capacities for child and adolescent psychiatry shall be extended in the in-patient and in the out-patient area in order to guarantee target-group-specific care.*

2.2.3 Monitoring priority on „de-escalation“

The NPM agreed on a new monitoring priority for the area of psychiatric hospitals and departments in 2020. The focus was on the effective prevention of violent incidents. The priority was developed in an internal NPM process over several months with experts from all the commissions and the Human Rights Advisory Council. In December 2020 the regional governments were informed that all commissions will visit those facilities and institutions focusing on factors of violence prevention. This is on the basis of the following considerations:

Joint development of a new monitoring priority

Objective: avoiding coercive measures Human rights treaties contain extensive demands for strengthening the rights of persons with permanent physical, emotional, mental or sensory impairments. These include promoting participation in medical decisions, reduction and documentation of measures that restrict freedom but also standards for accommodation and staffing. Coercive measures are a severe strain for both the mentally ill and staff. They should thus be avoided if possible. If they are necessary in exceptional circumstances, they shall be effective, proportionate and applied in as gentle a manner as possible.

Prevention through documentation and evaluation An increasing number of hospitals and institutions are countering the strained relationship between the rights and interests of the patients and the justified protective interests of other persons (e.g. staff and fellow patients) with de-escalation concepts or education and training programmes in de-escalation and aggression management. To this end, it has to be identified in advance, which factors promote increased agitated behaviour in the direction of aggression or violence and which are suitable for de-escalation. The complete recording of aggressive incidents (with standardised forms) and looking for causes of agitated or aggressive behaviour are critical for a structured analysis of the phenomena mentioned and corresponding prevention work. Every such incident shall be succeeded by clarification and follow-up, as targeted countermeasures can only be implemented on the basis of such information gathering.

2.2.4 Conducting the monitoring priority visits

50 monitoring visits nationwide In 2021 a total of 50 visits with this monitoring priority were conducted nationwide in psychiatric hospitals and departments. The visited hospitals and institutions were spread across the *Laender* as follows:

| Number of visits in 2021 | |
|--------------------------|-----------|
| Vienna | 12 |
| Lower Austria | 9 |
| Upper Austria | 7 |
| Styria | 7 |
| Tyrol | 6 |
| Carinthia | 4 |
| Vorarlberg | 3 |
| Salzburg | 1 |
| Burgenland | 1 |
| Total | 50 |

The commissions identified measures that prevent violence and monitored their organisation in the visited hospitals and institutions. The following sections provide an overview of the observations.

De-escalation, safety concepts and training measures

Aggression in health care (and, in particular, in psychiatric institutions and departments) is not completely avoidable. That is why the institutions need systematic and structured de-escalation management. Suitable preventive measures must be understood as a joint effort of an entire organisation and first require clarification and regulation of terms, circumstances, available resources, expectations and goals. In general, such regulation is made in the form of de-escalation and safety concepts.

Systematic de-escalation management

In order to avoid taking measures against the will of mentally ill persons, the staff shall be instructed in techniques that offer de-escalating and safety-improving options in every phase of the escalation of aggressive behaviour. The training should consist of a combination of de-escalation and (physical) defence techniques as well as (verbal and nonverbal) intervention for the application of measures that restrict freedom, which counter the typical (temporal and logical) course of violent situations.

Concepts highlight intervention possibilities

The commissions had the impression that there is great problem awareness for this topic in the institutions they visited. In most of the institutions and departments, regular de-escalation training for staff and employees from different professional groups based on a standardised procedure is offered during working time and paid for by the employer. There is a regular refresher course of the material learned in 82% of the institutions visited.

Regular training imparts content

Concepts from NAGS Austria and ProDeMa are predominantly used (NAGS Austria 49%, ProDeMa 18%, other 25%). The NAGS Austria association is a pool of experts in de-escalation and safety management in the health care and social area. ProDeMa is an institute for professional de-escalation management that was founded in 2006 for the purpose of teaching persons from the health care, education and social care sectors how to act professionally in dealing with aggression and violence. In so doing, existing concepts are enhanced inside the organisation or adapted to the respective circumstances specific to the institution. In the Christian Doppler Clinic Salzburg, for example, in addition to the ProDeMa de-escalation concept a project for the implementation of "safewards" measures is being implemented. In Hietzing Hospital with Neurological Rehabilitation Centre Rosenhügel a dedicated safety board "Aggression and Violence Prevention" was set up – parallel to the existing training programme based on NAGS Austria.

Enhancements specific to the institutions are welcome

In several of the visited institutions, for example in Carinthia, standardised de-escalation concepts had not (yet) been established (see for example

Villach Regional Hospital, De La Tour Hospital – Treatment Centre for Addiction-related Diseases). However, the operators of the institutions promised the NPM relevant adjustments and the introduction of basic course modules for members of all professional groups.

Pandemic-related restriction of training programme

Restriction of regular training programmes was perceivable during the first two lockdowns. However, the operators of the institutions ensured that they would resume training as quickly as possible. It is noticeable however that – beyond the medical and nursing staff – just 31% of the therapeutic staff and 20% of the other employees (e.g. cleaning staff) nationwide have been trained in de-escalation techniques.

Regular training desirable

On the positive side, there are institutions in which all employees – including in the service, administration areas etc. – have received de-escalation training or have also attended courses in which (internal) multipliers are trained (see Landstraße Hospital, Vienna General Hospital, Favoriten Hospital, Penzing Hospital, Hietzing Hospital with Neurological Rehabilitation Centre Rosenhügel, Neunkirchen Regional Hospital, Waidhofen an der Thaya Regional Hospital, St. Radegund Private Clinic, Graz Süd-West II/Standort Süd Regional Hospital, Christian Doppler Clinic Salzburg, Hospital of the Brothers of Saint John of God Eisenstadt, Rankweil Regional Hospital).

Training usually only mandatory for nursing staff

In most institutions, de-escalation training is only mandatory for the nursing staff; in institutions of the Vienna Health Association (see Landstraße Hospital, Vienna General Hospital, Favoriten Hospital, Floridsdorf Hospital), in Lienz District Hospital in East Tyrol, in Wels-Grieskirchen Hospital in Upper Austria and in the Christian Doppler Clinic Salzburg also for the medical staff. A statement of opinion from Wels-Grieskirchen Hospital indicates that – upon recommendation of the NPM – de-escalation training will be mandatory for all employees in the psychiatric department in the future.

In Rankweil Regional Hospital in Vorarlberg, participation in de-escalation training (based on ProDeMa) is not mandatory for nursing or medical staff. Nevertheless, a high level of training was attained in both professional groups in the psychiatric departments. Furthermore, refresher courses are attended in large numbers.

Backlog in some institutions

There is no obligatory de-escalation training (or refresher courses) in several institutions in Tyrol either. Furthermore, there is an alarming training backlog for the nursing and, in particular, the medical staff (see Hall Regional Hospital, Innsbruck University Clinic for Psychiatry I).

A similar situation was observed in Pyhrn-Eisenwurzen Hospital, Standort Steyr (Upper Austria), where – according to the statement of opinion of the operator – a basic concept for future de-escalation training has been developed, however, not yet implemented due to the pandemic.

- ▶ *The implementation of standardised de-escalation concepts in all institutions (and, if need be, specific to the institution) is recommended.*
- ▶ *Training and refresher courses in de-escalating measures should be mandatory for all of the staff, at least for those professional groups that have patient contact every day, in order to provide targeted violence prevention and avoid the application of measures that restrict freedom.*

Staffing

Staff shortages have a very negative impact on the care situation. In particular, during the night, when a lot of the staff are on sick leave and at the weekends there is an understaffing problem in many hospitals. This causes stress for the staff and overload in acute cases. Sufficient staff is critical for effective de-escalation management and avoiding measures that restrict freedom.

Sufficient staff for effective de-escalation management

The NPM observed that the changes in the training of third-level qualified care staff effected by the amendment to the Federal Act on Healthcare and Nursing Professions 2016 had a negative impact on the psychiatric departments. The special basic training in the psychiatric health and nursing area was replaced by a generalist bachelor course at a university of applied sciences. Further training within five years of starting work is required for specialisation in the psychiatric health and nursing area.

Drawbacks of the training reform for health and nursing professionals

This special training entails absence which in turn causes staff shortages and increased fluctuation in the care team. The lack of specific skills means increased training needs for career starters. Aspects of psychiatry are no longer explicitly stipulated in the basic training, which is why the graduates cannot initially be adequately deployed upon completion of the same. The existing lack of suitably qualified care staff in the area of psychiatry and, in particular, the area of child and adolescent psychiatry is therefore further exacerbated.

The NPM thus holds the view that specialisation (child and youth care or psychiatric health and nursing) should be possible in the final year of training in order to set the relevant priorities during basic training.

In this way, for example, the curriculum of the University of Applied Sciences *FH Campus Wien* was adapted to the general requirements. In addition to specialised practical experience and target-group-specific classes, a course in "The care of psychiatric patients" is also offered in the 6th semester. Students can thus broaden their specialist knowledge during their basic training. In the Vienna Health Association, efforts are being made to facilitate the special training both in fulltime and extra-occupationally in a needs-based way. From 2022 the specialisation will be offered as a

supplemental academic course in order to heighten the attractiveness of the training.

However, due to the regulation on special training it is not possible to offer modular and thus even more flexible training. The *Laender* therefore recommended a modular form of training during which a basic module has to be taken when the students/graduates start working and specialisation up to the final examination before a board of examiners must be completed within five years.

Variable training alternatives

The NPM supports this recommendation and is generally in favour of making the special training in psychiatric health and care easier through variable, extra-occupational training alternatives in order to ensure adequate human resources (Penzing Hospital, Hietzing Hospital – Child and Adolescent Psychiatry, Hietzing Hospital – 2nd Psychiatric Department, Vienna General Hospital – Child and Adolescent Psychiatry, Landstraße Hospital).

Shortage of medical specialists

The NPM identified a shortage of medical specialists in several hospitals and institutions. For example, the lack of medical specialists in the Department of Psychiatry of Floridsdorf Hospital over a long period of time caused overload and increased fluctuation. The constantly rising demands for consulting services in the entire hospital could only be fulfilled at the expense of in-patient care. The Chief Executive Office of the City of Vienna explained that these staff shortages have since been solved.

The decentralised location makes the recruitment of medical staff at the Waidhofen an der Thaya Regional Hospital – Waldviertel centre for mental health difficult, which is why the staffing of doctors is inadequate and is not consistently guaranteed. The office of the regional government of Lower Austria assured the AOB that additional medical specialists should be recruited with new incentive systems after the reappointment of the head doctor position. In addition, the doctors undergoing training at the location should be retained.

There is also comparable understaffing of medical specialists in the psychiatric department of Donauregion Tulln Regional Hospital. This meant that due to the reassignment of staff to the COVID-19 wards there was almost constantly less staff available. In this case too, the office of the regional government of Lower Austria promised the NPM to take measures to recruit and retain medical staff.

In Klagenfurt Regional Hospital, the NPM repeatedly observed understaffing in the medical area, in particular at weekends. An alarm was triggered on the day of the visit, for example, meaning that the medical specialist on duty had to perform several medical tasks at the same time. There was only one medical specialist and one assistant doctor on duty for the entire department. A third night position is only filled by interns. The office of the regional government of Carinthia pointed out that doctors' positions that

become vacant are filled as quickly as possible, which in some cases fails due to availability.

Generally speaking, there are not enough medical experts for child and adolescent psychology which is why the NPM has been promoting further increasing the training ratio for a long time. The Federal Ministry of Social Affairs, Health, Care and Consumer Protection explained that the number of medical specialists in child and adolescent psychiatry could be roughly sextupled since the creation of the special subject in 2007, but that the special subject "Child and adolescent psychiatry and psychotherapeutic medicine" has been categorised a shortage subject until 2027. Moreover, a further moderate increase of the training ratio to 3:7 is also being discussed for the Regulation on Education and Training for Medical Practitioners 2015 currently being amended. In addition, a concept for making the shortage subjects in the care of children and adolescents with mental and psychosocial problems more attractive is being developed.

Increase in the training ratio in child and adolescent psychiatry necessary

The lack of care staff causes understaffing on night shift. A 1:1 care ratio for restrained patients, which should be striven for as a general rule, requires a lot of staff in particular. Such care could not be guaranteed at Neunkirchen Regional Hospital, Department of Psychiatry and Psychotherapeutic Medicine, because only two carers are on duty during the night. The same was observed in the psychiatric department of Kufstein District Hospital.

Care staff missing for the night shift

The situation is similar in Waidhofen an der Thaya Regional Hospital – Waldviertel centre for mental health because here too only two persons are on site. One person is in the central station, the other takes care of the entire ward (including administering medication, giving infusions etc.). For this reason, 1:1 care cannot be guaranteed. The office of the regional government of Lower Austria conceded that where there are staff shortages which can occur during the night shifts of the care staff between 6.30 p.m. and 7.00 a.m., direct 1:1 care of restrained patients cannot be consistently guaranteed. The office assured that the option of an additional night carer responsible for both wards would be examined.

Generally, the Health Agency of Lower Austria (*NÖ Landesgesundheitsagentur*) is trying in inter-divisional working groups and bodies and in cooperation with the departments of psychiatry to develop personnel marketing measures designed to sustainably guarantee adequate medical, nursing and therapeutic care. The deployment of carers on night shifts should be examined as well.

In the view of the NPM, it shall be highlighted that competence-driven staff deployment including expanding the treatment competence and areas of activity is critical for adequate staffing in a multi- and inter-professional team. Nevertheless, in addition to the availability of sufficient staff in the care area, comprehensive therapeutic, qualitative care of the patients is essential.

Multi-professional therapeutic teams ensure adequate care

In this context, the NPM repeatedly observed that the therapeutic service (experts in clinical psychology, social work, physiotherapy, occupational therapy and music therapy) in Landstraße Regional Hospital does not meet the requirements of the performance-oriented hospital financing model. Human resources are tight in the area of occupational therapy in particular, as the existing staff has to cover three wards and the day clinic. The announced evaluation of staffing in the therapeutic area has not produced any visible results or consequences to date.

- ▶ *The special training in psychiatric health and nursing care should be made easier through variable extra-occupational training options in order to guarantee sufficient human resources.*
- ▶ *Intensive recruitment efforts in particular outside of the major urban areas and, in general, to make the conditions more attractive are required to reduce the shortage of medical experts.*
- ▶ *In the area of child and adolescent psychiatry, an increase in the training ratio is of key importance to facilitate the expansion of in-patient capacity.*
- ▶ *The care staff shall be increased for night shifts in particular in order to guarantee the consistent adequate care of patients.*
- ▶ *In addition to the availability of sufficient staff in the care area, a comprehensive therapeutic range of services in a multi- and inter-professional team is essential for the qualitative care of patients.*

Interior design and atmosphere

De-escalation effect
of architectural
design

The architecture of institutions and facilities in the health care sector is critical to the recovery process and can promote or prevent violence. Living conditions that are characterised as cramped and restricted have a detrimental effect on physiological processes (increased duration to functional disorders) as well as affective (e.g. negative subjective mental state), cognitive (e.g. performance deficits) and social processes (e.g. social withdrawal). The feeling of helplessness and resulting assumption of a passive role by the patients should be avoided at all cost.

Positive effects can be achieved through corresponding design of the surroundings, through the active participation of the patients in the design (e.g. furniture) or through suitable general conditions (e.g. sunlight, room temperature, and lighting). Privacy and being treated with respect are also a basic condition for successful therapy; they form the basis of trust of the patients in the institution. Adequate architecture and therapeutically supportive surroundings increase the quality of work and the ability of the staff to cope.

The NPM observed that in many institutions and facilities the interior design and furnishing are sparse and unattractive. In old buildings in particular there is not enough space and there is nowhere for the patients to withdraw. Cramped conditions

For example, the structural conditions in the psychiatric department of Favoriten Hospital are not suitable for creating a de-escalating effect and having a positive influence on the atmosphere. There are only a few beds available for the large catchment area, which is also attributable to the rapid population growth in the Favoriten district. Population density there has increased by more than a quarter in the last 15 years. The minimum bed index of 0.3 beds per 1,000 citizens stipulated in the Austrian Health Care Structure Plan (*Österreichischer Strukturplan Gesundheit*) would currently mean that 63 (as opposed to the available 44) beds are necessary in order to provide adequate care for the approximate 210,000 citizens in the district (as per the beginning of 2021). During the COVID-19 pandemic, the already tense situation was exacerbated by the fact that the risk of infection is higher in a room with multiple beds and these had therefore to be closed. Favoriten Hospital

The architectural design of the entire University Clinic Vienna, Department of Psychiatry and Psychotherapy, is not modern and the space available is not sufficient. Patients are accommodated primarily in four-bed rooms. There are no dedicated acute rooms to which patients can be temporarily moved in crises. From a security perspective, it is critical that treatment rooms in which employees are together with potentially dangerous patients do not have a second door for possible escape, should this be necessary. University Clinic Vienna

The consequence of mixed-sex occupancy of four-bed rooms in the IMC ward 04C constitutes an unacceptable lack of private and personal space. There is neither a visiting room nor recreation or therapy rooms for patients in the ward. Furthermore, work and function rooms are missing, which is why temporary work areas were set up in the hallways. The extremely cramped conditions mean that the patients have nowhere to withdraw. At the University Clinic for Child and Adolescent Psychiatry, the relatively long distance from the area where patients are accommodated based on the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) to the open ward area complicates mixing the patients who are hospitalised with those who are not, as well as any therapeutically indicated change between the two.

The rooms in the psychiatric department of Penzing Hospital are very cramped meaning that the private sphere of the patients cannot be guaranteed. There are no recreation and therapy rooms. The rooms and hallways are bare and unattractive without colour or other visual stimuli. Until the planned move of the departments, measures for creating a Penzing Hospital

de-escalated atmosphere should therefore be taken. Change in the room design using subdued colours would make a great contribution.

Hietzing Hospital
improvement of the
atmosphere

The artificial lighting in the risk rooms of the psychiatric department of Hietzing Hospital is very bright which, together with the sparse furnishings and white walls, is why the atmosphere is hardly conducive to creating a positive atmosphere or relaxation. The walls of the waiting zone and the reception rooms for the patients admitted by the ambulance or police are painted in monotonous white. The rooms are only sparsely furnished, brightly lit and have poor acoustics with a long echo. They thus only to a limited extent contribute to calming patients and reducing stress, thereby promoting escalation in tense situations. In the interest of de-escalation and the prevention of dangerous situations, at least measures for improved wall design, the acoustics as well as the flexible adjustment of the lighting (dimmable light with variable light temperature) should be taken.

Waldviertler Center
for Mental Health

Some of the patients in Waidhofen an der Thaya Regional Hospital – Waldviertel centre for mental health are accommodated in four-bed rooms, which is no longer in line with contemporary interior design. The cramped conditions mean too few recreation areas, which increases the risk of infection in pandemic times in particular. Risk is also increased by the circumstance that crisis rooms are not always free, which is why patients have to change room several times.

Graz Süd-West/
Standort Süd
Regional Hospital

In the Department of Psychiatry and Psychotherapy and in the Department of Geriatric Psychiatry and Geriatric Psychotherapy at Graz Süd-West/ Standort Süd Regional Hospital, the conditions are cramped as there are only four-bed rooms available to the patients. Due to the lack of places in which to withdraw, extremely stressful situations can occur in relation to the patients' private and personal space, or this is not guaranteed.

Kufstein District
Hospital

The NPM observed a similar situation in the psychiatric department of Kufstein District Hospital where the potential for escalation is high due to cramped conditions, in particular a lack of opportunities to go outside.

Klagenfurt Regional
Hospital

The structural situation in the psychiatric department of Klagenfurt Regional Hospital is outdated, which is why a continuous, demand- and needs-based care and support of the patients is not possible. Another problem is that in emergency situations the staff has to rush from several buildings and open several locks.

Video surveillance

In the two four-bed rooms in the admission ward, all patients are under permanent unrestricted video surveillance without pixeling. This also affects patients for whom video surveillance is not required and whose personal rights in particular in relation to the protection of their private space are unreasonably interfered with. The planned new building should therefore be implemented as quickly as possible.

Some of the four-bed rooms in the psychiatric department of Lienz District Hospital even accommodate five patients. These multi-bed rooms do not meet the current psychiatric standards. The serious compromise of the patients' private space makes therapy more difficult. Occupancy of the four-bed rooms should thus be reduced or divided up.

Lienz District
Hospital

The structural situation in the child and adolescent psychiatric department of Rankweil Regional Hospital is problematic, as there is not enough room. Furthermore, the separate location of the children's ward causes staff shortages because help cannot be requested during the night. The staff is not allowed to leave the hospital premises on night shift, which puts the quality of care at risk.

Rankweil Regional
Hospital

Furthermore, adolescents are repeatedly admitted to the adult in-patient area because there is insufficient capacity. The separation rule between adults and adolescents emphasised in the court rulings is thus violated, as the special needs of the children and youths can only be properly accommodated if they are in separate areas. The inward opening doors in the acute area, where self-harming patients needing special protection are housed, pose a considerable potential risk. These doors can be barricaded from the inside, which can prevent access by the staff. This contradicts the purpose of the hospitalisation because there is increased risk for the patients in need of protection. The doors of the acute rooms in the youth psychiatry area should thus be adapted such that they open outward or at least cannot be blocked from the inside. The planned conversion measures in the department shall thus be implemented quickly.

Separation rule
violated

In hospitals in general, barrier-free orientation aids for persons with impairments should be guaranteed in order to avoid "wandering around" and the associated risks. In addition to "short" distances in the hospital buildings, coloured guidance systems and clearly recognisable symbols are necessary. However, for the most effective barrier-free access, handrails, barrier-free information tables and floor (walking) indicators for persons with poor sight are required.

Guidance systems
necessary for persons
with impairments

In this context, the NPM found that the marking on the doors in the psychiatric department of University Hospital Tulln is worthy of praise in principle but that the symbols (vegetables, fruit) are complicated and should be designed such that persons with cognitive impairments in particular can recognise them more easily.

University Hospital
Tulln

On a monitoring visit to the Department of Psychiatry at Hietzing Hospital with Neurological Rehabilitation Centre Rosenhügel, the NPM identified that an effective guidance system is necessary in pavilion 1 in order to guarantee smooth work processes and be able to bring the patients to the respective wards without diversions and delays particularly in acute situations.

Hietzing Hospital

| | |
|---|---|
| Enable access to the outside | Unhindered access to the outside (green areas) and regular walks can contribute to a “calming”, de-escalating atmosphere in everyday hospital life. With this in mind, Section 34a of the Hospitalisation of Mentally Ill Persons Act expressly stipulates access to the outside as a patient’s right. According to the rulings of the Supreme Court, a roofed terrace closed on all sides for example cannot replace being “outside in the fresh air”. |
| Graz Süd-West/ Standort Süd Regional Hospital | The NPM observed that the protected area of the Centre for Addiction Medicine, Graz Süd-West/Standort Süd Regional Hospital, only has a small terrace and no direct access to the garden and park area. |
| Departments in Upper Austria | There is also no access to the garden in the psychiatric department of the Kepler University Clinic Linz, for the closed ward of the psychiatric department of St. Joseph’s Hospital, Braunau, and for the Department of Psychiatry and Psychotherapy B of Hall Regional Hospital. |

- ▶ ***Multi-bed rooms shall be replaced by single and twin rooms in order to ensure adequate care in a modern therapeutic setting.***
- ▶ ***Care shall be taken to ensure that the patients have sufficient opportunities to withdraw.***
- ▶ ***Care for adolescents together with adults contradicts the separation rule emphasised in case law.***
- ▶ ***When designing the rooms, a de-escalating atmosphere should be promoted through the use of a suitable lighting concept and subdued colours.***
- ▶ ***As orientation aids for persons with impairments, coloured and tactile guidance systems with clearly recognisable symbols as well as handrails and barrier-free information tables are required to avoid dangerous situations.***
- ▶ ***Unhindered regular access to the outside shall be guaranteed for the patients, whereby small and cramped terraces do not suffice.***

Measures that restrict freedom

Conditions and necessary surroundings

Measures that restrict freedom are only allowed if they serve to avert a grave danger, that is, a serious and considerable risk to the person’s life or health or that of third parties, or if they are for medical treatment. They can therefore not be justified with organisational, staff- or business-related reasons. From a human rights perspective, restraints are considered the measures that restrict freedom the most. They are included in the scope of the ban on torture or the inhuman or degrading treatment of persons when they are applied unlawfully or when they cause pain or physical injury. The duration of restraints shall thus be reduced to the necessary minimum.

In accordance with the standards defined by the CPT, care shall be taken that any restraint is not perceived as degrading and shall only be applied in rooms specially designated for this purpose. These places should be

safe, with appropriate lighting and heating and should guarantee a calming atmosphere. In no way should restrained patients be exposed to the gaze of others.

Every restraint shall be authorised by or at least be presented to a doctor for authorisation without delay. The restraint shall be stopped immediately if an acute situation that results in a restraint no longer persists. If limbs are strapped down with belts or straps, a trained employee shall be permanently in attendance in order to be able to provide direct therapeutic help.

The commissions confirmed that restraints are performed by qualified and adequately trained staff in the vast majority of cases, in particular with respect to the belt system used and de-escalation training (in 73% of the visits). During the restraints, the patients are informed 100% about the planned steps, the reasons for the restraint and the conditions for terminating the same.

Positive aspects

However, the NPM found that the application of restraints does not comply with the critical human rights standards in many hospitals due to the cramped conditions.

For example, restraints are also applied in two-bed rooms in the 2nd Psychiatric Department of Hietzing Hospital, sometimes in the presence of fellow patients. At the time of the visit by Commission 4, only one of these rooms was occupied with a non-restrained patient whereby the restraining material was easily visible to the patient, that is, she had to lie on it.

Restraints in the presence of others

In Villach Regional Hospital too, it was observed that restraints (fixation straps) remained attached to the bed until the hospitalisation was over. However, only a small number of the patients were actually restrained during their stay and repeated restraints with belts are not usual.

Fixation straps remain on beds for all to see

The NPM repeatedly observed that restraints are applied in the hallways due to the lack of a suitable room or insufficient capacity (Waidhofen an der Thaya Regional Hospital, University Hospital Graz, Hall Regional Hospital – Psychiatric Department A1). In Kufstein District Hospital too, there is no suitable room for restraints meaning that fellow patients have to be moved to the recreation room during the same. There is no single room available as a restraint room at Rankweil Regional Hospital, which is why suitable rooms for restraints shall be created as part of the planned new building.

Lack of suitable rooms

1:1 care can be preventive or have a calming and de-escalating effect on agitated patients when applying restraints. However, the NPM observed that consistent 1:1 care of patients in stressful situations cannot be guaranteed in several hospitals due to staff shortages. The reason for not providing 1:1 care was that some patients prefer to remain alone and feel their privacy is violated by the permanent presence of another person. This

Lack of 1:1 care

is taken into consideration, as in such cases continuous 1:1 care would be counterproductive from a medical perspective (Penzing Hospital, Hietzing Hospital – 2nd Psychiatric Department, Waidhofen an der Thaya Regional Hospital – Waldviertel centre for mental health, Mostviertel Amstetten-Mauer Regional Hospital – Psychiatric Department).

Follow-up meetings often not standardised

Follow-up meetings after aggressive incidents and coercive measures should, depending on the condition of the mentally ill person, take place promptly and a few days after the measure, if possible, together with the care contact person and responsible therapists. In so doing, special attention should be given to mental stress and the symptoms of a possible post-traumatic stress disorder. The content of the meeting and agreements made should be documented in the patient's file and integrated in the treatment plan, including re-admissions. Fellow patients who are strongly affected by the incident should be offered individual meetings. Follow-up meetings are offered as a general rule in 75% of the visited hospitals. However, a standardised guideline is used in just 22% of the hospitals.

The NPM observed that in several hospitals no structured follow-up meetings for reflection after coercive measures are held (Psychiatric Department – Baden Regional Hospital, Department of Geriatric Psychiatry and Geriatric Psychotherapy – Centre for Addiction Medicine, Graz Süd-West/Standort Süd Regional Hospital, Department of Psychiatry and Psychotherapeutic Medicine – Wels-Grieskirchen Hospital, Psychiatry – Steyr Regional Hospital). The low number of follow-up meetings is partly attributable to the lack of interest on the part of the patients, discharge after the end of the coercive measures and the patients' limited ability to communicate.

However, the NPM argues in favour of motivating the patients to take part in a follow-up meeting despite these difficulties. Exceptions are only possible for patients with severe cognitive impairments, for example in geriatric psychiatry.

Clocks for temporal orientation missing

During application of measures that restrict freedom, a clock should be available for temporal orientation purposes. The S3 Guidelines "Avoiding Coercion: Prevention and Therapy of Aggressive Behaviour in Adults" (*"Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen"*) also emphasise that the patients should be able to see a clock at all times during a restraint. The basis for this is a study according to which mentally ill persons perceive the loss of a sense of time in connection with measures that restrict freedom as very stressful. This is why the duration of a measure is often greatly overestimated coupled with the fear that the measure could last "forever".

Only in 16% of the visited hospitals do the restrained patients have some temporal orientation, that is, they can see a clock at all times. However, the recommendation by the NPM to install clocks was met in most cases

(e.g. Kepler University Clinic Linz, Wels-Grieskirchen Hospital, Pyhrn-Eisenwurzen Hospital – Standort Steyr, Floridsdorf Hospital, Vienna General Hospital, Graz Süd-West/Standort Süd Regional Hospital – Geriatric Psychiatry, amongst others).

As a general rule, restraint is only the ultima ratio when all other de-escalation measures fail and no other solution to the problem can be found. The proper application of restraint shall be documented in a transparent manner by providing the type and duration and shall comply with the principle of proportionality. Any complications – in particular those attributable to the lack of continuous monitoring – bear a very high liability risk in any case. The risk of injury and strangulation during restraints at less than four points, which the manufacturers of the materials point out under safety aspects, can be effectively countered with continuous monitoring. As 3-point restraints are only allowed to be applied lege artis diagonally, the documentation shall clearly show whether the left or right foot and the right or the left hand was restrained.

Restraints shall be documented in a transparent manner

- ▶ *Restraints shall be applied in a special room for that purpose without exception.*
- ▶ *Restraints in the hallway or in the presence of fellow patients are serious violations of the patient's personal and private space, and shall not be applied.*
- ▶ *Restraining material shall be removed from the beds immediately after the end of a measure that restricts freedom.*
- ▶ *1:1 care is both preventive and of key importance for de-escalation during application of a measure that restricts freedom. Not providing this cannot be justified with a lack of human resources.*
- ▶ *Follow-up meetings after measures that restrict freedom shall be offered to the patients in a structured form, which requires guidelines and the emphatic motivation of those affected.*
- ▶ *During measures that restrict freedom, patients shall be provided with a clock because the loss of a sense of time for mentally ill persons with respect to the duration of a measure that restricts freedom can be perceived as very stressful.*
- ▶ *The proper application of measures that restrict freedom shall be documented in a transparent manner.*

Confinement in locked rooms

Isolation is the term used to describe placing the patient in a closed room free of irritants as much as possible that is furnished in such a way as to harbour lowest possible injury potential (a mattress, a cover, liquid and perhaps a toilet). Care shall be taken in advance that no dangerous objects are left in the room with the patients. Monitoring is usually made through a viewing window or camera at close intervals.

In child and adolescent psychiatry, a so-called time-out is deployed as a less interfering alternative, in which the patients are asked to withdraw to a room or irritant-free crisis room for a limited period of time. This room is usually not locked. The isolation should generally be kept as short as possible and varies in practice between a few minutes and several hours.

Confinement in locked rooms as alternative

Confinement in locked rooms is perceived by those affected as less stressful compared to mechanical restraints and should thus be used more frequently in psychiatric departments as an alternative to mechanical restraints. A study by the Landstraße Hospital, in which patients, doctors and nursing staff were interviewed, showed that the participants experienced feelings such as fear, anger and helplessness more intensely during mechanical restraints than in isolation. In contrast, isolation induced more feelings of calm, security and wellbeing. All in all, the mechanical restraint is a greater mental strain than isolation. However, in the event of self-harm, most of the doctors tend towards a mechanical restraint.

The NPM observed that confinement in locked rooms is practiced in 44% of the visited hospitals. Furthermore, 56% of the rooms used for this purpose are not adequate to guarantee as safe, gentle and effective a confinement as possible. The human, spatial and material resources are generally not sufficient to ensure guidance and support as well as monitoring and control of the patients during a confinement in locked rooms.

- ▶ ***Confinement in locked rooms is perceived by those affected as less stressful compared to mechanical restraints and should thus be used more frequently in psychiatric departments.***

Treatment agreements

Treatment agreements can improve the trustful cooperation between mentally ill persons and those treating them whereby coercive measures in the context of re-admissions can possibly be prevented, shortened or made more tolerable. Mentally ill persons with coercive measures in their patient history should be actively offered a treatment agreement.

Widespread lack of treatment agreements

However, only in 25% of the visited hospitals, patients who have experienced coercive measures are offered the joint preparation of a treatment agreement or a treatment plan for any further involuntary in-patient care. A template is used in just 2% of the hospitals.

On the positive side, the Health Agency of Lower Austria announced to the NPM that it would create a standard template for a treatment plan and for a treatment agreement as well as instructions for how to use the same (Mostviertel Amstetten-Mauer Regional Hospital – Adult Psychiatry, Mistelbach-Gänserndorf Regional Hospital – Socio-psychiatric Day Clinic).

- ▶ ***Treatment agreements are an important instrument in shortening or avoiding repeated in-patient admissions. They should be concluded with patients using a template.***

Documenting and evaluating aggressive events

In order to prevent violent incidents and the use of coercive measures in health care institutions in as much as possible (and in particular in psychiatric hospitals and departments), the specific documentation and subsequent evaluation of aggressive events is required. This should help in acquiring knowledge for suitable prevention measures in the future.

Specific evaluation
for future measures

A special instrument for documenting aggressive events (so-called EvA logs) has stood the test in many hospitals. EvA was developed by H. Stefan, G. Dorfmeister and I. Stefan in 2012. It was taken over by NAGS Austria and NAGS Switzerland in 2013, further developed and adapted to the needs of health institutions in the German-speaking region. There was a further adaptation in 2019.

In the majority of the visited hospitals and departments, aggressive events are documented by recording the time, place, person and condition of the aggressor, the main reasons for the aggressive behaviour and the type and severity of the aggression. If structured incident documentation (e.g. EvA) is not used, the incident is entered at least in the patient history.

Documentation should
be standardised

A regular statistical evaluation of the previously documented incidents is carried out in only about half of the visited hospitals. However, in most cases there is clarification and follow-up of aggressive events on an individual level (e.g. in the form of support programmes, supervision and/or specific therapeutic intervention).

Regular statistical
evaluation
recommended

With regard to the Waidhofen an der Thaya Regional Hospital –Waldviertel centre for mental health, the NPM recommended that not only care staff but also the doctors should participate in the documentation of aggressive events, and that the evaluation of the EvA logs be systematised and carried out at regular intervals in order to be able to implement improvement measures as quickly as possible. According to feedback from the Health Agency of Lower Austria, there are plans to involve doctors and therapists in the documentation process in the future and to allocate the evaluation of the data to one centralised place in the hospital (e.g. the Quality Management Department).

On a monitoring visit to De La Tour Hospital – Treatment Centre for Addiction-related Diseases, the NPM observed that aggressive events are not currently documented in a structured way but only in the form of “memory logs”. The NPM recommended standardising the documentation (for example with the help of EvA logs).

- ▶ *The documentation of aggressive events in the form of structured incident documentation (e.g. EvA logs) is recommended.*
- ▶ *In addition, there should be a regular statistical evaluation of the documented aggressive events in order to optimise the evaluation options and quickly implement improvement measures.*

2.3 Child and youth welfare facilities

Introduction

Staff performs extraordinary work

In 2021 the NPM commissions visited 112 child and youth welfare facilities. It can be stated at the outset that in most cases the socio-pedagogical staff was perceived as committed and did their best to care for the children despite many pandemic-related difficulties. Contact restrictions and lockdowns constantly changed the minors' everyday life and restricted their social participation.

Minors had the highest incidences of all population groups during the fourth wave and were thus often affected by infection, isolation or quarantine. Many studies indicate a deterioration in the wellbeing of children and adolescents. There was a sharp increase in mental health issues requiring treatment, anxiety and depression. However, the low threshold treatment alternatives that were already in short supply before the pandemic were not increased. The consequence is untenable waiting times for counselling and therapy programmes. Staff in facilities had to work to their limits in order to support minors in critical phases and keep operations running. However, even they – despite their efforts – cannot compensate structural care deficits.

2.3.1 New monitoring priority „Training and further education of socio-pedagogical staff“

Difficult staff situation

The NPM commissions observed on their monitoring visits in socio-pedagogical facilities that staff terminated their employment contracts because they felt they could no longer cope with the everyday demands of their job. The pandemic worsened the situation, but it was already necessary to increase human resources as well as training and further education before that. It is becoming increasingly difficult for operators to recruit suitable staff. The working conditions, work atmosphere and collegial spirit inside the institution can alleviate work overload. A team that is characterised by a trusting atmosphere and openness and sticks together in times of crisis is also considered a protective factor. Professional training and further education programmes offer increased protection against burnout. They can ensure that with increasing work experience and growth in personal resources the concrete challenges faced in shared accommodation can be met.

This is the reason why the NPM took up the topic of “training and further education of socio-pedagogical staff” in 2020 and initiated preparatory work for a new monitoring priority. In an internal process lasting several months and in which experts from all of the commissions and the Human Rights Advisory Council were integrated a comprehensive questionnaire was

developed. Both the supervisory authorities and the umbrella associations were informed about the topics the NPM would address starting early 2021 and which preventive goals are associated with the information gathered from the interviews.

Since 1 April 2021 the commissions have been examining the level of training and qualifications of the employees on all monitoring visits to child and youth welfare facilities. One of the focus points is the initial training for new hires. The visits document how the integration in existing teams functions and when new employees are deployed autonomously on day and night shift. One topic addresses the roster planning and on-call duty during the night, at weekends and in the holidays as well as flexible employees when staff levels are low. A further subject that is examined is whether the fluctuation in the facility is within the normal range and which programmes are available for reflection and support.

Even though the monitoring priority is still running until mid-2022, it is already evident that many of the planned further education measures have not taken place in the past two years due to the COVID-19 pandemic. Some operators have changed to internal training, which is one way of temporarily compensating for deficits. It is important that the operators ensure that the backlog in further education is cleared as quickly as possible.

Further education programmes postponed due to the pandemic

Another problem that is evident from the monitoring priority and also associated with the pandemic is the shortening of the initial training phase for new employees. The considerable amount of sick leave and quarantine-related absence means that the initial training concepts are not implemented as planned. This is alarming, as work overload perceived at the beginning of a career fosters leaving the profession prematurely.

Shortened initial training with understaffing

FICE Austria (International Federation of Educative Communities) also started a project in 2021 to train the staff in residential child and youth welfare in the implementation of the quality standards developed in 2019. This project underlies the hypothesis shared by the NPM that the different basic training courses do not (no longer) provide the socio-pedagogical staff with adequate skills required for the challenging work in residential facilities. Efforts should also be made to examine whether opening up to other professional groups can counter the acute lack of personnel in order to be able to better solve recruitment problems in isolated regions in particular. FICE Austria has set itself the goal of developing its own curriculum for the further education programme for "Quality Child Care Expert". The necessary basis as well as the approach, course content, teaching formats and learning methods are being developed by a practical group and further developed by a sounding board. A working group composed of representatives from the further education facilities is working on marketing topics and the implementation of the further

Basic training is not sufficient

education programme. The NPM supports the project: an employee and a commission member are contributing their practical experience from the NPM monitoring priority on the sounding board. It is important to the NPM to trigger innovation whereby cooperation with further education facilities can be a contribution.

2.3.2 Summary of individual observations

Decrease in third-party care

According to the current child and youth welfare statistics 2020, the number of children and adolescents in non-residential care has continued to rise compared to the previous year. The decreasing trend of children and adolescents in full residential care has also continued as before. A total of 12,678 children and adolescents were in care in Austria in 2020, of whom 7,762 were in socio-pedagogical facilities. As in previous years, the City of Vienna still has the highest proportion of children per 1,000 citizens under the age of 18 in care at 12.3%. For the first time since the child and youth welfare statistics were recorded, Upper Austria is in last place with 5.9%.

Furthe expansion of non-residential care in Vienna necessary

The NPM urgently recommends Vienna to expand the early help programmes in order to help families with special risk factors and prevent out-of-home care. Non-residential child and youth facilities shall also be expanded. On monitoring visits to crisis centres of the City of Vienna, Commissions 4 and 5 observed that some minors could not be discharged to go home because follow-up non-residential child and youth facilities were not immediately available. Stays in already overcrowded crisis centres are thus extended unnecessarily. One of the city crisis centres thus changed to family outreach support during the lockdown in order to strengthen and prepare them for the pending return of their children. At the same time, the recommendation of the NPM still holds that professional family outreach work together with simultaneous out-of-home care should be installed in families where this seems promising. The family system can thus be supported in soon taking care of children and adolescents themselves without endangering the minors' wellbeing.

Lack of privacy

Generally speaking, many operators reacted quickly to recommendations and criticism from the commissions. Door locking systems in shared accommodation were repeatedly assessed as problematic because the minors were either unable to lock their rooms from the inside or they were not able to enter them from the outside without help. The NPM recommended the installation of new locking systems. In some shared accommodations the rooms were lockable but the children were not given keys, as they often lose them. Chip cards were recommended in this case. The facilities had also to be frequently reminded of the need for lockable containers and safes for personal belongings.

Deficits storage of medication

Appropriate practices in the handling of medication are not a matter of course in the facilities. Valid prescriptions from medical specialists were

frequently missing for psychotropic medication or the administered dose did not comply with the prescription. Many shared accommodations did not store the medication in a lockable cupboard. Storage in a lockable office, however, does not suffice in order to be absolutely certain that minors do not have access to the medicines. Medication cupboards were found in which the key was inserted but not locked. Medicines are sensitive products. External influences such as temperature, light and humidity, but also improper storage can affect their quality and effect. In this context, there was criticism that in a shared accommodation antipsychotics were simply kept in a paper bag; in several cases it was not clear to whom they are to be administered. There were deficits with regard to the documentation. Medication dispensing lists were not fully signed or were not available. Information on the date of administration of medication including PRN medication was missing. The criticised deficits were rectified.

The commissions saw a need for improvement in the daily documentation for all minors present. At least one entry per child per day is required to adequately document developmental progress and make it transparent. This is a pivotal task in social pedagogy. Some facilities still used Word files for their documentation, which can be subsequently changed and supplemented. As a systematic and regular evaluation is not possible with such documentation, a change to another documentation system was recommended.

Documentation inadequate

During the monitoring visits, it was observed that participatory instruments such as children's teams and house councils are installed in almost all facilities but that the intervals between the meetings became longer over time. The explanation given for this was that the minors no longer have interest in this and see the meetings as a bothersome compulsory exercise. In one shared accommodation the children's team meetings were postponed for several months because of the COVID-19 pandemic. In the interest of actual participation, it is necessary to allow children's teams to meet regularly and to organise them such that children can perceive codetermination as an active instrument of participation and contribution. Only when the minors can experience that their voices are heard and each one of them is an important part of the group do they learn to develop a culture of discussion that has a positive impact on their social competence. The children's team meetings should be documented. The NPM requested the operators to organise the children's teams such that the minors can perceive them as a positive instrument of their participation in the group activities, and to hold the meetings regularly once again.

Participation in theory but not in practice

The quality standards developed by FICE Austria in 2019 in cooperation with various organisations for the purpose of harmonising the quality in residential child and youth care are known to only a few facilities. The commissions thus recommended that the operators familiarise the facilities with the same.

Quality standards not know

| | |
|---------------------------------------|---|
| Risk of injury through carelessness | Several points of criticism by the commissions were related to the avoidable risk of injury. In one facility, there was an urgent need for action because glass in the entrances was splintered without being repaired. The risk of injury was observed in planks of wood lying around in the garden or in unlocked stores with sharp kitchen knives. In other cases, damage to furniture caused by impulsive outbursts by children and adolescents had not been repaired. Furthermore, broken doors and shoeboxes as well as mould in the shared accommodation were criticised. The cleanliness in some facilities also left a lot to be desired. In addition, commissions recommended a more homely redesign where hallways and living areas open to all were not decorated and the atmosphere was not cosy. |
| Massive curtailment of privacy | In one shared accommodation, an adolescent with epilepsy was accompanied by a caregiver around the clock. The caregiver even slept in the room with him, which was a massive curtailment of his privacy. On the recommendation of the NPM, the caregiver was moved to her own room and a detection mat as well as an armband that triggers an alarm in emergencies acquired. |
| Recommendations implemented | Recommendations that were made at the beginning of the COVID-19 pandemic in order not to stress minors unnecessarily were complied with in most cases. During the first lockdown, an entire external residential group in Lower Austria had to move into the main building in order to be able to accommodate children and adolescents who had tested positive in the shared accommodation. This did not happen any more in the following lockdowns. Partly residential groups were no longer closed for preventive reasons. The legal guardians could however decide themselves whether they wanted to take care of their child at home some or all of the time. Whilst weekend home trips for the minors were completely cancelled in the first lockdown in 2020, this was subsequently handled differently in the Laender due to criticism by the NPM. However, the trips home were only possible if the parents observed the prescribed hygiene rules and presented the required tests. |
| High vaccination coverage among staff | On the positive side, the socio-pedagogical staff was prioritised for vaccination in early 2021 despite persisting tight vaccine reserves, and the vaccination coverage in this professional group is high. The query from the Land Upper Austria to the Chamber of Labour in relation to working time models in facilities with more than 24 hours effected clarification. The Chamber of Labour confirmed the stance of the NPM that such working times contradict the collective bargaining agreement of the Austrian social and health care companies (Sozialwirtschaft Österreich) and are thus not permissible. |

2.3.3 The facility as a safe space

Children and adolescents in out-of-home care come from very stressful family backgrounds and thus suffer from emotional distress and traumatisation. In order to support them in their development in the best possible way, they shall be given the opportunity to relax in their home in addition to protection from boundary violations, attacks and violence.

Emotionally distressed and traumatized children need protection

Many aspects have to be considered when providing minors a safe place. This begins with the resource-oriented support planning. It is crucial that a child is not placed in a residential facility in which they do not fit into the group in terms of age or level of development. From the perspective of the young person, it is of key importance that they are actively integrated in the process of being admitted to and staying in the facility. Misplacements can greatly endanger both the safety of the minors living together and their development opportunities. The commissions observed again several times in 2021 that decisions were not always taken in the best interests of the minors.

Misplacements shall be avoided

Only in the course of the care process can it become evident that the behaviour of a minor has a considerable negative impact on others. The search for a suitable care place then usually involves much effort and takes a long time accordingly. In a facility in Carinthia, Commission 3 encountered an adolescent boy who already had a criminal record and incited others to commit illegal acts. Several housemates were so frightened that they wanted to move to another shared accommodation, as living together under these conditions had become intolerable for them. It is evident that socio-pedagogical shared accommodations can only assume tasks in the case of "difficult clients" with moderate to high psycho-social impairments and psychiatric diagnoses when additional specific resources are deployed.

Frightened housemates

In some *Laender* there is therefore the possibility to apply for approval of a socio-therapeutic place. A (quantitatively and qualitatively) enhanced care programme with differentiated content is stipulated for these residential places. The costs for additional staff are covered. However, in practice it takes a very long time until such a place is approved, which means that necessary therapeutic measures are delayed.

Approval takes too long

In a shared accommodation in Lower Austria, there was only one such socio-therapeutic place although in the view of Commission 6 several children had increased needs in daily care. In another Lower Austrian facility, the approval for a socio-therapeutic place was not extended, as the regional government preferred a move to another facility. As such a move would have been too stressful for the boy in the view of his therapist and the department of child and adolescent psychiatry, the district administrative authority and the facility decided against this. The adolescent remained in his familiar surroundings; however, the shared accommodation did not

Socio-therapeutic care not approved

receive a higher daily allowance. The difference in cost is financed from donations.

Urgent measure for protection required

Commission 6 observed in a further facility in Lower Austria that there were frequent violent incidents in the group perpetrated by three youths. They were, in addition, also often missing and there had already been charges filed against them for drug abuse. As this conduct remained without consequences, a negative role model for the younger children was feared. Even though the commission had criticised the pedagogical care on their previous visit, the situation had not changed; the ambulance and police operations had not become less frequent. It was evident from the reports on these operations that the youths were perceived as threatening by the younger children. This was also reflected in the daily documentation. The mixed age structure in the group was considered problematic. Commission 6 came to the conclusion that measures for the protection of all residents had to be taken urgently. At the same time, the police contacted the NPM and recommended the relocation of a girl.

Concept for relief refused despite violent incidents

In another Lower Austrian shared accommodation, the composition of the group was of concern to Commission 6. Several minors in need of care who required regular in-patient child psychiatric treatment live in this shared accommodation. It appeared doubtful that this group would receive the suitable care in a socio-pedagogical facility. In addition, frequent aggressive outbursts, violence and police operations made the care for the rest of the group who suffered under these conditions and had no peace difficult. Some of the children made an intimidated and frightened impression on the commission. On recommendation of the department of child and adolescent psychiatry and psychotherapy to separate the minors at least during the day, the shared accommodation developed an adapted care concept. According to this, children with a care level should be taken care of in a daily structured group in order to reduce the stress for the others. The *Land* Lower Austria rejected this concept and refused to bear the additional cost.

New concept not discussed with the children

On a previous monitoring visit also in Lower Austria, a risk to a child's welfare was observed due to sexual border violations and massive threats and even stalking by a boy who was almost of age. On the follow-up visit, the boy had moved out and the sex education concept had been revised due to the incidents. However, the contents of the new concept had not been discussed with the children and adolescents living in the shared accommodation. There were still no rules for dealing with sexual relations among adolescents cared for together. The NPM recommended further improvement and involvement of the minors in the care of the facility.

An adolescent girl in a shared accommodation in Vienna was subjected to repeated sexual assaults and massive threats by another male adolescent. Even though the adolescent threatened to torture the girl and kill everyone, he remained in the facility and was only moved to a training apartment in the building. This, however, provided no additional protection from continued attacks. The commission noticed the strong ambivalence displayed by the care staff. There was a stable relationship with the adolescent boy who had been living in the facility for four years, whilst the team had a sparse relationship with the girl who had only recently moved into the shared accommodation. The NPM criticised that there was no adequate violence protection concept, which is necessary for adolescents with a serious complex of problems.

Sexual assaults and threats

There was regular massive escalation in another shared accommodation in Vienna. It was a particularly shattering experience for the residents to witness a girl being led away in handcuffs by police officers after she could not be calmed down. Despite intensive efforts, it was not possible for the facility to find a school place or employment for this girl and another resident. The two adolescents thus spent the whole day in the shared accommodation without any fixed daily structure. The commission considered it urgently necessary to create a daily structure for them.

Massive escalation

In Tyrol, Commission 1 had already observed on a previous monitoring visit in 2017 that there had been sexual assaults among the adolescents. Based on confidentially held interviews and the documentation collected on the visit in 2021, the commission observed that there had again been several sexual assaults on a young female resident. This adolescent girl was then moved to a girls' shared accommodation.

Change of shared accommodation after sexual assaults

Commission 3 learned of violence between residents in a Styrian shared accommodation. All of the children and adolescents interviewed who reported of physical violence claimed they did not feel comfortable in the shared accommodation and had the feeling of being under threat in everyday life. The NPM urgently recommended preventive measures. Besides, protection concepts should be developed and implemented in order to guarantee the safety and the sense of security of the children and adolescents.

Preventive measures against physical violence

The Department of Child and Youth Welfare of Upper Austria initiated a project for developing a guideline for facility-specific protection concepts. Experts from different professional groups are involved in this project. The guideline should support facilities in developing their own protection concepts that are adapted to the peculiarities of their group. To this end, the team shall address possible risks for the minors in their care and define measures to counter these risks. The NPM is contributing its expertise to the project.

Guidelines for protection concepts

- ▶ *As operators of child and youth welfare facilities and guarantors of a safe, non-violent, supportive environment for all children in out-of-home care, the Laender are called on to create the conditions for providing the best possible social, emotional, mental and intellectual support and de facto guaranteeing access to health care including psychosocial services and therapy programmes within the full residential care framework.*
- ▶ *Children and adolescents in out-of-home care shall be fully protected from violence in every form.*
- ▶ *A non-violent attitude and communication of all experts involved in the out-of-home process is the central condition for safeguarding the children's welfare. Facility-specific protection concepts shall be developed with the staff and the minors.*
- ▶ *The staff shall be given the best possible training in order to be able to implement such concepts in the team. The Laender as operators of child and youth welfare facilities shall make the necessary resources available.*

2.3.4 Lack of socio-therapeutic places

Too few socio-therapeutic places

The lack of care places for children and adolescents who cannot be adequately taken care of or not at all in normal group life has been a major problem for years. The NPM continues to highlight this deficit and reminds the *Laender* as supervisory authorities of their obligation to provide a remedy here. On monitoring visits to child and adolescent psychiatric institutions, crisis centres but also to socio-pedagogical shared residential groups, the NPM commissions repeatedly observed that the situation has not improved but worsened.

In Lower Austria in particular, the problems have multiplied considerably due to the introduction of the so-called standard cost model. The amendment of the Lower Austrian Child and Youth Welfare Facilities Regulation (*Kinder- und Jugendhilfeinrichtungsverordnung*) means a transfer to caring for children and adolescents with special needs in socially inclusive residential groups. At the same time, most of the socio-therapeutical groups have been abandoned and thus the available socio-therapeutic places reduced to a minimum. There are no socio-psychiatric residential places for children and adolescents with socio-psychiatric care needs in Lower Austria. In a statement of opinion on the review procedure, the NPM expressly warned of the consequences; this fell on deaf ears.

Groups with nine minors unsuitable for some

Even if the inclusive concept is undoubtedly positive, it was clear that some children and adolescents cannot be cared for in groups where nine minors live. They need considerably smaller groups and more individual support. For some, only groups of four work. There are still such groups in Lower Austria but far too few. The "usual structures" cannot accommodate the needs of severely traumatised minors, and at the same time, these are still at a greater risk of failure in pedagogical education and care facilities due

to the unavoidable overload of the professionals working there. In order to actively and effectively counter the trauma-related dynamics of the girls and boys in care who suffer from the consequences of existentially threatening violence and experience of neglect, the care staff needs suitable qualifications: training for example in the area of trauma pedagogy. Far too often, however, children with severe mental disorders are placed in the wrong environment without a corresponding expert analysis of the necessary framework conditions.

Traumatised children and adolescents are then frequently experienced as intolerable and discharged when their relationship dynamics overstrain the capacity of the staff in the facilities. If the key remedy for overcoming traumatic stress is the guarantee of reliable social relationships, it is unacceptable that residential measures for children and adolescents are terminated prematurely because there are not sufficient pedagogical aids and support programmes in the residential groups. Born of this inner need on the part of the minors, the indication towards residential child and adolescent psychiatric treatment grows with the continued deterioration of their health. The number of children and adolescents being admitted to facilities of the department of child and adolescent psychiatry and psychotherapy has increased since the socio-therapeutic residential groups were abandoned in Lower Austria. In some cases, the care is ended so abruptly that the minors without a perspective for a follow-up place have to be admitted there. There are also placements in psychiatric wards after police prohibitions to enter or barring orders from shared accommodations, in which an increasing number of children under 14 are affected.

Situation in Lower Austria dramatically deteriorated

The situation is exacerbated by the opinion held by the *Land* of Lower Austria that therapies shall be paid for by the health care system and should no longer be covered by child and youth welfare. The shared accommodations are thus forced to use therapy programmes financed by the public health insurance system, which however are not available in most cases. As the cost of private psychotherapy is very high, they cannot be covered by the flat rate stipulated in the daily allowance. The consequence is that the facilities are phasing out therapies and terminate them completely when the therapists do not invoice their fees through public health insurance. It is possible to apply for approval with the district administrative authorities, so that the cost for therapists without a contract with public health insurance offices are covered; however, Commissions 5 and 6 received reports that approvals are almost always refused. The termination of necessary therapies means that the escalation incidents in the residential groups are increasing.

Therapies are terminated prematurely

In Vienna, Commissions 4 and 5 are told on almost every monitoring visit to crisis centres that they have difficulties finding adequate follow-up care places resulting in unnecessarily long stays. It is even more difficult to place adolescents in socio-psychiatric facilities. But there is also a lack of

Difficult to find adequate follow-up places in Vienna

low threshold residential places for adolescents. For adolescent girls with mental impairments and displaying behavioural disorders there is currently no inclusive residential accommodation as there is for boys.

The long waiting times for the financing of psychotherapies are also problematic, as necessary therapeutic measures are thus delayed. These should be promptly approved.

Insufficient places
in Styria

In Styria there is a particular lack of places for children under ten years of age who cannot be cared for in child and youth residential groups due to behavioural disorders or disabilities, because they would need special support and care. Misplacements due to a lack of specialised places, staff shortages and too large groups cause a strain on the care systems or an increased potential for violence. The expansion of specialised facilities for children and adolescents with severe mental stress, traumatisation and disabilities is also urgently necessary for ten to 18-year-olds and young adults. Annex 1 to the Regulation on the Implementation of the Styrian Children's and Youth Assistance Act (*Steiermärkische Kinder- und Jugendhilfegesetz-Durchführungsverordnung*) points out in relation to socio-pedagogical residential groups that minors shall not be admitted who, due to a physical or mental impairment, need special support and care as well as those who are at risk of suicide or who evidently have a propensity to use violence to harm themselves or others as well as acute alcohol and/or drugs or medication problems. There is no other suitable accommodation for these groups in Styria. Places are sought for them in other *Laender*, which results in unacceptable distances from their family systems.

Additional strain
caused by care crisis

A suitable facility could not be found for a Styrian girl of primary school age with severe behavioural disorders. She was therefore cared for in a shared accommodation designed for adolescents, which considered itself completely ill-equipped for her care. A follow-up facility also felt it was no longer in a position to guarantee the protection of the girl after a short time, which is why she was sent home to her parents. The competent district administrative authority reported a care crisis to the *Land*, as the girl was subjected to additional strain and traumatisation as a consequence of the lack of child and youth welfare care places. Central children's rights have been part of the constitution since 2011. The practical efficacy for those who need support still leaves a lot to be desired.

No care places for
children with
psychiatric illnesses

After visiting the Department of Child and Adolescent Psychiatry in Graz, Commission 3 identified a lack of care places for children and adolescents with psychiatric illnesses and recommended the *Land* to urgently create more care places for these minors outside of the facility.

- ▶ *The earlier, the more unprotected and the longer children are subjected to risks inherent in the experience of violence, the stronger are the impairments they suffer for the rest of their lives. The supply of socio-therapeutic and socio-psychiatric residential places within the child and youth welfare framework shall thus be urgently increased.*
- ▶ *Prompt access to psychosocial and psychotherapeutic non-residential care shall be guaranteed for all minors.*
- ▶ *To this end, permanent and evidence-based psychosocial places in particular with access to education are required, as only in this way can all children and adolescents be reached and risks to their welfare detected.*

2.3.5 Lack of crisis de-escalation places

There is a nationwide lack of crisis de-escalation places. The situation is particularly dramatic in Lower Austria where the crisis centres are linked to the regional youth homes. As a general rule, the de-escalation on such a "bridge" is very thorough involving clinical and health psychologists. However, the number of available places is in no way sufficient. Unlike in Vienna, the crisis places in Lower Austria are not overcrowded but, where possible, the minors are placed in socio-pedagogical shared accommodations. As was reported to Commissions 5 and 6, there are constant requests from the district administrative authorities to their own socio-pedagogical care centres and private operators to admit minors for the crisis phase who have to be removed from the families.

Number of crisis de-escalation places in Lower Austria no longer suffice

During the crisis, children need special care with a specific care ratio. The pedagogic care in socio-pedagogical facilities is entirely different to that in crisis work. The main task of a crisis centre is the risk assessment, crisis intervention and stabilisation as well as the development of a perspective and planning. This requires specific expertise and experience of working as part of a multi-professional team, which are not available in the shared accommodations, and thus placing the children there means custody only but not de-escalation. The staffing levels cannot guarantee crisis de-escalation in addition to everyday care either.

Special care necessary during the crisis

Transferring children and adolescents who have to be removed from an acute family situation to shared accommodation – without any preparation and clarification about which type of support is needed – is in no way compliant with professional standards. Most operators refuse such admissions in order not to put the minors living there under additional strain.

Placement with others poses a risk

After the police were called to a facility in Lower Austria on several occasions, about 30 acute cases were presented to child and adolescent psychiatric facilities asking for some minors to be admitted to residential care. This was only possible in five cases. It is highly problematic when,

Problematic situation with barring orders

due to a lack of adequate therapy programmes, children and adolescents are barred by the police from shared accommodations after impulsive outbursts. De-escalation in a crisis centre is not provided for such minors in Lower Austria in contrast to Vienna. In one shared accommodation, this resulted in two minors being sent back to their families, as no alternative accommodation was available.

Vienna crisis centres
overcrowded

In Vienna the crisis centres have been almost constantly overcrowded for years. Instead of the prescribed eight children, Commissions 4 and 5 have found up to 14 children there. Most of the crisis centres have neither the personnel nor the space for this. In one crisis centre, two children thus had to sleep on mattresses on the floor because ten beds and two emergency beds were already occupied. The NPM has been recommending for a long time that the number of crisis de-escalation places be increased to meet the regional demand. Non-residential risk assessments are carried out in Vienna but here too demand is excessive.

Three crisis centres
not operational due to
staff shortages

The City of Vienna has assured the NPM several times that the expansion of the crisis places is planned and budgeted, and follow-up places would be created. However, an improvement in the situation was not perceivable. On the contrary, the already problematic situation has deteriorated considerably because three crisis centres were closed temporarily due to staff problems. In addition to the overcrowding, the admission of severely traumatised children and adolescents pushes the staff to their limits. A crisis centre had to close because the staff asked to be relocated or resigned due to the work overload and it was not possible to replace them due to a lack of suitable applicants. The crisis intensive group for girls used to consist of two groups. One of them was moved to the crisis centre for boys. Since summer 2021 there is thus only a crisis centre for adolescent boys. The planned special crisis centre for adolescents with psychiatric illnesses from the age of twelve to 15 should have opened in autumn 2021 but was not able to take up operations, as there were too few applications for staff positions.

New crisis centre in
Carinthia

In Carinthia, a third crisis intervention centre was opened in Lavanttal at the end of 2020. In view of very long waiting lists for crisis de-escalation places, it is doubtful whether this will suffice. Commission 3 criticised that not every child receives a clinical-psychological assessment in the crisis intervention centre, but that this is only carried out if prescribed by the district administrative authority. A clinical-psychological assessment would be required in any case to be able to treat children for the specific disorder and place them in suitable follow-up facilities.

No crisis centre in
Burgenland

Burgenland still has no crisis centre even though one is stipulated in the Regulation. Only crisis places that are integrated in a south Burgenland facility are available. However, these do not suffice. An expansion of the

crisis places has been planned for years. The *Land* is currently working on the creation of crisis places in foster families. It remains to be seen whether foster families will be able to take care of children with multiple traumata in difficult crisis situations including de-escalation. Relevant training programmes will also be urgently necessary.

The perception of minors as autonomous holders of fundamental rights with specific interests and needs, whose opinion on all matters affecting them shall be adequately considered according to their age and level of maturity (Article 12 United Nations Convention on the Rights of the Child (UNCRC)), is not yet a matter of course in practice. The recommendation by the NPM to clarify which requirements facilities suitable for children and adolescents have to fulfil – including the wishes and expectations of those minors – prior to placing them in out-of-home care was not implemented. If, however, minors are transferred directly from families to facilities unfamiliar to them without crisis de-escalation and preparation, neither their past history nor the individual stress factors or diagnoses on their level of development are known, which complicates the support needed. Furthermore, the use of such procedures precludes children and adolescents from participating in the development of support planning suitable for them. The central element in determining what is “in the child’s best interest” is, however, the inclusion of minors in the decision-making process (UN Committee, General comment No. 14 (2013)/child’s wellbeing and General comment No. 12 (2009)/participation). Many misplacements and changes of facility are the consequence of not paying attention to the individual adaptation of the programmes or to the inclusion of minors in the selection of the same.

Not all children are involved in support planning in advance

The FICE Austria quality standards for residential child and youth welfare expressly stipulate that a detailed and comprehensive clarification of the life situation of the minor as well as personal and social resources shall be considered in determining the relevant risks and needs. Besides, having to accept children without prior assessment poses a great challenge for the care facilities, as in addition to the pedagogic relationship work, they have to take care of stabilisation and diagnostics.

- ▶ ***A needs assessment of the number of crisis places should first be conducted in all Laender, and the expansion thereof budgeted quickly.***
- ▶ ***Additional non-residential de-escalation options shall be created, as low threshold support programmes for children and adolescents in mental crises were already lacking in Austria before the pandemic.***

2.3.6 Pandemic exacerbates the difficult staff situation all over Austria

Care work becoming increasingly strenuous

On monitoring visits to facilities, the commissions frequently receive information that it is becoming increasingly difficult to recruit trained staff as fulltime employees even in the urban areas. There are hardly any applications for socio-therapeutic and socio-psychiatric shared accommodations in particular. The main cause of this is that the work in residential child and youth welfare facilities is becoming increasingly strenuous and difficult. Many employees can now only cope with the challenging work with additional free time to recuperate. For this reason, fulltime positions are difficult to fill and it is easier for operators to hire applicants for part-time permanent positions.

Pandemic exacerbates strained staff situation

The large numbers of employees on sick leave, in quarantine or who were released from their duties during the COVID-19 pandemic meant that the remaining staff had to work more overtime. The shifts became longer as soon as rosters had to be stretched and morning shifts staffed because children and adolescents had to go into quarantine as contact persons of others infected with COVID-19 or change to home-schooling during school closures. Care in kindergartens and day care centres was not guaranteed all of the time either. The approval concepts and staffing ratios of the child and youth welfare facilities, however, are not equipped for the uninterrupted presence of the minors throughout the day. Instead of more recreation time to compensate for the added burden during the pandemic, the staff were able to take less time off, in some cases to the point where their health was at risk. For example, the commissions sometimes observed that socio-pedagogues worked two or more main shifts in succession (up to 76 hours without stopping), which is an extreme and health-endangering work overload.

Staffing ratio of MA11 shared accommodations no longer contemporary

In the facilities of municipal department MA 11 in Vienna the mental strain for the employees is particularly bad, as only four persons are planned per team and they have to work alone respectively. If then one or two persons are absent, which occurs constantly during the pandemic, the added burden for the other team members is particularly high. The NPM has criticised the staffing of the shared accommodations for years and demands stepping up human resources.

Lower Austria reduces care ratio during the pandemic

Lower Austria is attempting to get the staff shortages and lack of care places under control by availing of the option to reduce the care ratio and increase the group size for the duration of the exceptional circumstances. Measures within the framework of the Epidemics Act (Epidemiegesetz) are cited as examples for exceptional conditions in the draft of the recent amendment to the Regulation on Lower Austrian Children's and Youth Assistance Act (Niederösterreichisches Kinder- und Jugendhilfegesetz). However, the care of children and adolescents during a lockdown is considerably more time-consuming, and the normal care ratio already does

not suffice to ensure the usual care quality. The reduction in the staffing ratio amounts to two FTEs per group of nine children. Instead of the current six pedagogues, there are now only four available per group, in which case double staffing would no longer be possible. Simultaneously exceeding the group size would exacerbate the situation in residential groups in Lower Austria considerably. Furthermore, the draft did not even provide details regarding by how much the limits can be exceeded.

In light of the strained staff situation, rapid action by public and private operators of child and youth welfare facilities is necessary. This could be, for example, in the form of financial incentives or increasingly including on-call night duty in the weekly working time. The collective bargaining agreement of the Austrian social and health care companies (*Sozialwirtschaft Österreich*) stipulates the possibility of, alternatively, to remunerating the on-call night duty, including this at 50% in the normal working time. To this end, a works agreement shall be drawn up and additional staff recruited, which incurs higher costs. To be able to implement this and other measures, the *Laender* would have to increase the daily allowances accordingly.

Rapid measures necessary

The NPM observes, however, that even without such measures, the daily allowances granted by the *Laender* no longer suffice to be able to provide quality care work. Some private operator organisations cover their additional costs with donations, which is only possible for larger organisations. The allowance is EUR 20 to EUR 25 per child per day. As operators of child and youth welfare, the *Laender* are called on to assume their responsibility for all children in their custody and not exonerate themselves financially at the expense of private operators and tolerate a deterioration in the quality of care.

Daily allowances no longer suffice

In Burgenland, where effective 1 October 2024, socio-pedagogical shared accommodations are only allowed to take care of ten children per group and socio-therapeutic shared accommodations are only allowed to take care of eight children per group, the daily allowances have still not been increased even though the NPM has spoken out in favour of this several times. This is urgently necessary, however, in order for the facilities not to accept any new children now, when places become vacant, and risk breaking up relationships. The facilities can continue accepting new minors for financial reasons, who will in any case have to be let go again in about two years.

Increase in daily allowances overdue

- ▶ ***Measures shall be urgently taken to counter the threatening care crisis in residential child and youth welfare facilities. The options stipulated in the collective bargaining agreement of the Austrian social and health care companies shall be fully utilised.***
- ▶ ***Staffing ratios shall not be reduced during a pandemic. Rather, incentives and measures shall be put in place to deploy additional staff and to guarantee the necessary time for recuperation.***
- ▶ ***The public sector shall bear the additional cost caused by the pandemic in order to ensure the necessary quality of care.***

2.3.7 Measures that restrict freedom

Uncertainty and knowledge gaps

The Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) has also been in force in child and youth welfare facilities for almost four years. This expansion of the scope also guarantees minors external monitoring and protection under the law against infringements of fundamental rights, which amongst others is the result of the consistent highlighting by the NPM and Human Rights Advisory Council of deficits in judicial protection. The Supreme Court considers the scope to be applicable in the facilities of the *Laender*, in private child and youth welfare facilities, for example regional youth homes, homes belonging to private operators, special, therapeutic and socio-pedagogical shared accommodations, SOS Children's Villages or special schools, if at least three persons with mental illness or mental disability can be constantly taken care of or given support there. Allowing the associations of the representatives of the residents to question measures that restrict freedom and have the same undergo judicial examination contributes to more sounding out and testing alternative possibilities for encouraging and supporting the minors. If there is not enough clarity as to whether a measure that restricts freedom is suitable for the relevant age group, the legal material recommends reporting suspect notification to the representative(s) of the residents. There are now extensive court rulings that cover recurring types of measures that restrict freedom in practice. These usually relate to physical methods by holding down, belt restraints, spending time in time-out rooms or also locking persons in rooms as well as administering medication with a sedating effect. Despite this, the commissions observe uncertainty on the part of socio-pedagogical staff in some cases. In addition to knowledge gaps in the statutory provisions, this also relates to responsibilities for guaranteeing the practical implementation of the measures. The commissions recommended contacting the representatives of the residents as well as training and further education in such cases.

Training and communication required

The commissions also identified the need for increasing awareness of the obligation to notify and document measures that restrict freedom in some facilities. Pedagogic management perceive the requests of the representatives of the residents to have the permissibility of measures that restrict freedom judicially examined as a negative appraisal of their work, which is not the intention of the Nursing and Residential Homes Residence Act or the representatives of the residents. Commissions sometimes have the impression that the cooperation of the facility with the representatives of the residents does not work optimally. Some operators took the recommendations of the NPM as an opportunity to proactively plan training for the pedagogical management and enhanced their concepts with a description of the cooperation with the representatives of the residents.

Delayed notification also impedes the follow-up of applied measures that restrict freedom. For example, Commission 2 observed in a facility that the repeated holding down of minors to avert danger was only reported four days later. In another shared accommodation in Upper Austria, the measures were reported, but not promptly and not completely. Whether these measures were impermissible, suitable and appropriate pursuant to Section 4 of the Nursing and Residential Homes Residence Act and the danger could not have been averted by using less severe means, could thus not be assessed.

Delayed notification

The administration of all medication, in particular psychotropic medication, which results in a restriction of freedom, shall be prescribed by a doctor. If this occurs as part of a treatment contract with a doctor who does not have a contractual relationship with the socio-pedagogical facility, a "facility-specific risk" pursuant to the Nursing and Residential Homes Residence Act is not put into practice (Supreme Court, 12 June 2019, 7 Ob 80/19v mwN). This shall not apply according to the court rulings if the medical specialists authorised to prescribe medication are employed in the facility or are consulted by it. In a facility in Vorarlberg, Commission 1 observed in such a case that the administration of psychotropic medication with sedating properties, which can also be used to restrain persons was not reported. There was also no clarification and follow-up by the representative of the residents as to whether medication-based restrictions of freedom had been caused. It shall be noted that a shortage of pedagogical resources or the lack of therapy programmes are not compensated by psychotropic medication. A highly complex process of assessment and consideration shall be conducted in each individual case because not every medication that restricts movement is automatically within the scope of the Nursing and Residential Homes Residence Act.

Failure to notify

When the medication-based treatment is prescribed primarily with the indication and intention of stabilising the emotional state of minors, reducing internal tension or strengthening control over impulsive behaviour but does not follow the purpose of restricting expansive behaviour or the possibility of changing location, a medication-based restriction of freedom is not usually the case. On the contrary, such remedial treatment can sometimes increase the level of freedom of minors because it facilitates going to school, participating in excursions or playing with other children. Facilities have the obligation to guarantee the implementation of conditions that support and encourage the minors entrusted to their care. That also includes the best possible medical care.

Boundaries to restrictions of freedom are present, however, where medication actually restricts minors in their ability to act or to pursue their interests and activities adequate for their age even if this effect was not intended. These situations but also the administration of medically

prescribed medicinal products intending and producing a sedating restriction of activities shall be reported immediately as medication-based measures that restrict freedom to the representatives of the residents. If minors are capable of taking decisions and are adequately informed about the effects of medically prescribed medicinal products, effective consent pursuant to Section 3 of the Nursing and Residential Homes Residence Act can be assumed. However, this also shall be documented and reported.

Restricted applicability of Nursing and Residential Homes Residence Act

In Styria, the Regional Court for Civil Matters Graz ruled that due to the grounds for exclusion of the Regulation on the Implementation of the Styrian Children's and Youth Assistance Act, the Nursing and Residential Homes Residence Act is only applicable to child and adolescent residential groups in exceptional cases. For this type of accommodation, the law stipulates that a mental impairment or a psychiatric illness constitutes a contraindication. If, however, at least three minors who are mentally ill and/or have learning difficulties actually live there, and a measure that restricts freedom is applied to one of these minors, the law shall apply. The competent department clarified this in a communication to all operators of child and youth welfare facilities. In this case too, restrictions shall be necessary for achieving a recognised purpose (aversion of danger or educational measure). There shall be no less severe measure and the restriction shall be applied in the gentlest possible way for the minor and shall be proportionate.

- ▶ ***Information deficits on the application of the Nursing and Residential Homes Residence Act on the part of the pedagogical staff shall be removed.***
- ▶ ***Cooperation with the representatives of the residents shall be actively sought if there is a need for training.***
- ▶ ***Notifications shall be made without delay.***
- ▶ ***Forms shall be filled completely.***

2.3.8 Self-isolation pursuant to the Epidemics Act

Measures shall be proportionate

Pursuant to the Epidemics Act (*Epidemiegesetz*), health authorities can, by means of notice, order that "persons who are infected, suspected of being infected or suspected of being infectious can be detained or their contact with the outside world restricted if, depending on the nature of the illness and the behaviour of the affected person, there is a serious and considerable risk to the health of other persons that cannot be avoided using less severe means" (Section 7 (1a) of the Epidemics Act). Children and adolescents living in facilities are often affected by this. Simply leaving or entering certain rooms and areas inside the facility or not maintaining the prescribed social distance to other persons can be seen as an increased risk of the spread of COVID-19 infection.

Self-isolation for several days without social contact is a serious infringement of fundamental rights, which can even have a lasting negative impact on the health and development of smaller children with mental issues. The Human Rights Advisory Council thus addressed the question as to whether and at what point the type and implementation of quarantine and isolation measures for children and adolescents during the COVID-19 pandemic are to be considered proportionate from the perspective of the children's welfare. The NPM supported this in-depth analysis, as the Epidemics Act and the Self-isolation Regulation (Absonderungsverordnung) enacted thereunder are from eras, in which children's rights in Austria were not recognised as autonomous and a special – and urgent – consideration of the child's welfare did not yet exist as a constitutional obligation under international law and a constitutional task for the legislature and execution thereof. For every infringement of the children's and adolescents' fundamental and human rights a differentiated approach is thus required and adequate, individually adapted support measures shall be taken.

Quarantine measures, in particular the isolation of minors in a single room, constitute an infringement of rights protected under the constitution (freedom of movement: Article 4 Basic Law on the General Rights of Nationals and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), private and family life: Article 8 ECHR, depending on the circumstances also the right to personal freedom: Article 5 ECHR, Federal Constitutional Law on the Protection of Personal Freedom). It is within the sphere of responsibility of the health authorities to ensure that both protection against infection and the special needs of children and adolescents are given adequate consideration in such cases. Every actually prescribed protective measure shall be proportionate and be the least severe means of achieving the legitimate goal pursued by the measure.

challenging task of isolating children in a suitable way

The Human Rights Advisory Council considers allowing the minors to regularly leave single rooms when fellow residents are not in the building amongst others as a less severe measure or proportionate implementation step or support measure. Regular periods outside in outdoor areas of the facilities, which are not open to the public, should also be possible when accompanied by a caregiver. Furthermore, the Human Rights Advisory Council considers constant 1:1 care necessary when infants are in self-isolation. Should this not be possible due to the staff situation, at least one contact person shall structure the day with isolated minors and be available to talk, help with learning and games. Video telephony and contact with friends and family should be facilitated in these already stressful circumstances.

Enhancements to existing recommendations necessary

The NPM contacted the Federal Ministry of Social Affairs, Health, Care and Consumer Protection and asked the Minister of Health to enhance his "Recommendations for the health authorities in dealing with SARS-Cov-2

infections in children and adolescents” with the area “Children in socio-pedagogic institutions” and to integrate the recommendations of the Human Rights Advisory Council. A reaction was still pending at the time of compiling this report.

The Human Rights Advisory Council also recommended that the commissions particularly observe how quarantine measures are implemented and identify examples of good practice on monitoring visits to facilities for children and adolescents. The commissions were happy to fulfil this request and were able to observe that many shared accommodations were well prepared for the quarantine cases and have prepared their own concept for the same.

Positive and negative examples

A shared accommodation in Vienna was assessed as exemplary. The rooms could be divided into two residential units by a lockable sliding door if needed. A sanitary area separated from the rest of the shared accommodation and a separate entrance are located in the smaller unit. In the larger area, there is a play and learning area and two persons can stay and sleep there. The concept prescribes 1:1 care for infants who become infected with COVID-19 or are considered K1 (i.e. a person who has had close contact to an persons infected with COVID-19). However, the commissions also visited shared accommodations where the space and staff situation was so critical that it was not possible to react in a manner suitable for the children if needed.

Excessive measures

Some facilities overstepped the mark with their precautionary measures for infection prevention. For example, Commission 5 criticised that in one shared accommodation the children living there were not allowed to invite their friends around and meet them outside the accommodation even though there was no cause for this and no legal obligation. For the minors who spent the mornings together with their schoolmates in class every day, it was difficult to understand why they were not allowed to meet them at the playground. According to the COVID-19 preventive measures in place at the time, meeting up was allowed as long as the social distancing rules were observed.

Disproportionate treatment of contact persons

Contact restrictions for children suspected of being infected who had had contact with positive cases (so-called “K1” persons) were also rigorously implemented in this shared accommodation. A six-year-old boy who was deemed K1 several times had spent several weeks in his room at short intervals, usually completely alone, without having become infected and being infectious. Older children were also in isolation for several weeks. Commission 5 considered this excessive and not only highly problematic for younger children but also a risk to their health. The facility justified this practice with the argument that it had observed the requirements of the City of Vienna. In the ensuing clarification procedure, municipal department MA 11 contested having issued such directives.

In a shared accommodation in Vorarlberg, it was also not allowed to receive visitors in the facility during the lockdowns, which was not conformant with the applicable COVID-19 Preventive Measures Regulation (*COVID-19-Schutzmaßnahmenverordnung*). This meant that children who were not allowed to travel home were not able to maintain personal contact with their relatives. The commission assessed this practice as disproportionate. Commission 1 therefore recommended aligning the internal rules with the legal requirements and installing a visitors' rooms.

Visiting ban

- ▶ *The Federal Ministry of Health should adapt recommendations to health authorities in light of the primary interests of the children's welfare particularly within the framework of infection prevention, and facilitate individual and/or facility-specific support measures in the event of self-isolation.*
- ▶ *The self-isolation of minors living in facilities shall be considerably organised such that their needs are adequately accommodated. Periods outside in the fresh air observing protective measures (FFP2 masks, minimum distance) shall be guaranteed, provided there can be no contact to other persons.*
- ▶ *1:1 care shall be provided to infants who have to spend quarantine predominantly in single rooms. For older minors, one care contact person at least shall help with structuring the day and contact the minors regularly.*

2.3.9 Young adults

State support in the form of child and youth welfare ends when minors come of age. An extension of this care is prescribed by law but there is no legal entitlement to it as has been the case in Germany for years. In some *Laender*, support is only extended in exceptional cases until the age of 21 under certain conditions.

Extension only in exceptional cases

In Vienna adolescents from shared accommodations run by the municipal department MA 11 are already moved to partially assisted living at the age of 16, long before coming of age. That is too soon for many children and adolescents who have suffered through traumatic experiences, as they need more time for their mental and cognitive development. But even if the move to a less supported setting works well initially, this can change rapidly. On a monitoring visit to a shared accommodation, the commission learned of a girl who had been in out-of-home care for 15 years and was released to partially assisted living before coming of age. The adolescent lost her apartment, which caused her to fall into a deep mental crisis and would have needed support. Even though her family did not offer her any support, unlike with adolescents from intact family systems, she did not receive any further help from the municipal department MA 11.

End of full support before coming of age

This case is just one of many and shows that the practice of the Vienna child and youth welfare creates major problems for many adolescents. This is incomprehensible from both a psychological and pedagogical perspective

concept for the transition recommended

because the success of the previously taken measures is challenged. It also contradicts the FICE quality standards for residential child and youth care. The NPM therefore recommended the child and youth welfare operator to create a pedagogic concept that is specially adapted to the transition phase.

Condition for extension unclear

A Viennese shared accommodation run by a private operator reported that the approval of the measures beyond the coming of age is only granted if the young adults have a traineeship. Municipal department MA 11 replied to the NPM that this is not a mandatory requirement; rather the goals described in the assistance plan form the basis for the continued support. From the point of view of the NPM, it is particularly important that the adolescents who do not achieve these goals in the defined timeframe are not dropped by child and youth welfare. In most cases, this results in returning to problematic family systems or homelessness. Achieving psychosocial development goals is also a valid reason to justify maintaining the support.

No extension for some adolescents

Another private Viennese facility explained that young adult support for the adolescents living there has never been approved to date. The five adolescents with increased care needs looked after in the facility move to an adult facility with a far lower care ratio once they come of age. Whilst three to four pedagogues are present simultaneously in the shared accommodation, two persons are responsible for eight adults in the best case in the ensuing open facilities. Continued care for at least three years would therefore be absolutely necessary from a pedagogical point of view in order not to endanger the previously achieved pedagogical effect. At least the intensive support had served to keep the adolescents away from crime and drifting into an environment with addiction risks. The NPM is in favour of continued support beyond the age of 18 for such adolescents too.

Violation of the UN CRPD

In a socio-psychiatric shared accommodation, Commission 4 considered it problematic that specialised transitional psychiatric programmes in the area of assisted living for young adults with specific support needs are almost non-existent. The waiting times for such places are long or in many cases the candidates have no luck at all. This shortfall in supply constitutes a violation of the UN Convention on the Rights of Persons with Disabilities (CRPD) because access to rehabilitation and habilitation programmes in particular at the interface between adolescence and adulthood requires that adolescents with chronic mental or psychiatric impairments can appreciate their fundamental freedoms and opportunities to participate in life with others on an equal footing.

Non-residential programmes

There are, however, other *Laender* that find innovative ways to support so-called care leavers. In Salzburg and Vorarlberg, care facilities can issue cheques for non-residential care for up to 40 hours, the cost of which is borne by the *Land*. In Tyrol there is a funding pool with which non-residential support for care leavers is financed. In Carinthia, two

permanent positions for non-residential care were created. Burgenland has introduced an extension of the support up to the age of 24 and Upper Austria is considering a similar regulation. Unfortunately, there is no legal entitlement to continued non-residential care in these *Laender* either.

For the NPM it is problematic that adolescents in out-of-home care only complete a course of studies in exceptional cases. This is usually not even considered for talented minors; rather they are put under pressure to complete a traineeship in order to become self-supporting sooner. The NPM demands that children in out-of-home care have the same opportunities to receive university education as children who grow up in intact families.

No equal opportunities in education

- ▶ *Legal entitlement to support for young adults should be created throughout Austria.*
- ▶ *There should be the possibility of receiving support up to the age of 24.*
- ▶ *Concepts for organising a supported transition to an autonomous life as well as follow-up support programmes from child and youth welfare are necessary.*

2.3.10 Positive observations

Commission 6 visited a socially inclusive shared accommodation in Lower Austria with nine care places for adolescent boys. The adolescents join the group at the age of 13 and remain there until they come of age. First, they are in a core group with four adolescents on the first floor, then they move to the internally assisted living on the ground floor, which is divided into four residential units. The adolescents are prepared for an independent life already in the core group. There is one kitchen per residential unit in the internally assisted living. The adolescents prepare their own food. There is externally assisted living for five further adolescents. These adolescents have an apartment in the proximity of the main building.

Age-appropriate individual independence

A total of 14 members of staff work in the building. There are also intensive carers who are deployed for ten hours per week in the different groups as required. Thanks to this high staffing ratio that far exceeds the requirements of the Lower Austrian Regulation, intensive care work and an individual approach to addressing problems are possible. This is reflected in the fact that neither police interventions due to aggressive behaviour nor admissions to psychiatric departments have been necessary for years. In addition, there is no staff fluctuation, which has a very positive impact on relationship work.

High staffing ratio shows success

The pedagogical head is only responsible for this building and can help out on site in crisis situations at all times. There is an on-call service for the single shifts during the night and a long initial training phase of one month for new employees. These have support from other staff on their first four

night shifts. The concept of the change from the core group to the assisted living in the same building and then to the externally assisted living is a very good example of how age-appropriate and individual legal independence of adolescents can succeed.

Flexible deployment systems and parental work have a positive impact

A flexible staff deployment system was introduced in a larger facility with socially inclusive and socio-therapeutic residential groups in Lower Austria. There are five socio-pedagogues who can help out in the residential groups during staff shortages. They are constantly present in the individual residential groups and therefore known to all of the children. At the same location, there are three socio-pedagogues who are trained in parental work and coordinate and support all of the contact with the original families. The contacts have worked much better since the introduction of this special parental work. This considerably improved the willingness of the parents to cooperate with the care facility, which has a very positive impact on the children and adolescents. Both the permanent positions for the flexible deployment system and the parental work are financed through donations.

Concept for legal independence

One Viennese operator started a project in the form of phased support of the residents to an independent life, as the waiting times for partially assisted living are very long. Commission 4 assessed the care concept for becoming independent as very positive. In particular, the good staffing levels were noticeable, which guarantees individual and phased support of the adolescents and young adults with psychiatric diagnoses. The clients continue to receive support even after they move out, for which a project for follow-up support was set up.

Involvement of the children

In another shared accommodation in Vienna, children are actively involved in developing a crisis plan. In addition to considerations on what can trigger a crisis, this plan also contains solution strategies. The fear-inducing events are named in an appropriate way for children. The proposed solutions are concrete, understandable and were therefore considered best practice by the commission.

Individual crisis plans

In another Vienna shared accommodation, individual crisis plans were developed for two children who are frequently involved in conflicts. These crisis plans help to avoid escalation that can result in dangerous situations for the children themselves and others and can then only be brought under control with measures that restrict freedom.

2.4 Institutions and facilities for persons with disabilities

Introduction

The commissions visited 83 institutions and facilities for persons with disabilities throughout Austria in 2021. The visits indicated that the care in many residential facilities, sheltered workshops and day care centres is dedicated and performed in the best possible way under the given circumstances. Nevertheless, in light of the UN Convention on the Rights of Persons with Disabilities (CRPD), the NPM still observes that persons with disabilities cannot lead a self-determined life with freedom of choice like most others. A comprehensive system change is thus required, in which the interests and needs of the persons with disabilities are at the centre of all considerations.

No self-determined life

In 2021 the NPM pointed out both in legislative body debates and in public relations work that there is hardly any freedom of choice. In particular, the comprehensive expansion of personal assistance would be an important fundament to enable persons with disabilities to lead as self-determined a life as possible. In addition, persons with severe chronic illnesses and complex psychiatric diagnoses are entitled to professional help and residential forms in their local community that guarantee flexible, individualised and multi-professional support in every phase of the illness.

Lack of financial resources

In this area there are massive care deficits and frequent misplacements throughout Austria which can also affect very young persons. From a human rights point of view, there is a need to establish socio-psychiatric treatment and care programmes where the affected persons live with their families. Severe mental illness is often accompanied by impairments in everyday and social skills. Help in organising their own life and enabling the affected persons to participate in social activities in different life situations (self-care, family, leisure time, work, social participation) are of key importance. Not least those affected shall be involved in the development of such concepts so that together ways can be found to avoid frequently recurring stays in psychiatric departments.

2.4.1 (Sexual) Self-determination as monitoring priority

The NPM commissions observed on many monitoring visits that self-determination for persons with disabilities working and living in institutions and facilities is not a matter of fact. For this reason, after consultation with the Human Rights Advisory Council, the topic of "self-determination" with a special focus on "sexual self-determination" was designated a monitoring priority for 2022.

Priority 2022

The aim is to attain an overview of the current situation regarding (sexual) self-determination. To this end, a questionnaire was developed that was agreed between the NPM commissions and the AOB. During the creation phase, suggestions were gathered from different specialist areas and a final document jointly developed. The questions were designed to be easy to answer on the one hand but facilitate providing a clear picture of the situation on the other. In preparation, the NPM organised a training workshop with experts in the area of protection against violence and sexuality of persons with disabilities.

Violence prevention and self-determination

The area of sexuality is a taboo subject in many institutions and facilities, which is why the topic is not sufficiently addressed. This however is necessary for effective protection against violence and facilitating self-determination.

Lack of sex education and prevention concepts

The consequences of not practising and not taking violence prevention and sex education concepts seriously are demonstrated by a case in a facility in Tyrol. A male caregiver had shaved the private parts of a younger, nonverbal, female client without any care-related indication for the same. After the case became known, the facility did not initially recognise the incident as sexual harassment but assessed it as "inappropriate exaggerated diligence". The employee was allowed to continue working in the facility for another two months before his contract of employment was mutually terminated. On a follow-up visit, the commission observed that the incident had neither been clarified and followed up on with the woman herself nor with the team. The woman, who had been subject to other violent experiences in the facility, had not received psychotherapy because of her inability to express herself verbally. Augmentative and Alternative Communication was not applied adequately.

Augmentative and Alternative Communication

It is a clear deficit that Augmentative and Alternative Communication is still not routinely used with all cared for persons who need it in many institutions and facilities. When basic communication tools are missing, those affected cannot express more complex wishes. But self-determination is not possible without being able to express one's own will.

Elections of residents' representation should be mandatory

A particularly important factor for the promotion of expressing one's own will and participation are also residents' representations (not to be confused with the representatives of the residents pursuant to the Nursing and Residential Homes Residence Act). These elected representations enable all residents to express their wishes and needs and to participate in planning processes. The NPM and the Human Rights Advisory Council recommend a nationwide legal obligation for the election of such a self-representative body in every institution and facility for persons with disabilities.

2.4.2 COVID-19: dealing with the pandemic

The COVID-19 pandemic continues to present major challenges to persons with disabilities and also the institutions and facilities that look after them. The institutions have to ensure the protection of the persons in their care without excessively restricting their freedom. As explained in the 2020 report (see NPM Report 2020, p. 84), the commissions had criticised the excessive measures including massive curfews and visiting restrictions. As many day-care centres were closed as a precautionary measure during the lockdowns, persons with disabilities who were living in residential facilities were forced to stay there 24 hours per day.

Disproportionate measures in the first pandemic year

In 2021 the commissions observed that sufficient PPE was available in all institutions and facilities, and thanks to the great dedication of the staff, routine everyday pandemic life was possible. Furthermore, the increasing vaccination coverage made maintaining social contacts easier.

In several facilities, the commissions praised hygiene concepts and infection prevention measures that countered the emergence of clusters whenever COVID-19 infections occurred. Much was invested in awareness-raising work in order to make regular tests and vaccinations accessible to residents in a low threshold manner. Many institutions and facilities took great pains to keep daily structures open and not to unduly restrict the life of the residents even during the lockdowns. Even in exceptional circumstances that are inherent in a pandemic, recognition of the dignity and autonomy of persons with disabilities shall be the focus of all decisions.

Institutions tried to maintain normality

The commissions therefore criticised – above all in the first six months of 2021 – the continued adherence to excessive restrictions. For example, residents of a shared accommodation in Vienna were forced until mid-May to keep contact with fellow residents to a minimum, to wear masks in the living area and to only remove these when in their own room and during meals. The NPM assessed this as excessive, as the residents of a shared accommodation shall be considered a residential group that lives in the same household. Criticised instructions and bans of this type had neither a legal basis nor were they in the interest of health protection. The facility justified their action by arguing that they had received and followed incorrect information from a specialist department.

Excessive obligation to wear a mask in recreation rooms

Heteronomy makes persons with disabilities particularly vulnerable to inhuman treatment or worse. The NPM has made such observations on many occasions. Freedom rights for persons with disabilities, in particular persons with severe physical and mental impairments, can only be fully effective when they receive the individually necessary support for a self-determined life. In addition to contact restrictions and curfews as well as measures that restrict how leisure time is spent, which affect persons

with and without disabilities in the same way, personal closeness and interpersonal exchange in the private sphere were impeded. This can hinder participation, which can result in highly questionable isolation from a human rights perspective. Furthermore, the obligation to wear a facemask when in contact with other persons in living areas is intimidating for persons with hearing impairments in their communication because lip-reading becomes difficult. For those with poor eyesight, this can mean a restricted field of vision that makes orientation difficult.

No permission to go to the supermarket

In two facilities, the residents were temporarily not allowed to go out to the supermarket or into town during a lockdown in early 2021. In one facility, they even had to wear masks outside. The operator justified this with the argument that residents are unable to comply with hygiene and social distancing rules and that due to staff shortages there is not always personnel available to accompany them to the shops or on a walk. In addition, since the pandemic neighbours had complained when clients behave “as usual” and visibly ignore infection prevention measures.

No alternative programme to missing daily structure

In the first half of the year the commissions had the impression that the emergency operation of the sheltered workshops during the lockdown was primarily reserved for external clients in order to relieve caregiving relatives. At the same time, the clients from shared accommodations integrated in daily structures were more frequently forced to stay in the shared accommodation when incidences increased in early 2021 in particular.

This resulted in many residents not being able to visit the day-care centres for several months. Alternative programmes on site in the shared accommodations could not always be implemented due to the lack of personnel. The effects of loneliness and boredom could only be partly compensated through increased digital communication.

In a Viennese facility, Commission 4 observed that many residents suffered from increased inner unrest, tension and stress due to the loss of their familiar structures. The cramped conditions in which the residents spent almost the entire day contributed to sparking conflict.

Supervision and team meetings suspended

The commissions regularly criticised that supervision and team meetings did not take place for months due to COVID-19. However, it is undisputed by experts that supervision for persons working in helping professions is essential for preventing burnout, stress and consequent escalation.

► *Consistent observation of human rights principles of non-discrimination and equal opportunity, participation and empowerment is particularly necessary during times of crisis.*

- ▶ *Except when self-isolation is officially ordered by the authorities, human closeness and sensual contact in private living areas shall not be forbidden, even when group activities in residential institutions and facilities for persons with disabilities have to be postponed on grounds of infection prevention.*
- ▶ *At times when pandemic-related general curfews are in force, it shall be guaranteed through better staffing of residential facilities that isolation and loneliness are avoided through person-centred support and risk-adapted participation alternatives.*
- ▶ *Employees shall receive mandatory training in the conditions under which measures that restrict freedom are permissible.*
- ▶ *Those living in residential facilities should be able to continue performing their work and activities in day-care centres during a lockdown. If this is not possible, alternative programmes for structuring the day shall be provided by the institutions and facilities.*
- ▶ *Supervision, team meetings and further training should take place if the COVID-19 pandemic continues, if necessary online or using video telephony.*

2.4.3 COVID-19 vaccination prioritisation

The NPM had to examine complaints from persons with disabilities in connection with vaccination prioritisation too. In Styria, the vaccination plan for persons with intellectual disabilities who lived in residential facilities was postponed for a time. But persons who did not live in facilities were also prioritised behind pedagogical staff for vaccination.

Styria disregarded national vaccination plan

In contrast to this, the national vaccination plan stipulated that persons with disabilities and their assistance staff should be vaccinated before pedagogical personnel. Persons with disabilities had a higher priority because they are often dependent on support persons and cannot self-isolate.

The regional government of Styria argued however that the AstraZeneca vaccine, which was predominantly available at the time, was not recommended for persons with disabilities. This was not correct. Rather, the National Vaccination Committee merely recommended a vaccination with an mRNA vaccine for persons with disabilities and not an AstraZeneca vaccine.

Persons with disabilities do not belong to this group in general. The question as to whether they live inside or outside facilities was also irrelevant for determining whether they are highly vulnerable. An individual risk assessment would have been required to determine this. However, because the affected persons were allocated to one common group, many persons with disabilities had to wait longer than necessary for the COVID-19 vaccination.

2.4.4 Participation in the National Action Plan on Disability

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| <p>NAP should ensure implementation of the UN CRPD</p> | <p>After Austria ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2008, it had to be ensured that the obligations protected under international law that had been entered into thereby are complied with. As a schedule for the implementation of necessary steps, a so-called NAP (National Action Plan) on Disability was set up, which was originally valid only from 2012 to 2020 but was extended by one year in order to avoid weaknesses in the follow-up process.</p> |
| <p>Evaluation of NAP 2012-2020</p> | <p>In order to assess the implementation of the 250 measures, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection commissioned an evaluation study within the framework of which interviews were held with experts inside and outside of the administration. The NPM was also asked for its assessment. In addition, the Austrian state reports to the UN Committee on the Rights of Persons with Disabilities, the recommendations of the Committee, reports from the Austrian Disability Council, the Monitoring Committee and reports from the NPM and their statements of opinion on the state examination procedures were included amongst others. The results of the evaluation were published in 2020.</p> |
| <p>Too little participation</p> | <p>As the NPM already stated several times, this evaluation shows that the NAP 2012–2022 was suitable for covering important topics in principle. However, fundamental guarantees anchored in the UN CRPD and derived state protection and guarantee obligations were not fully represented so that the change of paradigm intended by the convention was not comprehensively addressed or adequately financed. Furthermore, the participation of persons with disabilities and the principle of disability mainstreaming were barely considered.</p> |
| <p>Lack of indicators, data and statistics</p> | <p>The lack of indicators for measuring goal attainment is particularly critical. A traffic light system facilitated determining whether individual measures have actually been effective. However, an assessment of the scope of the goal attainment is practically impossible. It is again evident that conclusive data and statistics on many life areas of persons with disabilities are still lacking in Austria. Statistics Austria is authorised to collect data on life areas of persons with disabilities but does not have the political mandate to do so.</p> |
| <p>Participatory process for new NAP initiated</p> | <p>One of the main difficulties in implementing the obligations of the UN CRPD is the federal structure and fragmented competences. The topics affecting persons with disabilities are thus often interdisciplinary. Important areas are within the legislative and enforcement competence of the Laender and have to be coordinated by them. The NAP 2012–2020 was, however, adopted on federal level and was construed as a plan primarily for the federal administration. The Laender did not sufficiently participate in</p> |

the creation of the same: there was no cooperative alignment process of all regional authorities. This should be avoided for the NAP on Disability 2022–2030 through large-scale cooperation. In the groundwork, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection placed special emphasis on a participatory process from the very beginning and invited both civil society and the Laender to take part. For the NPM, the participation offered a good opportunity to highlight recommendations from ex-post and preventive control that have not yet been implemented. A total of 26 teams were set up who formulated recommendations for the full implementation of the UN CRPD.

In January 2022 an editorial team from the Federal Ministry of Social Affairs, Health, Care and Consumer Protection summarised these and offered all involved the opportunity to make a statement of opinion. The resolution of the NAP on Disability 2022–2030 is due in March 2022.

A key factor for the success of the NAP on Disability will be not only the design of its content but also the adequate financing of the planned measures. As intended in the 2020–2024 Governmental Programme, setting up an inclusive fund fed by capital from the Federal Government and the Laender would be necessary to finance those measures that are at the interface between Federal and Land competence.

Inclusion fund for financing the NAP on disability

The financing of an inclusive and permeable employment market amongst others could also be secured from the fund. The NPM addressed the topic of “wages instead of pocket money” taking into account the observations of the commissions in a special report with the title “No chance of employment – the reality of persons with disabilities” (“Keine Chance auf Arbeit – Die Realität von Menschen mit Behinderung”); which is only available in German. In the plenum of the National Council, the parliamentarians reiterated in February 2021 that there is an urgent need for action – both on the part of the Federal Government in whose competence public social insurance law lies and on the part of the Laender who are responsible for the rights of persons with disabilities. What was criticised as untenable in the debate in particular was the fact that persons with disabilities do not receive wages for their work in daily structures and sheltered workshops, that they do not have social insurance or pension cover independently and remain more or less their entire life in the legal position of co-insured children. This forces them into dependence on social welfare and a life on the lowest subsistence level. Young persons are also often too quickly designated unfit for work. The Federal Ministry of Social Affairs, Health, Care and Consumer Protection initiated a large-scale working group to discuss possibilities and difficulties in the implementation of the demands and recommendations from the special report. However, the initially highly motivated process stalled somewhat due to the pandemic. But the special report was also dealt with in the Diets and was received very positively. However, concrete

Inclusive employment market waiting with implementation

political initiatives for implementing the recommendations have not been taken to date.

Success factors of the NAP on Disability are clear

The fact that the calculation of the anticipated costs, securing the financing, the definition of suitable indicators, the involvement of Laender and communities as well as a regular evaluation are essential for the success of a NAP on Disability, was confirmed by the EU Agency for Fundamental Rights amongst others in the document "Working Party on National Human Rights Action Plans". The NPM already took part in a dialogue between experts in 2019. The ensuing report of the working party particularly emphasised the special importance of the above-mentioned factors.

► ***The definition of indicators, sufficient financial resources as well as a regular evaluation will be essential factors for the success of the NAP on Disability 2022–2030.***

2.4.5 Statutory requirements for protection against violation and self-representation

Diverse conditions for effective protection against violence

Effective protection against violence in institutions and facilities for persons with disabilities depends on many factors. In addition to the organisational structure of the facility, person-centred support concepts, professional reflection and further education of the staff, violence prevention concepts contribute to a social interaction that is sensitive to violence, as they define certain intervention forms and procedures in advance and make them enforceable.

Violence prevention concept and self-representation essential

Effective protection against violence shall be institutionalised. This has been demonstrated by the experience of the commission visits since 2012 and was also confirmed in the comprehensive study on the experience of violence of persons with disabilities (Mayrhofer et al., "Experience and Prevention of Violence to Persons with Disabilities" – *"Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen"*, p. 30, 469). This is why it is necessary to define intervention strategies and instructions on how to handle violent incidents. These shall be structurally anchored within the framework of a formalised protection concept and actually implemented in the facility through training. This should increase the competence of the staff and the security of all. Self-representation as well as internal and external complaint channels are other fundamental factors for protection against violence in institutions and facilities.

Different statutory requirements of the Laender

In light of this, the residential and participation laws of the *Laender* were examined focusing on the statutory requirements in place for institutions for persons with disabilities in relation to violence prevention concepts, self-representation and complaint management. The result showed a heterogeneous picture.

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| <p>Pursuant to the Burgenland Social Institution Act (<i>Sozialeinrichtungsgesetz</i>), an operating permit may only be granted if a suitable violence prevention concept is presented. The right of the residents to form interest groups and to know that their complaints and problems will be addressed quickly is also standardised.</p> | <p>Burgenland Social Institution Act</p> |
| <p>In Carinthia, statutory requirements for protection against violence or violence prevention are not visible. The Carinthian Nursing Homes Act (<i>Heimgesetz</i>), however, standardises the right of the residents to elect an interest group or residents' delegation and know that their complaints will be addressed.</p> | <p>Carinthian Nursing Homes Act</p> |
| <p>The Lower Austrian Housing and Day-care Regulation (<i>Wohn- und Tagesbetreuungsverordnung</i>) also does not contain requirements for violence protection and violence prevention. The guideline for procedures for approving institutions and facilities stipulates that the care concept shall also include crisis and complaint management, and in particular, the procedures for the same with organisation chart and responsibility. According to the Austrian state report on the UN Convention on the Rights of Persons with Disabilities (CRPD), use of a risk assessment form shall be mandatory if there is suspicion of violence or neglect.</p> | <p>Lower Austrian Housing and Day-Care Regulation</p> |
| <p>The Lower Austrian Housing and Day-care Regulation contains detailed regulations on self-representation. The operator of the institution or facility shall recommend and support the formation of an interest group. One person shall be elected for every twelve cared for persons respectively. This person shall be heard on all important questions and has a right of co-determination. The range of services and house rules shall be discussed with the interest group at least once a year. The fast, objective and appropriate processing of complaints, which can also be lodged with the supervisory authority, shall be guaranteed.</p> | |
| <p>The Upper Austrian Equal Opportunities Act (<i>Chancengleichheitsgesetz</i>) does not contain any regulations on violence protection and violence prevention. According to the Austrian state report on the UN CRPD, however, there are mandatory service and quality standards for providers, which also cover violence protection and training in violence and crisis prevention.</p> | <p>Upper Austrian Equal Opportunities Act</p> |
| <p>In Upper Austria, it is also prescribed by law that the operator of the institution or facility shall recommend and support the formation of an interest group. One person shall be elected for every ten cared for persons respectively. The interest group shall be heard on all important questions and shall be informed in time before fundamental changes. The operator shall consult with the interest group at regular intervals or whenever this so requests. Furthermore, an interest group council is stipulated for nationwide representation.</p> | |

Salzburg Participation Act The Salzburg Participation Act (*Teilhabe-gesetz*) does not contain any requirements for violence protection and self-representation in institutions and facilities for persons with disabilities. According to the Austrian state report on the UN CRPD, the monitoring of the technical supervision also includes the existence of violence protection concepts, crisis and emergency plans as well as independent complaint channels.

Styrian Disability Act The Styrian Disability Act (*Behindertengesetz*) does not contain any requirements for violence protection and violence prevention either. The relevant services and charges regulation stipulates that the performance/provision of services and the quality thereof shall be co-determined by the users. In addition, the operator of the institution or facility shall recommend and support the formation of an interest group, which shall be heard on all important questions and have a right to co-determination.

Tyrolean Participation Act Pursuant to the Tyrolean Participation Act (*Teilhabe-gesetz*), when supervising institutions and facilities for persons with disabilities, special care shall be taken that the residents' rights are guaranteed and precautions are in place to prevent violence and abuse. A quality standard stipulates that the operators shall create a guideline for the prevention of violence and abuse.

The setting up of a user representation consisting of ten members who themselves are residents in facilities for persons with disabilities is also prescribed by law in Tyrol. This should be involved in decision-making processes on *Land* level regarding facilities for persons with disabilities and be a contact for persons with disabilities.

Vorarlberg: no statutory requirement In Vorarlberg there are no discernible requirements for violence protection and self-representation in institutions and facilities for persons with disabilities. According to the state report on the UN CRPD, however, violence prevention in institutions and facilities plays an important role. Diverse manuals on the strategy were created together with violence protection offices.

Vienna Equal Opportunities Act The Vienna Equal Opportunities Act (*Chancengleichheitsgesetz*) does not contain any requirements for violence protection and violence prevention. However, detailed requirements are included in funding guidelines and those of the Vienna Social Fund. According to these, providing information on how to deal with violent incidents and crisis situations is a requirement for the recognition of an institution or facility for persons with disabilities. This includes the description of preventive measures and de-escalation strategies as well as support structures for the affected persons with disabilities and the staff, for example further education, self-representation and complaint channels, amongst others. The operators of institutions and facilities shall report violent incidents to the Vienna Social Fund immediately. The reportable incidents as well as the reporting process for violent incidents are regulated in a guideline.

The Vienna Equal Opportunities Act standardises the right to form sheltered workshops and residents' councils. These co-determination bodies shall be heard on important questions and involved in decision-making processes. Furthermore, an interest group shall be set up for advising the *Land* Government in matters concerning persons with disabilities. This consists of representatives from organisations for the awareness of the interests of persons with disabilities. At least eight of the ten to 15 members shall themselves be persons with disabilities.

In conclusion, it is evident that violence protection and violence prevention concepts are not prescribed by law in all *Laender*. Even if it is included in the supervisory work of the authorities, the existence of a suitable violence protection concept with defined processes for action should be anchored in the law. Care should be taken that these concepts are actually implemented in the institution or facility and regularly evaluated.

Nationwide anchoring in the law and implementation necessary

Self-representation and suitable complaint channels, as important factors for protection against violence, should be anchored in the law throughout Austria, and care should be taken that this is supported with sufficient resources and can be put into practice.

- ▶ ***The presentation of suitable violence protection and violence prevention concepts should be stipulated by force of law in all Laender in order to be recognised as an institution or facility for persons with disabilities.***
- ▶ ***The supervisory authority shall ensure that these violence protection concepts are actually implemented in the institution or facility through suitable training, as well as regularly evaluated and adapted.***
- ▶ ***Self-representation and complaint channels should also be legally anchored as further factors for protection against violence, and care shall be taken that these can actually be availed of by persons with disabilities.***

2.4.6 No strategy and action plans for deinstitutionalisation

Observations by the commissions and many international studies indicate that "institutionalisation" prevents the potential and needs of persons with disabilities for leading a self-determined life from being exhausted to the full. The goal of a human-rights-oriented policy must be – regardless of the severity of the impairment and the intensity of the care effort – to enable a socially integrated life that is as independent as possible, in a self-chosen environment close to the community. However, the construction and extensive refurbishing of homes for long-term residency of persons with disabilities financed by public funds fosters in light of Article 19 of

the UN Convention on the Rights of Persons with Disabilities (CRPD) the segregation and marginalisation of persons with disabilities from the middle of society if there are no (suitable) alternatives available. In Vienna and in urban areas, in particular, there are good strategies and initiatives for structural change and successful model projects in the *Laender* as well, but no consistent strategic plans for changing the existing structure of programmes. And this even though there have been clearly formulated recommendations for action to Austria by the UN Committee on the Rights of Persons with Disabilities since 2013 (see CRPD/C/AUT/CO/1).

More monitoring
of the use of public
funds

In 2021 the European Ombudsman Emily O'Reilly initiated a strategic examination designed to clarify how the European Commission monitors the proper use of EU funds that are utilised by national authorities to promote the rights of persons with disabilities to an independent life. She asked for information on observations and complaint procedures from Austria. The European Commission is considering setting up "national monitoring committees" in a draft directive and considers it expedient to involve offices that are responsible for monitoring fundamental rights as well as organisations of persons with disabilities. The European Ombudsman asked about the stance of the Austrian NPM in this matter.

No strategy for
deinstitutionalisation

As already iterated in 2018 amongst others before the UN Human Rights Committee, the NPM stressed that deinstitutionalisation and personal assistance are fundamental factors for an independent life of persons with disabilities. Complaints and deficits observed by the commissions were used to highlight the fact that large institutions and facilities are often abandoned or re-dimensioned, but they are also often replaced by smaller institutions and facilities with similar structures. A radical plan for how persons with disabilities could be guaranteed an independent life outside of specialised institutions still does not exist. There is no coordinated master plan for the reduction of institutions, let alone the intention to tackle such a plan nationwide. New homes and day-care centres have even been built and opened in recent years. In Salzburg, for example, after Commission 2 and the representative of the residents had criticised a facility for children and adolescents with disabilities operated by the *Land* due to the inadequate space, complete lack of barrier-free accessibility and impermissible measures that restrict freedom as well as other structural deficits.

It should be noted that, as a consequence of the reporting, minor structural changes were made, personnel resources increased as well as individual care and support plans created. However, a conceptual rethink did not take place. The new building and attached day-care centre were constructed without involving the self-representation or the Monitoring Committee. The facility is in a central location but still represents a manifestation of a special world. There are similar examples in other *Laender*.

The Austrian Initiative for Independent Living (*Selbstbestimmtes Leben Österreich*), an organisation for self-representation, therefore lodged a complaint about the use of EU funds for segregating institutions and facilities for persons with disabilities in Upper Austria to the EU Commission. The financing was from the European Agricultural Fund for Rural Development (EAFRD). Six residential facilities and two day-care centres were built or refurbished with EAFRD funds.

Complain to the EU Commission about the use of funds

The EU Commission rejected this complaint. The Austrian Initiative for Independent Living, however, introduced further arguments thereafter. First of all, there was no deinstitutionalisation plan. Second, small institutions and facilities based on outdated, segregating concepts also contradict the principle of deinstitutionalisation pursuant to the UN CRPD. Third, the EU failed to deal with the arguments of the Monitoring Committee, the NPM and the Disability Ombudsman in sufficient detail. The decision is primarily based on arguments presented by the *Land* Government and the competent Federal Minister.

A second complaint about the non-inclusive use of funds affects Tyrol. The refurbishment and new construction of five residential facilities and three sheltered workshops for adults with disabilities as well as a large facility for children with disabilities was financed with EU funds amongst others.

For many operators of institutions and facilities, deinstitutionalisation still means the implementation of outdated concepts. What the conditions are for leading a self-determined life pursuant to the UN CRPD is apparently still not clear to decision-makers. For this reason, the possibility to choose the type of work and place to live that facilitate a self-determined life outside of the boundaries of institutional logic remains an unfulfilled wish. Social contact with persons outside the facility is also very restricted for persons living in facilities. This was highlighted in the study of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection on experience and prevention of violence to persons with disabilities (*“Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen”*) amongst others.

Outdated concepts in smaller facilities

The current (institutional) system does not ensure that persons with disabilities promptly receive places in a daily structure or residential facility when needed. Investigative proceedings carried out by the AOB show that there are often long waiting times for relevant places depending on the region. Those affected, often adults with disabilities, have to rely on the care and support of their families with whom they are left during such times. They and their families often do not receive adequate support.

Not enough places

In some regions, there is a general lack of places. Apart from the waiting time for vacant places, the limited choice for persons relying on such places puts them under further pressure to behave well. When institutions and

Imbalance of power between facilities and affected persons

facilities refuse to admit certain persons or when they terminate contracts, the choice of alternatives becomes increasingly restricted. The power of the remaining institutions and facilities thus increases to demand that persons adapt their behaviour to the structural conditions accordingly. There can be no mention of ensuring an autonomous, independent life in such cases. Rather, persons with disabilities are left with just two alternatives: either to behave – even in detailed questions – as required by the facility or to leave and be cared for by often overstrained families.

The NPM knows of cases in which home residents were expelled from the institution or facility after a short time without the necessary preparatory measures. In one case, the affected person was simply left in front of his parents' door without informing them in advance. His possessions were packed in rubbish bags and deposited in front of the house.

Cases such as these might not be the norm, but they illustrate the great imbalance of power between persons with disabilities and the operators of the institutions. This constellation does not make the affected persons holders of rights entitled to the best possible support but rather applicants. This unacceptable situation is maintained and sponsored by public funds. This money could be put to better use for personal assistance.

The NPM informed the EU Ombudsman that it would be available with its commissions to support every initiative for the purpose of inclusion.

- ▶ *Outdated structures that hinder integration in the community and create special worlds for persons with disabilities should not be established using public funds.*
- ▶ *Strategies for deinstitutionalisation shall be intensified in order to guarantee a real freedom of choice for a self-determined life.*

2.4.7 Children with disabilities in out-of-home care

Different standards
for care

In Upper Austria, Commission 2 visited two facilities for children with disabilities who were not living with their families. Although the general perception of the work in these facilities was positive, the Commission criticised that there were different standards for the care of the children there, compared to those for minors cared for within the framework of child and youth welfare services.

For example, there are differences in the documentation obligations, supervision obligations, the creation of help plans and the regular holding of help meetings.

Children without disabilities who live out of home are allocated to the competence area of child and youth welfare services. The Children's and Youth Assistance Act (*Kinder- und Jugendhilfegesetz*) is applicable for

their care. In contrast, children with disabilities who live in a facility are allocated to the Department of Social Welfare. The Upper Austrian Equal Opportunities Act (*Chancengleichheitsgesetz*) is applicable for their care. This law applies to adults and children with disabilities equally. Children are only explicitly mentioned in connection with the early support of infants.

The *Land* Upper Austria was not able to understand the NPM's criticism and sees no need for (statutory) change. The *Land* Government thus emphasised that the Upper Austrian Equal Opportunities Act covers a very broad target group and the proportion of children is quite low. It claimed that due to the differences in the target groups of the Upper Austrian Equal Opportunities Act compared to the target group of the Children's and Youth Assistance Act 2014 other care needs as well as pedagogic and agogic concepts result. For this reason, qualifications requirements and standards have to differ between the Upper Austrian Equal Opportunities Act and the child and youth welfare services. Infringement of the person's rights in the event of a risk to the child's welfare are the focus in the area of child and youth welfare services.

Upper Austria cannot understand criticism

With regard to documentation, the regional government of Upper Austria stressed that pursuant to the Upper Austrian Equal Opportunities Act documentation is required but that the frequency is determined individually and on a needs basis. Concrete requirements for the time and frequency of the documentation are allegedly not always expedient. Amongst others in the area of the Upper Austrian Equal Opportunities Act, a resource-friendly documentation is expedient in order to have resources for the direct support and care.

The NPM upholds its criticism. It is clear that children with disabilities can have additional needs. This means, however, that standards pursuant to the Children's and Youth Assistance Act should be the minimum and that, in addition, the individual needs of children with disabilities should be met. Why should frequency make sense for children under the Children's and Youth Assistance Act but not for other children cared for under the Equal Opportunities Act? What matters is that children in institutions and facilities are taken care of regardless of whether this is on the basis of one law or the other. The criticism of the commission was ultimately of the fact that there are fewer protective mechanisms for children with disabilities in parts of the Upper Austrian Equal Opportunities Act than for children under the Children's and Youth Assistance Act. This might suffice in isolated cases, for example in a dedicated family environment. However, this shall be rejected as a general rule. The welfare of the child cannot be separated into disability and non-disability.

Standards pursuant to Children's and Youth Assistance Act should be minimum

Using the availability of additional resources as an argument for reducing documentation obligations is disconcerting. These two areas cannot be in opposition to one another. Insufficient resources shall be increased.

It is noteworthy, as mentioned above, that in the Upper Austrian Equal Opportunities Act, the terms “child” or “children” are only used in connection with the early support of infants and with an obligation to report any suspicion of violence. Especially the range of the target group that is covered by the Upper Austrian Equal Opportunities Act increases the risk that the special needs of children are not adequately covered.

The NPM emphasises that the criticism is of the legal framework and does not compare the care in facilities under the Children’s and Youth Assistance Act or under the Upper Austrian Equal Opportunities Act. The same protective minimum standards shall apply to children who live in and are cared for in institutions and facilities – regardless of the legal basis on which the care is provided. Furthermore, appropriate, additional support measures can be provided individually.

► ***The protective minimum standards for children with disabilities cared for in institutions and facilities shall be aligned to the level for minors without disabilities and enhanced by documentation obligations, which serve to remove barriers.***

2.4.8 Temporary accommodation: making savings shall be possible

Flat rate „one-third solution“ facilitated savings and independence

On a monitoring visit to a residential group for young persons with psychiatric diagnoses in Lower Austria, Commission 6 learned that clients have to pay an increased cost contribution for their care. The visited facility considers itself a health centre for the purpose of helping young persons with psychiatric diagnoses, in particular, to an autonomous life in the medium term. Originally there was a flat rate “one third solution” for such facilities in Lower Austria. Clients only had to pay a third of their income (disability pension, orphan’s pension etc.) as a cost contribution. The clients could use the rest as pocket money or make savings with which to build an autonomous life later.

New rule: saving for independence possible

Since 2020 the one third rule has been successively replaced by an 80/20 rule, according to which the clients are left with just 20% of their anyway low income. The reason for this is the court ruling of the Regional Administrative Court, pursuant to which the one third solution is not legally covered. From the NPM’s point of view, the application of the 80/20 rule to these cases is however questionable from a human rights perspective, as it forces young persons to remain permanently in dependence. Autonomy and inclusion are however fundamentals of the UN Convention on the Rights of Persons with Disabilities (CRPD).

In the statement of opinion to the NPM, the *Land* Lower Austria explained that it would continue to attempt to facilitate saving through a hardship clause pursuant to Section 35 Lower Austrian Social Welfare Act (*Sozialhilfegesetz*). Unlike the earlier rule, evidence of the social hardship has to be provided in each case. The amount of the reduction of the cost contribution is not stipulated either.

The NPM recommends creating binding rules in all *Laender* that enable clients in temporary accommodation to save money to build an independent life.

Enabling
autonomous living

► *Saving money shall be possible in types of housing intended to prepare clients for an independent life, as those affected will otherwise remain permanently in dependence.*

2.4.9 Positive observations

The commissions were already able to report about examples of good practice in the visited institutions and facilities for persons with disabilities in recent years. It is gratifying that these positive examples are on the increase, and more scope can therefore be dedicated to learning from positive instruments and models for implementing the UN Convention on the Rights of Persons with Disabilities (CRPD).

More frequent
examples of
good practices

The fundamental condition for a self-determined life and working in institutions and facilities is having the opportunity to express oneself, to communicate one's wishes, needs and complaints – also for persons who are unable to express themselves verbally or in writing due to their disability. In several facilities, the commissions praised that Augmentative and Alternative Communication (AAC) instruments are used intensively and innovative paths explored.

For example, information on the weekly plan and the menu, house rules, complaint channels etc. are more frequently available in an easy-to-read form. Commission 3 reported about a residential facility in Carinthia in which the residents are supported individually by pictograms when performing their daily personal hygiene. They tick off activities such as cleaning their teeth, combing their hair etc., which they have performed themselves.

Restricted speech increases the risk of being subjected to violence and reduces the possibility of being able to set boundaries and mobilise support. The study on the experience of violence of persons with disabilities (Mayrhofer et al., *„Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen“*, p. 459), which was published in 2019, came to the same conclusion. It is all the more important that these persons too have the opportunity to lodge complaints and report possible border violations.

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| Innovative complaint channels in Augmentative and Alternative Communication | Commission 1 highlighted a facility for children and adolescents with disabilities in Tyrol in particular. In addition to a complaint letter box and notices about external complaint channels in easy-to-read form and pictograms, the facility was working on an innovative complaint channel using Augmentative and Alternative Communication with which children and adolescents who are unable to communicate in writing can articulate their wishes and complaints. To this end, a tablet computer with special pictograms in picture language with smileys amongst others is placed in an easily accessible place. |
| Employee with disability as confidant | What is very positive is that an employee with disability is also working in the facility. She is a contact person for the children and adolescents to whom many of them direct their wishes and complaints. To further support this, the facility is planning that the employee will receive peer advice training. |
| Self-representation strengthens sense of community | <p>The commissions report with greater frequency that there are instruments of self-representation in the facilities and, in many cases, they are well established. For example, Commission 6 had the impression in two residential facilities in Lower Austria that participation and self-representation have a high priority there. In one facility, meetings of the elected self-representation and residents' council are held regularly. The management of the facility plans to organise these more frequently in the future and stressed to the commission that the residents feel a stronger sense of community in this way.</p> <p>In the other facility, there are frequent table, reflection and relief talk. The residents take part in the team meetings. They are integrated in the daily routine and have regular occupational activities in the house and the garden. Meals are prepared and food purchased together with the team. Contact to the outside world is maintained.</p> |
| Talking with and not about those affected | <p>In a residential facility in Vienna too, in which the residents take part in the team meetings, Commission 4 had the impression that the facility is managed according to the "talking with and not about the residents" principle.</p> <p>In a sheltered workshop for persons with disabilities in Tyrol, Commission 1 reported about a well-established workshop representative system. The recommendation of the self-representation to pay all employees the same amount of pocket money was thus implemented immediately.</p> |
| Independent and self-confident | Commission 6 made many positive observations in a residential and day-care facility for persons with mental illness in Burgenland. There are diverse, meaningful occupational programmes. All residents are involved in different activities in the facility and are well integrated in the town. There are monthly meetings with the elected self-representation. The commission |

described the residents as free, independent and self-confident; their treatment of each other is with respect and harmonious.

Commission 3 reported about how sexuality is handled positively in a residential facility in Styria, in which the topic is discussed actively and a sex education concept was developed with the participation of the residents. Commission 1 also had the impression that sexual self-determination is taken seriously in a residential facility in Tyrol. For example, a resident told the commission that he was supported by the facility in his desire to live out his sexuality.

Good handling of sexuality

Commission 4 also reported about an extremely positive example of self-determination and participation. The move to new residential projects was planned from a residential building in Vienna. The intensive and structured inclusion of the future residents in the planning of the new residential projects was very positive. This calls for a sensitive approach, particularly for affected persons with a long history of institutionalisation. The operator of the facility thus initiated a dedicated project and deployed the local management as project liaison between the residents and the departments entrusted with the planning. The expectations, priorities and ideas of the residents are discussed and further developed in working groups and individual meetings in order to be included as much as possible in the implementation phase.

Involvement in planning of the new residential environment

The planned residential projects were also praised by the commission: instead of shared accommodation, there will be partially assisted single and double studios in future. Trusted caregivers should be available round the clock. Low threshold meeting places and clubs are planned. Certain rooms and areas should be used jointly with neighbours so that everyday contact and inclusion are possible. The unbundling of the cost of living and of care and the abolition of the obligation to visit a daily structure facilitate flexibility in organising individual needs-based residential and care situations. A higher proportion of caregivers makes it possible for persons with disabilities to remain in the new residential structure in future should they need care or suffer from dementia.

Residential groups with more inclusion and self-determination

It is also positive that the commissions repeatedly observe on follow-up visits that their recommendations have been implemented. For example, Commission 1 praised a Tyrolean facility, which the commissions had criticised for the high level of uncertainty regarding a change of location on the initial visit. On the follow-up visit, both the residents and the employees were well informed and had been able to submit their wishes for the design. The mood was upbeat. In addition, complaint management was improved and residents were able to choose their own medical doctor. An operator of a facility in Salzburg assured that they would implement the recommendation for installing structural barrier-free accessibility

Recommendations of the NPM implemented

and organise training in the Nursing and Residential Homes Residence Act (Heimaufenthaltsgesetz), which was subsequently done.

In the case of a facility in Upper Austria, a resident contacted the NPM directly. She found the general tone of address at the facility degrading and disrespectful. She always has to ask for everything and to justify herself whenever she needs help. Furthermore, she is spoken to about her bodyweight in an inappropriate way. Commission 2 paid an unannounced visit to the facility and demanded that it follow up thoroughly on the complaints without delay. The *Land* Upper Austria was also informed as the supervisory authority.

In its statement of opinion, the facility announced amongst others that it would work on the general attitude and communication, and provided evidence of having addressed this in team meetings, workshops and supervision. The management held one-on-one meetings and individual supervision with the resident and the carers, and an open feedback culture; anonymous complaint channels were established as well.

Furthermore, the operator of the facility announced that the residents would be motivated to express wishes and criticism directly. The residents' interest group should therefore show more presence in the facility than has been the case to date.

2.5 Correctional institutions

Introduction

The NPM visited 27 facilities of the penitentiary system and facilities for the detention of mentally ill offenders in the year under review.

The mandate of the regional commissions for facilities of the penitentiary system and facilities for the detention of mentally ill offenders expired on 30 June 2021. A new Federal Commission was set up pursuant to Sections 7 and 8 (1) of the Allocation of Responsibilities and Duties to the Ombudsman Board, its commissions and the Human Rights Advisory Council 2021 (Geschäftsverteilung der Volksanwaltschaft, Federal Law Gazette II 2021/285). It took up its visiting work on 1 July 2021. The commission immediately addressed the monitoring priorities of "suicide prevention" and "the detention of juvenile offenders". In addition, several follow-up institutions were visited in the autumn – some for the first time.

New Federal
Commission for the
penitentiary system

Due to the COVID-19 pandemic, meeting with the management of the facilities was not possible again in 2021. It was therefore not possible to discuss structural problems and the implementation of open recommendations with those responsible for the facilities. However, the plan remains unchanged. The working meeting will – as soon as the occurrence of infection allows – be held later.

The NPM has been involved in the basic training of prison officers for years. Career starters thus learn about the NPM mandate but also about recommendations and standards, that are also available in their current (German) version on the NPM website (i.e. Volume 7 of the AOB publication series: "Preventive Recommendations for the Protection and Promotion of Human Rights in the Area of Police Departments and Facilities for the Detention of Mentally ill Offenders" ("Präventive Empfehlungen zum Schutz und zur Förderung der Menschenrechte im Bereich des Straf- und Maßnahmenvollzugs"). The lessons had to be almost exclusively held online in the year under review. Even though the participants were very dedicated, the personal contact that makes every lecture livelier and enables direct questions is missed.

Training and
professional exchange

As is evident from monitoring visits and consulting days in correctional institutions, the view of the career starters changes the longer they have been working and the more practical experience they have gained. New questions arise. The stance of the NPM on one or the other problem area is also challenged. The NPM is happy to answer the questions of the employees about the work approach and basis for assessment of the NPM on site during an announced visit or consulting day. The special services could also be reached in this way without incurring additional effort or cost for the administration of the judiciary.

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| Training and international contacts | In the year under review, the NPM took part in diverse training programmes including a workshop on the topic of “Interview techniques with vulnerable groups” which was organised by the Commissioner for Fundamental Rights of Hungary within the framework of an SEE meeting in Budapest. In late autumn, the annual dialogue with the German and Swiss NPMs took place in Berlin. In addition to relevant publications, representatives of the NPM also made speeches in Berlin, Frankfurt am Main and Grenoble. |
| Monitoring priorities | The alarming development of the numbers of cases caused the NPM to maintain the monitoring priority of “suicide prevention” (see chapter 2.5.1). The associated observations of deficits in acute psychiatric care are also a recurring theme. They are dealt with in the large “Health care” section (chapter 2.5.5). This part of the report also contains observations of the NPM on the fixtures and furnishings in the individual correctional institutions (chapter 2.5.2), deficits in the living conditions of the detainees (chapter 2.5.3), evidence of torture and abuse (chapter 2.5.4) and critical remarks on the detention of mentally ill offenders (chapter 2.5.6). Information on staffing (chapter 2.5.7) and questions on returns and release (chapter 2.5.8) conclude this part of the report. |
| Priority: detention of juvenile offenders | The observations on the “detention of juvenile offenders” are excluded. This monitoring priority is due for completion in the coming weeks and will be reported separately. |

2.5.1 Suicide prevention

„Psychological autopsy“ is no end in itself – Federal Ministry of Justice

On the occasion of the suicide of an inmate at Innsbruck correctional institution, a reflection was held on site by the specialist suicide prevention group of the Federal Ministry of Justice in October 2021. The observations made should not be kept back from the management of the institution.

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| Prompt feedback important | The Federal Ministry of Justice assured that the findings from the “psychological autopsy” will be communicated on the grounds of learning experience for optimising suicide prevention. The internal communication has a high priority. The NPM acknowledges this. However, the time factor is also critical. The conclusions of the experts should be not reported to the management of the institution with a considerable time lag but as quickly as possible so that preventive measures for avoiding further incidents can be taken as soon as possible. |
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► *Insights from the specialist suicide group of the Federal Ministry of Justice should be passed on to the correctional institutions in a timely manner.*

Optimisation of the VISCI questionnaire – Federal Ministry of Justice

The attention of the NPM was drawn to the fact that certain risk factors – e.g. from previous periods in detention (particularly earlier suicide attempts etc.) – are not included in the VISCI system (Viennese Instrument for Suicidality in Correctional Institutions).

VISCI is a form with 20 questions – amongst others on the health, psychological and family situation of the detainees. The evaluation of the questionnaire determines how quickly the detainee will meet the psychological service and to which cell they shall be brought. The VISCI system operates according to a traffic light system: red means high risk, yellow indicates no immediate need for action, and green means that there is no risk. If there is a high risk, the individual concerned must be examined promptly by a specialist doctor, who then decides on the further course of action.

The Federal Ministry of Justice confirmed that the VISCI system does not automatically import data from previous periods in detention. Upon admission to a correctional institution, the questionnaire is evaluated directly after arrival in order to be able to allocate the person to a cell. Once the data has been entered, the electronic recording in the Integrated Prison Administration (IT application of the judiciary) system is complete. Previous attempted suicides or psychiatrically relevant information are not yet visible at this time.

Snapshot

However, some questions in the questionnaire do indeed address attempted suicide, periods spent in psychiatric departments, psychiatric medication, diagnoses etc. from the past. In this sense, all risk factors would be – under the premise that the answers are truthful – included in the evaluation.

Initial assessment

The NPM also noticed the high number of detainees classified as “VISCI yellow”. This classification was not always understandable. In some cases, the classification was made, for example, merely based on nicotine abuse (of more than twenty cigarettes per day). The NPM thus recommended an evaluation of the accuracy of the VISCI questionnaire, that is, it recommended a weighting of certain questions in order to further fine tune this instrument.

Stereotype classification

The Federal Ministry of Justice assured that the optimisation of the VISCI questionnaire is continuously discussed by the specialist group on suicide prevention in the penal system and promised that the recommendations of the NPM would be presented and discussed at the next meeting.

► *In order to guarantee the accuracy of the VISCI system, the questionnaire should not only capture the current mental state of the inmate.*

- ***Known risk factors from previous periods in detention (particularly previous attempted suicides etc.) should be included in the suicide assessment.***

Location and furnishings of specially secured cells – Innsbruck correctional institution

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| Cells in the basement | In Innsbruck correctional institution, the specially secured cells are located in the basement of the main building. The cells are situated on the inner side, below ground level. They have windows to the outside and thus hardly any daylight. There is a rectangular view panel from the hallway beside the door. The hallway is naturally illuminated through skylights (basement windows). The rooms are furnished with a concrete base on which a mattress lies. |
| Exacerbating circumstances | <p>In view of the fact that persons in mental emergencies are placed in these cells – after attempted suicide or violent outbursts or in acute psychiatric situations – the NPM is highly critical of the low amount of natural light.</p> <p>In addition, persons in mental emergencies should be able to contact officers or the care staff directly. Currently, the detainees are completely isolated in the basement. Contact with the officers is only possible via the call bell or the video surveillance and usually only after a long waiting time.</p> |
| Poor furnishings | As a general rule, for specially secured cells the NPM recommends a roughly 50 cm high rigid foam cuboid that is covered with a washable, disinfectable foil instead of a mattress on a concrete base. Such cuboids can be used to sit and lie on. Injury is precluded. |
| Management eager to make improvements | <p>During a monitoring visit in April 2021, the commission also observed that the textiles provided in the specially secured cells were not tear-resistant. The blanket in one cell was already torn. The shirt proved not to be tear-resistant. During the visit, the management reported that the specially secured cells have already been equipped with tear-resistant covers and clothing.</p> <p>It was also positive that the cutlery for detainees in specially secured cells was made of cardboard so that nobody can injure themselves.</p> |
| Federal Ministry appeases | The Federal Ministry of Justice indicated that moving the specially secured cells to one of the upper floors is not covered with the currently available finances. An improvement of the furnishings is only possible thereafter. The Federal Ministry pointed out that rigid foam cuboids had been misused in the past when detainees had swallowed pieces of them and therefore health risks could not be fully ruled out. |

- ***Specially secured cells should be equipped with 50 cm high cuboids made of rigid foam, which is covered with a washable, disinfectable foil.***

Video surveillance in guard room area – Innsbruck correctional institution

Constant surveillance should be guaranteed when a detainee is placed in a video-monitored cell. Currently, this appears to be impossible in Innsbruck correctional institution during the day shift due to the number of screens that have to be monitored simultaneously (in a passage) as well as the coordination of accompanied leaves.

Too much distraction

The observations of the NPM indicated that two attempted suicides were not detected through the video surveillance but when distributing the meals and by an employee from the psychological service. The safety precautions per video surveillance seem to be inadequate in their current form. It would be preferable if an officer were deployed for the observation exclusively and relieved regularly.

Accidental intervention

Innsbruck correctional institution is aware that the current video surveillance does not comply with the safety standards. A new safety office is planned; the screens are to be transferred to a separate quieter room. Furthermore, the prison warden promised during a monitoring visit in April 2021 to try and deploy another officer in the guard room during the day so that one person is exclusively responsible for observing the monitors and can be relieved regularly.

High monitoring pressure

The Federal Ministry of Justice confirmed that the current situation in the guard room area of Innsbruck correctional institution no longer complies with the organisational and deployment-related requirements. Adaptation measures are being discussed internally at the correctional institution. From an economic perspective, only a medium to long-term complete solution makes sense, which should be the case after the move of the police detention centre in autumn 2024.

On-site checks (for example through the food hatch) will remain indispensable and shall be performed at regular intervals.

Regular inspection

► *In order for the camera surveillance not to fail, the officers deployed to monitor the cells should not be entrusted with other tasks at the same time.*

2.5.2 Infrastructural fixtures and fittings

Outdated building structure – Feldkirch correctional institution

Feldkirch correctional institution is located in a historic art nouveau building that is under preservation order. The NPM has criticised for years that many structural deficits such as the cramped conditions in the cells, the few work opportunities and the sparse leisure and sports programmes, which were observed again in April 2021, are attributable to the old building structure.

General conditions no longer up to date

The question of the necessary private living space of detainees cannot be viewed separately from whether they have a job and how much time they spend outside the cell. A balanced occupational programme, ample outdoor recreation opportunities as well as sufficient remaining individual living space have a positive effect on behaviour in detention and contribute to reducing conflict between detainees. Irritability and dissatisfaction are breeding ground for attacks. Aggression can arise between the detainees in cells for multiple inmates due to the cramped conditions, the lack of privacy and the long lock-up times.

New building due The construction of a new building or at least extensive adaptation of the old structure is necessary for a modern correctional institution in Feldkirch. The NPM has repeatedly demanded the implementation of the planned extension and conversion (see NPM Report 2018, p. 122 et seq.), but with no success to date, even though a site was reserved for the new building years ago.

Lack of financial means The Federal Ministry of Justice pointed out that the need is known and implementation as quickly as possible is also in the interest of the prison administration. However, the project is hindered by budgetary restrictions. As a consequence of the increase in the number of persons accommodated pursuant to Section 21 Austrian Criminal Code (Strafgesetzbuch) as well as the high costs for the medical care for this clientele, the detention of mentally ill offenders has a higher priority; other projects have to be postponed. At the moment, however, it is not possible to estimate when the construction project at Feldkirch correctional institution will begin.

► ***Modern infrastructure is necessary for contemporary detention. Planned extensions and conversion shall be implemented as soon as possible.***

High occupancy pressure in outdated building structure – Graz-Karlau correctional institution

Cells for multiple inmates as conflict zones In the difficult inmate population in Graz-Karlau correctional institution, there are frequent violent altercations between the detainees, some of whom suffer serious injuries. Apart from the fact that detainees should be in single cells at night as a matter of principle (Rule 12 of the UN Standard Minimum Rules for the Treatment of Prisoners – the Nelson-Mandela-Rules), riots can be avoided by separating detainees involved in fights and moving them to single cells. However, there is only a limited supply of single cells due to the structure of the building in many correctional institutions.

The NPM also emphasised on a monitoring visit in spring 2021 that more single cells are needed as a preventive backup alternative. It demanded that the structural modernisation of Graz-Karlau correctional institution be accelerated.

The Federal Ministry of Justice reported that the general and functional refurbishment of tract 1 was approved after conclusion of a management agreement with the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*). With the conversion, the cells for multiple inmates in the A wing with occupancy of three to four persons will be turned into single cells. After completion of the construction measures – planned for December 2025 – there will be fewer detention places but more single cells available. Compared to the current situation, there will be 57 additional single cells.

Additional single cells planned

► *More single cells shall be available in order to prevent altercations.*

Transfer detention rooms in Innsbruck Regional Court – Innsbruck correctional institution

Within the space of six months, the commission re-visited transfer detention rooms in Innsbruck Regional Court to see them in the form they are used by Innsbruck correctional institution for court appearances. Detainees are housed in these cells for the time before and after the court appearance in Innsbruck Regional Court. The prisoners are usually brought to the transfer detention rooms before the trial and transferred back to Innsbruck correctional institution afterwards. A stay in these cells is thus short.

The NPM criticised that there is still no emergency bell in the toilet in one of the cells. The Federal Ministry of Justice pointed out that the cells belong to the Federal Real Estate and Property Corporation. All structural changes and repairs have to be managed through the corporation. The necessity to urgently install a bell was emphasised.

No emergency bell

The NPM pointed out once again that two transfer detention rooms have no toilet. A prison officer has to be called when inmates want to use the toilet. The NPM recommended removing the walls of the transfer detention rooms so that the barrier-free toilet in the transfer detention room between them is directly accessible.

Prisoners have to ask to use the toilet

The Federal Ministry of Justice did not follow this recommendation. The proposed demolition of the concrete walls between the cells would only be possible with a considerable amount of effort and disproportionately high cost. Furthermore, after the conversion the cells would no longer facilitate separating groups of accomplices.

Recommendation refused

The toilets in the other eight transfer detention rooms are supposed to be separated by curtains. However, this construction was observed in only two cells at the time of the visit. In the other cells, the curtain rails had been removed for alleged “safety reasons”. The Federal Ministry of Justice

Separation of the toilets

explained that Innsbruck correctional institution is working together with the Federal Real Estate and Property Corporation on separating the sanitary areas in another – more damage-proof – way.

The NPM demands a solution that provides adequate privacy and odour protection. Using the toilet without sufficient privacy in the direct presence of other detainees is degrading for the individual and intolerable for those present. Persons detained for short periods should also be able to fulfil their natural needs under humane conditions. This would be possible with closed toilet cubicles in the rear section of transfer detention rooms.

- ▶ *Cells in which several persons are housed, even if only briefly, shall have a structurally separate toilet.*
- ▶ *Single cells shall have a toilet that is separate from the rest of the cell (by a curtain, barriers).*

2.5.3 Living conditions

Too few work opportunities – Feldkirch correctional institution

In the main facility of Feldkirch correctional institution, which has a capacity of 121 places, there are just 58 jobs available. Those without work are forced to spend up to 23 hours per day locked in the cell. Such long lock-up times are perceived as extremely stressful by the detainees. The Federal Ministry of Justice confirmed that the employment rate was 60.23% in October 2021.

- ▶ *In the long term, a strategy shall be developed for the purpose of gradually increasing the employment rate (work) of male detainees. Recreational opportunities shall be expanded.*

Little occupation for female detainees – Vienna-Josefstadt correctional institution

Blatant discrimination The minimum standards for women in prison stipulate that endeavours shall be made to ensure a mixture of male and female detainees in the companies providing occupational opportunities. In Vienna-Josefstadt correctional institution, women are not allowed to work in the same operation as men.

The Federal Ministry of Justice explained that there are no separate sanitary facilities and changing rooms. The construction of the same is planned as part of the functional refurbishment but this will take years.

Women barred from working The NPM insists on the creation of more occupational opportunities for women in Vienna-Josefstadt correctional institution. Currently, they have little opportunity to pursue a “useful job” as is required by the Penitentiary System Act (*Strafvollzugsgesetz*).

- *Efforts shall be made to mix male and female detainees in the institution's companies providing occupational opportunities.*

Insufficient shower opportunities – Innsbruck correctional institution

The commission learned that detainees without work in Innsbruck correctional institution are only allowed to shower twice a week. Pursuant to the Penitentiary System Act, prisoners shall be given the opportunity to take a warm shower or bath as often as necessary, at least twice a week.

After the criticism by the NPM, the officers at Innsbruck correctional institution were instructed to offer all detainees who do not have the opportunity of exercising personal hygiene in a company providing occupational opportunities a shower bath in the department every day. Furthermore, it was decided that all inmates can shower after sports.

- *Prison inmates shall be given ample opportunity to shower.*

Too few sports opportunities – Vienna-Simmering correctional institution

Sporting activities were greatly restricted during the COVID-19 pandemic – in order to reduce the risk of injury, amongst others. At the time of the visit in September 2020, all ball games (football and basketball) in Vienna-Simmering correctional institution were banned. The yard exercise was extended to one-and-a-half hours per day in compensation.

In order for the detainees to be able to do sports when outdoors, it was recommended that alternatives with a lower risk of injury than football and basketball be found which can also be reasonably practiced in a pandemic.

Right to sporting activities

- *Even during a pandemic, detainees have the right to sporting activities when outdoors.*

Insufficient visiting hours – Ried im Innkreis correctional institution

In August 2020 the commission observed that there was still no change to the visiting hours at Ried correctional institution. It is still not possible to visit on public holidays and at the weekend.

Situation unchanged

The Federal Ministry of Justice maintains its stance taken to date, according to which the visiting hours are set on four weekdays and thereby compliant with the law. Four female officers are on maternity leave; in addition, higher

occupancy is to be expected due to inmates starting their prison sentences. An extension of the visiting hours is not planned due to the foreseeable capacity and the limited availability of the personnel.

Criticism remains The NPM upholds its criticism. Detainees should have ample opportunity to personally engage with relatives and social contacts. There is no change to the demand for an extension of the visiting hours.

► *An extension of the visiting hours is advisable in the interest of maintaining family and other personal contacts.*

Expansion of telephonic contact – Federal Ministry of Justice

Tried and tested pilot project All of the cells in Salzburg correctional institution have a telephone. The NPM welcomes the system whereby detainees are not dependent on a telephone in the office or in the yard, which can only be used with time restrictions. It recommended establishing the Salzburg model nationwide (see NPM Report 2018, p. 136 et seq.).

Law antiquated The Penitentiary System Act stipulates that prison inmates may only use a telephone “for extenuating reasons”. However, this provision no longer appears contemporary. The NPM recommended removing the restriction set forth in the law.

The Federal Ministry of Justice claimed that the installation of telephones in the cells – in light of the budget situation – cannot be implemented at the moment. As far as the legal text is concerned, the Federal Ministry communicated that an amendment is planned.

► *It shall be possible to make telephone calls from the cell at all times.*

Installation of video telephony devices – Stein correctional institution

A longstanding demand of the NPM was fulfilled in the year under review. Video telephony is provided in all correctional institutions since March or April 2020. Detainees whose relatives live far away, in particular, thus have the opportunity to maintain visual contact with family and friends.

Temporary measure should remain Currently, the video telephony is still operated in the form of a pilot project and is not regulated by law. There is therefore no legal right to the use of video telephony. A decree stipulated that this type of communication does not constitute a “visit” but a type of telecommunication. A statutory provision is planned with the next amendment to the Penitentiary System Act. A draft promised for autumn 2021 has – still – not been provided.

For security reasons, the video telephony functions exclusively as an “all-in-one PC” and is operated via an additional computer of the judiciary. The complete equipment weighs some 25 kg and is therefore basically planned as a stationary solution. This is implemented using the “ZOOM” application. The inmates log into the video telephony via request and enter the email address and telephone number of the person they want to talk to. Every detainee has roughly 40 minutes for a call respectively. Satellite facilities are the exception, as the persons there have mobile telephones.

Usage of video telephony

The adaptation work for the video telephony in the visitor zone was completed at the end of November 2021. Since then, two telephones have been in use. One additional device was installed in the infirmary, in the zone for assistance at doctor’s appointments and in a meeting room respectively. All devices are frequently used. The Federal Ministry of Justice explained that the somewhat lower utilisation in the infirmary is attributable to the medical condition of the detainees. A final evaluation report is still pending.

Five devices for video telephony

- ▶ *Video telephony should be sufficiently available to all those interested in using the same.*
- ▶ *The detainees shall be informed of the possibility to use video telephony.*

Suitable rooms for video telephony – Vienna-Simmering correctional institution

In Vienna-Simmering correctional institution it was evident that the video telephony devices located in the service rooms due to the lack of space were interfering with the work of the specialist service officers. The NPM recommended providing alternative rooms for the video telephony visits during the afternoon in order not to block the specialist services rooms.

Rooms on the specialist services blocked

As an emergency measure, the specialist services were allowed to use the rooms of the maintenance staff for counselling sessions during the telephony times. The Federal Ministry of Justice promised that the rooms located beside the meeting rooms would be technically adapted so that they could be used for video telephony. This would enable the specialist services to use their rooms in the entire period. Work has started on the required conversion and necessary installations.

Alternatives explored

- ▶ *Suitable rooms for video telephony shall be provided in order not to block the specialist services rooms.*

2.5.4 Evidence of torture, ill-treatment, abuse, neglect and degrading treatment

Permanent lighting in a cell – Innsbruck correctional institution

Effect tantamount to torture On a monitoring visit in January 2021 the commission observed that a suicidal inmate was housed in a specially secured cell where a neon light had been left switched on for 19 days. In the end he was unable to distinguish between day and night. The artificial light had to be left on permanently because the cameras with night vision were in need of repair.

Degrading treatment The Federal Ministry of Justice emphasised that the nocturnal lighting of the cell was part of the necessary monitoring of the inmate. Regrettably, the light could not be fully switched off. However, it was possible to dim the light. The defective camera has since been repaired.

The NPM criticised that the lighting – regardless of the fact that the light could be dimmed – could not be fully switched off for 19 days. Even if not intended, being exposed to permanent light is a frowned upon method of torture (reference to the jurisdiction of the European Court of Human Rights (ECHR), Grabenwarter/Pabel, ECHR7 [2020] Section 20 (43) in FN 259).

► *The permanent lighting of a cell such that the detainees housed there cannot distinguish between day and night is tantamount to torture and shall be avoided in all circumstances.*

2.5.5 Health care

Many doctors missing The shortage of personnel in psychiatric care has been increasing for years. Vacancies remain unfilled, as no doctors apply due to the low pay and unattractive working conditions. A monetary incentive is required to attract medical specialists for work in the prison system.

The NPM has repeatedly highlighted the nationwide deficits in the acute psychiatric care of detainees (see Annual Report 2021, volume “Monitoring Public Administration”). The management complained about the staff shortages in almost every call or meeting.

Regrettably, the recruitment agency for justice supporting staff has not succeeded in recruiting additional psychiatrists. This is further aggravated by the fact that outside of the correctional institutions there is a shortage of psychiatrists, and the prison system is rarely the first choice among several job offers.

Incentives shall be created The Federal Ministry of Justice assured that the office of the medical superintendent has been endeavouring for some time to make the workplace

for prospective medical specialists as attractive as possible, whereby, according to economic studies, the lack of a financial incentive is not the only reason for the lack of applications.

In order to effect an improvement of the situation, in the meantime a detailed training and further education plan for young doctors has also been developed together with the recruitment agency for justice supporting staff. Furthermore, negotiations were initiated by the general directorate for prisons with the Medical Chamber in order to expand the further education concept into a diploma-certified course and thereby make the medical work in a correctional institution more attractive.

Furthermore, telemedicine care, as an additional specialist support, is currently under development and should be taken into trial operation in autumn 2021.

Telemedicine in trial phase

Inadequate psychiatric care – Garsten correctional institution

In March 2021, one male psychiatrist worked ten hours per week, and one female psychiatrist worked five hours per week in Garsten correctional institution. In the view of the NPM, adequate psychiatric care cannot be guaranteed for all of the detainees in the correctional institution.

In addition, the NPM considers it problematic that detainees from Garsten correctional institution can no longer be moved to Linz in acute cases because the Kepler University Clinic is overcrowded and an admission ban for such cases has been in operation since autumn 2020. Currently, detainees are taken to the Psychiatric Department of Pyhrn-Eisenwurzen Hospital in Steyr; however, the hospital does not have suitably trained staff. The rooms are small, the windows are not barred, and prison guards have to stay in the room with the person they are guarding. A structural adaptation is not possible; this would be equivalent to a new building.

Where should psychotic detainees be brought?

Too few psychiatric consultants – Stein correctional institution

The NPM has observed unfilled positions in the psychiatric service in Stein correctional institution, the second largest correctional institution in Austria, for years (see NPM Report 2016, p. 108). The correctional institution has a capacity of approx. 800 places. In addition, there are special departments for offenders who are on withdrawal or mentally ill in Stein correctional institution.

Chronic lack of care

The NPM noted that often vacant medical expert positions in other correctional institutions remain unfilled for years too because no qualified experts could be found.

In April a fulltime position in the psychiatric service in Stein correctional institution was vacant once again. At the time of the visit, three

psychiatrists were employed there for a total of 21.5 hours per week. This constitutes inadequate medical care in light of the size of the institution as well as the number of mentally ill detainees. Health risks are thus being tolerated.

Partial improvement In the meantime, psychiatric care was stepped up with an employee who works 14 hours per week in the area of the detention of mentally ill offenders. In addition, another psychiatrist could be found who is available on an hourly basis rotating on a one to two-weekly model. However, 27.5 hours still need to be filled. The recruitment agency for justice supporting staff is trying to come up with a swift solution for the vacancy. Stein correctional institution is also sending out enquiries, calling doctors in the region and placing advertisements in the newspapers at regular intervals.

Special contracts only for medical management Even if these efforts are welcomed, the Federal Ministry of Justice should develop a strategy for recruiting more medical specialists to work in the judiciary. The remuneration packages shall be increased substantially in order to recruit more medical staff to work in the prison system. It also remains worthy of criticism that the Federal Ministry for the Civil Service and Sport only approves the conclusion of special contracts for medical management functions and a new doctor's guideline was never developed. Furthermore, doctors are hired exclusively through the recruitment agency for justice supporting staff. It is thus not (no longer) possible to hire general practitioners and psychiatrists with a federal employment contract.

Human rights concerns Detainees and mentally ill offenders in detention have the right to receive the same medical care as persons living in freedom. The psychiatric service of a correctional institution shall have sufficient human resources for the psychiatric care as well as diagnostic meetings with the patients and still have time for cooperation with other specialist services and participating in multidisciplinary expert teams.

► ***The Federal Ministry of Justice should develop a strategy for recruiting medical specialists for work in the judiciary.***

Consequences of inadequate psychiatric care – Maria Lankowitz satellite facility, Graz-Karlau correctional institution

Vacancy for years For two-and-a-half years, 21 weekly hours of psychiatric care have been vacant in the Maria Lankowitz satellite facility of Graz-Karlau correctional institution. The job advertisements published by the recruitment agency for justice supporting staff to date have not been successful.

Minimal care The consequence of this is that neither adequate psychiatric care for the prison inmates in substitution therapy nor support in acute cases can

be provided in the satellite facility. This deficit is even more serious as detainees with a substance use disorder need intensive psychiatric care and a transitional residential group was set up in the satellite facility for this group of persons.

In mid-February 2021 the commission observed that detainees in the Maria Lankowitz satellite facility had been sedated. Some of the interviewed persons were unable to concentrate and pay attention during the conversation or they fell asleep. Furthermore, they claimed that their psychotropic medication had not been adapted over a long period of time. At the time of the visit, all of the five inmates in opioid substitution therapy in the transitional residential group were also receiving benzodiazepines (incl. z drugs) and other sedating psychotropic medication.

Detainees appeared to be sedated

The Federal Ministry of Justice countered that the detainees expressed the wish to have a reduction in the dose; however, experience has shown that most of the inmates do not want a gradual decrease but instead want a reduction of the medication in order to effect the prescription of benzodiazepines or the frequently misused Lyrica medication. The Ministry assured that in cases where, after expert assessment by the psychiatric service, the reduction or change of medication is considered professionally reasonable, the prescription is changed within three days, sometimes within a day.

The feedback from the Ministry, according to which a request for a reduction in dose is implemented promptly, provided this is advisable or medically indicated, contradicts the claims made by the detainees. Furthermore, the version from the Ministry does not explain the observed over-sedation of the detainees. What is missing is psychiatric monitoring. This deficit is attributable to the absence of a psychiatric consultant.

Different statements

The NPM also recommended the establishment of a telemedicine programme. It is regrettable that this recommendation was not followed due to the shortage of human resources in the psychiatric service. The Ministry specified in a supplementary statement of opinion that the commission's direct impression that the inmates in the transitional residential group had difficulty concentrating and paying attention during the conversation could be largely explained by the physical exertion related to the work in Maria Lankowitz satellite facility. It is not unusual in the transition phase that inmates sleep during their lunch break. Similar phenomena are also known from in-patient addiction support facilities.

Telemedicine unaffordable

However, the situation is said to have stabilised due to the inmates becoming accustomed to physical work so that those affected no longer requested a reduction in dose either. The NPM will visit Maria Lankowitz satellite facility again to get an impression of the current situation.

Further observation advisable

- ▶ *Detainees have a right to adequate psychiatric care. The vacant psychiatric consultant position shall be filled as soon as possible.*
- ▶ *Psychiatric monitoring particularly for detainees with a substance use disorder shall be established.*

Inadequate care of acute psychiatric detainees – Innsbruck correctional institution, Association of Tyrolian Hospitals

Two incidents The commission addressed the treatment and care of two suicidal inmates in Innsbruck correctional institution in January 2021.

The Federal Ministry of Justice explained that detainees who were moved to an appropriate medical facility due to acute suicidality (“VISCI red”) were only transferred back after treatment when the acute risk is observed to have been reduced. In both of the cases mentioned, however, the visiting delegation observed that the claims of the Ministry did not apply.

Five attempted suicides in four days In one case, the inmate had attempted suicide five times in four days. He was transferred after just two days and two nights in the *Tirol Kliniken* (Association of Tyrolian Hospitals) back to Innsbruck correctional institution where he was held for almost three weeks in a specially secured cell. The doctor on duty at *Tirol Kliniken* insisted that “the patient is no longer safe in the Innsbruck Psychiatric Department” and he should be picked up. In the discharge letter, *verbatim*: “Isolation with constant observation is urgently indicated due to the chronic suicidality”.

Hanged man cut down The situation was similar in the second case. The inmate was transferred to *Tirol Kliniken* after strangulation, from which he could only be freed through “considerable physical intervention” by the prison guards (“by lifting his body”). He was transferred to Innsbruck correctional institution after just three hours.

Premature transfer back to correctional institution In both cases, the commission observed that the treatment setting as it should be in a medical facility in the case of acute suicidality was not available or did not work. From a psychiatric perspective, the aim is not only to prevent someone from committing suicide but also to remove the emotional, psychological strain. To this end, the person affected shall be supervised by specialist staff who determines whether additional sedating medication is necessary to reduce the existing psychological strain.

In view of this criticism, it is not clear to the NPM why a patient who receives an infusion and who then quiets down is discharged from hospital not even an hour later because he “is no longer safe there”. The Federal Ministry of Justice was not able to answer this question.

Correctional institution overstrained The NPM does not misjudge the efforts of the specialist services in Innsbruck correctional institution who supported the two inmates closely.

However, it shares the view of the Ministry that Innsbruck correctional institution has no permanent support from qualified professional staff, which is why the inmates were also transferred to the Innsbruck Psychiatric Department in both cases.

The Ministry endorses the assessment of the commission that a treatment setting (local place and qualified personnel), as is given in a medical facility, cannot be provided in a correctional institution. The situation and possibilities in the event of acute suicidality in the correctional institution were pointed out in conversations and networking meetings with *Tirol Kliniken*.

Networking meetings should effect improvement

The NPM remains hopeful that it will be understood that patients – even if they have to be monitored in the department – can only be adequately treated and cared for in the relevant health care institution.

► *As long as there is an acute risk, further treatment should also be provided in the hospital to which a detainee is transferred. There should be effective transition management between the hospital and the correctional institution in the time thereafter.*

Inadequate medical care – Innsbruck correctional institution

In the penal system, not only medical specialists are urgently needed. For years the NPM has observed in almost all court prisons that no general practitioner is in attendance from Friday afternoon until Monday morning and no examinations upon arrival or addiction screening can be performed during this time. Unfortunately, no improvements have been observed in this respect.

The importance of having an on-call doctor or at least a telemedicine contact was also evident in the observations on suicide prevention. If a detainee is classified as “VISCI red”, immediate notification is sent to the psychiatric and psychological service during normal operations. During the night shift (beginning at 3.00 p.m. or 12.00 p.m.), at the weekend or on public holidays, contact is frequently only possible on the next (working) day. This is also the case in Innsbruck court prison where there is neither an on-call psychiatrist nor a doctor.

Risk at the weekend and during the night

Regarding the medical care in Innsbruck correctional institution, the Federal Ministry of Justice explains that a satisfactory substitute regulation could not be found. However, the former institution psychiatrist was prepared to be available for any emergencies but also for other necessary medical work (e.g. for a request to place a detainee in a specially secured cell) at the weekend. The recruitment agency for justice supporting staff was able to install an on-call service.

Solution in the individual case

On-call medical service The NPM recommends introducing a nationwide on-call medical service. Furthermore, telemedicine could help to alleviate care shortages – in particular, on night shift and at the weekend.

► ***A nationwide on-call medical service system shall be established for the weekend and during the night shift.***

Hepatitis C therapy in detention – Federal Ministry of Justice

Chronic hepatitis C is curable Thanks to the introduction of so-called direct antiviral effective medication or direct acting antivirals (DAA) that intercept the replication of the HCV (hepatitis C virus), a complete eradication of the HCV can be achieved in more than 90% of all of those infected with the HCV.

The decision regarding therapy with DAA in detention is taken according to the principle of equivalence of the Main Association of Austrian Social Insurance Institutions. A therapy indication with DAA thus basically exists with virological evidence of HCV-RNA above a specific threshold and genotyping.

Elimination of the HCV illness by 2030 Due to a WHO requirement to eradicate the HCV illness by 2030, the Federal Ministry of Justice developed a plan together with the Federal Ministry of Social Affairs, Health, Care and Consumer Protection. The goal is a reduction of HCV infected persons to 80%. A total of 815 detainees were hepatitis-C-positive in January 2021. Of these, 85 persons were in ongoing medication-based therapy; such therapy is due to start for 25 persons in the coming months. A total of 60 places per year for therapies with DAA are reserved for detainees, whereby urgent therapies are not included.

The NPM demands that all detainees with chronic HCV infections are offered adequate therapy. The WHO stresses this too when it comments that all persons with chronic HCV infections should be treated, and generally recommends application of the DAA-based regime for HCV therapy (Stöver/Kepler, *“Elimination von Hepatitis-C-Infektionen in Gefängnissen”*, *Praxis-Report* 2018, p. 8 et seq.). Additional therapy places shall be created to make treatment possible for all patients.

Austria shall not be allowed to fall behind Currently, prison inmates and detainees awaiting trial are examined for HCV infection and at least the genotype and viral load determined. However, detainees with chronic HCV infections are still not included in the therapy with DAA. This is justified with the argument that the preventive measures for stopping the spread of COVID-19 infection had a higher priority, amongst others.

Even though it is understandable that the measures in connection with the COVID-19 pandemic bind resources, the NPM would like to recall that in February 2019, a year before the outbreak of the pandemic, it recommended

ensuring as soon as possible that detainees with chronic HCV infections awaiting trial shall not be at a disadvantage compared to the other prison inmates. Pursuant to the principle of equivalence, they should have the same access to therapy with DAA as persons living in freedom.

- ▶ *All detainees including those awaiting trial with a chronic HCV infection should have the same access to therapy with DAA (direct acting antivirals) as persons living in freedom.*
- ▶ *Measures shall be taken to increase the number of therapy places with DAA for persons with chronic HCV infection in detention in order to be able to meet the WHO requirement to eradicate the HCV illness by 2030.*

Substitution with depot medication – Garsten correctional institution

The Addictive Drugs Regulation (*Suchtgiftverordnung*) was amended on 18 May 2020. Since then, substitution with depot medication is possible. In Garsten correctional institution the change of substitution medicine to depot injections is being expedited. Detainees expressed concern, however, that the depot injection would be the only form of administration in future.

Injection not mandatory

The decree of the Federal Ministry of Justice does not stipulate administration by depot injection. It is thus important to inform the detainees better about the voluntary nature of this new form of administration.

The initial information provided by the resident doctor apparently caused confusion surrounding the voluntary nature of this new form of administration. According to the Ministry, these misunderstandings could, however, be cleared up through the joint approach of the support services and resident doctor.

Need for communication and talking

- ▶ *Substitution with depot medication should be provided on a voluntary basis. Patients shall be adequately informed about the compound.*

Substitution compound – depot injection - Graz-Karlau correctional institution

During a monitoring visit to Graz-Karlau correctional institution in April 2021 the commission recommended using the depot injection with Buvidal® as a substitution compound. The depot injection is the first long-term effective buprenorphine compound used for substitution treatment. The substance is injected weekly or monthly depending on the required dose. The active ingredient is dispensed and released continuously.

The Federal Ministry of Justice claims that Buvidal® is already being prescribed. Patients have to be motivated and persuaded to stop taking

medication or change to another product. The factual circumstances – above all when release is pending – of living in freedom also have to be considered so that a consistent and professionally flawless therapy is guaranteed. It is unavoidable that the product has to be further prescribed by a practising doctor after release in order not to subject the affected persons to additional risk factors. Such factors include the risk of withdrawal and inherent drug-related crime.

During the time in detention, a series of support conversations is also held with the psychological service in combination with the care staff, as the detainees' fears concerning withdrawal symptoms have to be absorbed by closely knit support.

In conclusion, the use of Buvidal® in the penal system is endorsed by the Ministry in justified cases.

► ***Depot medication with the long-term effective buprenorphine compound (Buvidal®) should be used more often for substitution treatment in the prison system.***

Provision of naloxone (Nyxoid spray) – Federal Ministry of Justice

Life-threatening situation

Swift reaction within the shortest time is required in the event of an opiate overdose. Nyxoid spray (with active ingredient naloxone) is intended to help non-medical personnel to quickly counter an opioid-associated respiratory depression until the emergency doctor arrives. The WHO recommends training and access to naloxone for all persons who can be witness to an overdose, that is for non-medical personnel also.

Medication shall be quickly available

Currently, the pharmaceutical compound Nyxoid spray is usually stored in the doctor's emergency case or in the infirmary. On the monitoring visits to the correctional institutions Graz-Jakomini and Graz-Karlau, the NPM recommended training the prison guards in the application of Nyxoid spray and equipping the departments or stations with Nyxoid spray. As the infirmary is normally far away from the inmate wing, the respiratory arrest can have already occurred before the spray is available where it is needed. The life-saving and easy-to-use medication should therefore be quickly accessible for the prison guards.

In the view of the commission, the death of a detainee in Graz-Karlau correctional institution could have been prevented through the use of a pharmaceutical compound such as a Nyxoid spray stored locally (that is, at the station and applied by prison guards). The death shows how important it is that prison guards are trained and the stations equipped with Nyxoid spray. The Federal Ministry of Justice argued that in hindsight, due to too many factors, it is not possible to provide a valid assessment of whether

the death of the detainee could presumably have been prevented through the use of pharmaceutical compounds such as a Nyxoid spray.

The Nyxoid spray is currently used by medical staff only. The Ministry considers the application of the Nyxoid spray by prison guards as overstepping first aid activity. It is not the officer's responsibility to make a tentative diagnosis in order to be able to react using an opiate antagonist spray. In any case, training with regular refresher courses is required before the stations can be equipped with this medical product and the application thereof by the prison guards can be permitted.

Who decides on the use of opiate antagonist spray?

Furthermore, in the case of the documented medical emergencies to date, the dose in the single-application package proved to be insufficient and for the most part an intravenous dose had to be used. Using the spray ultimately also showed that the applicator can be easily dismantled and the needle inside can be used as a special tool (e.g. tattoo needle).

No supplies in the departments

For the reasons mentioned, the nationwide implementation of a corresponding training course will not be proposed for inclusion in the "modular deployment training" for prison officers. Instead, an optimisation of the practical routine in the area of the rescue process is preferable. The spray is not authorised for use in the prison service.

► *The prison guards should be trained in the application of the Nyxoid spray (with active ingredient naloxone) and the departments in the inmate wing equipped with the same in order to prevent opioid-associated respiratory arrest until the emergency doctor arrives.*

Storage and dispensing of medication – Graz-Karlau correctional institution

The commission visited Graz-Karlau correctional institution at the end of August 2020. The focus of the visit was on questions regarding health care, in particular the storage of medication in the infirmary. There are several points of criticism on this topic in the visit report. Medication should not be stored in the doors of fridges but in the middle in order to ensure the correct temperature is maintained. For the purpose of continuous monitoring and documentation of the storage temperature, the purchase of two thermometers or temperature data loggers is recommended.

Correct storage of medication

When drops are dispensed, the date on which the container was opened and the "use by" date should be written on the packaging. The commission considers the transferring of Psychopax drops from one container to another critical. This "decanting" falls under the term of "manufacture" pursuant to the Medicinal Products Act (Arzneimittelgesetz). The correctional institutions are not authorised to manufacture medicinal products. The commission recommended that, similar to the supply of liquid addictive substances, a pharmacist, preferably the regular supplier, fill

Transferring drops from containers and dispensing them

Psychopax drops from a single batch into a large bottle, which fits a dispensing pipette.

- ▶ *Medication should be stored in the middle of a fridge, the temperature of which is regularly monitored.*
- ▶ *The date on which the container was opened and the “use by” date should be written on the packaging of drops.*
- ▶ *The transferring of drops from one container to another should only be performed by a pharmacist.*

Dispensing medication – Leoben and Graz-Jakomini correctional institution

In Leoben correctional institution, the NPM had to criticise the procedure for dispensing the medication. Each nursing staff sorts the medication for individual inmates. The blister packaging is then randomly checked by another nursing staff.

The Federal Ministry of Justice stated that an increase in staff capacity is not possible and that the medication is adequately validated by the existing personnel.

Dual control principle required The NPM upholds its demand: medication should be dispensed by two persons who check each other mutually. The checks shall be documented.

Error-prone system In Graz-Jakomini correctional institution too, the NPM addressed the dispensing of medication. The tablets are taken out of their packaging and collected in “little piles” on the table. Each nursing staff then sorts the medication for individual inmates. The sorting is randomly checked by another staff member here as well.

The Ministry justified this method with the implementation of the dual control principle that was recommended by the NPM. Since then, checks are made on a case-by-case basis. These are noted on the inspection sheet.

Permanent checks required This way of dispensing medication cannot, however, be endorsed: a random check does not constitute a dual control principle. The criticism of the practice of preparing “little piles” of tablets on the table is also upheld because this can easily cause mix-ups or incorrect dosage.

- ▶ *Medication for the detainees should be dispensed using the dual control principle. All checks shall be documented.*

Lack of confidentiality of conversations with the special services – Innsbruck correctional institution

The commission observed that the confidentiality of prisoners' conversations with the staff of the psychological and social service is not safeguarded in Innsbruck correctional institution. The conversations are held in meeting rooms in which – at the instigation of the NPM – two separate meeting areas were created. However, this partition was not made soundproof.

The Penitentiary System Act (Strafvollzugsgesetz) guarantees the inmates psycho-social care. Needless to say, this shall be confidential.

The Federal Ministry of Justice reacted to the criticism of the NPM immediately and announced that additional building work had already taken place in order to guarantee the confidentiality of the conversations.

► *The confidentiality of conversations with the staff of the psychological or social service shall be guaranteed.*

Therapies via video telephony – Graz-Karlau correctional institution

The focus of the monitoring visit to Graz-Karlau correctional institution included an examination of the proportionality of measures for preventing the spread of the COVID-19 pandemic. The commission observed that due to the decreed contact restrictions, video telephony was used for therapies. The commission sees an opportunity here for fully qualified psychotherapists who are authorised to work autonomously to be deployed more frequently and recommends contemplating group psychotherapy per video.

New form of communication

The Federal Ministry of Justice appeared to be noncommittal in relation to this recommendation. As far as the expansion of (group) therapy on a video conference basis is concerned, this form of therapy constitutes an experiment in the penitentiary system; the capabilities of the individual patients are crucial in this context. As a general rule, the more feelings-based content is dealt with in such conversations, the less this instrument can be used. The spatial and physical distance between therapists and group members makes particularly intensive conversations impossible, meaning that this form of therapy can be seen merely as an aid.

Boundaries immanent

► *If the health situation does not permit the presence of a therapist, at least individual therapy should be offered digitally through a secure connection.*

No psychotherapy via video telephony – Leoben correctional institution

In Leoben correctional institution the commission observed that psychotherapy via video telephony is not offered. Only a few institutions enable psychotherapy by video telephony even though this was recommended by the Austrian Professional Association for Psychotherapy and public health insurance offices. On 30 April 2020 the Federal Ministry of Justice decreed the use of video telephony for the continuation of psychotherapies by external psychotherapists (Item 10a).

Even though the Ministry explains that group therapies by video conference cannot be held in all correctional institutions (for example in Leoben correctional institution) due to the lack of technical equipment, individual therapies with the help of video telephony should be held.

► *Psychotherapies that cannot be carried out personally should be offered using a virtual format.*

Target and service agreements with special services – Wels correctional institution

Pilot project Within the framework of the monitoring visit to Wels correctional institution in February 2021, the NPM observed that the prison warden had concluded a target and service agreement with the psychological service. This stipulates amongst others that the psychological service is entitled to a specific budget that is used and managed autonomously from 2022.

With this budget, the psychological service shall ensure – amongst others – the purchase of external support measures in its own sphere of activity. The decision regarding the purchase of therapies shall be thus made by a professionally qualified office that can make changes if required. The psychotherapeutic programme and purchased group programmes should start at the beginning of 2022. A quarterly meeting on the cost incurred shall be held with the management of the facility.

Nationwide initiative The Federal Ministry of Justice informed the NPM that within the framework of a project at least one special service in every correctional institution is currently appointed with whom a resource, target and service agreement is created and then implemented in the following year, 2022. According to the Ministry, the corresponding meetings on the agreements in summer 2021 returned consistent positive feedback and they are being dealt with in detail as part of the ongoing controlling meetings with the Ministry.

Positive effect anticipated It remains to be seen whether this method will effect an optimisation, e.g. in the purchase of therapies. The Ministry assumes in any case that the

needs-based purchase of therapies is possible through the above-mentioned agreements and a related individually managed budget for a special service area or several special service areas. A performance-oriented (prison) administration could give way to an improved internal, interdisciplinary understanding and thereby to improved multi-professional cooperation. Ultimately, this increased freedom for the special services in their scope of activity can result in enhanced employee motivation and – not least – contribute to a more transparent communication and cooperation with other professional groups in everyday prison life.

► *The special service areas should have an individually managed budget in order to facilitate the needs-based purchase of external support measures and (therapy) services.*

2.5.6 Detention of mentally ill offenders

Overcrowding – forensic ward of Kepler University Clinic

Severe overcrowding was recorded once again in both wards of Kepler University Clinic in December 2020. This was nearly 140% on the day of the visit. There were three or four patients in almost all two-bed rooms; some beds were stationed in the hallway.

In one department, the physiotherapy room was used as a patient room with four occupied beds. Restraints were carried out in the smoking room of a ward, which is glazed on the hallway side. A screen had been put in place to protect the occupants from the gaze of the other patients.

Restraints in
smoking room

The overcrowding has a manifold negative impact on the living conditions of the patients: it results in a loss of privacy in the rooms. The improper use of social rooms for therapies or restraints means that the patients have nowhere to go during the day.

Illness-inducing
stress

The NPM is concerned that the lack of places in which to withdraw and be alone increases the potential for aggression of the patients, which is reflected in a rise in medication to calm them, more frequent restraints and imposed isolation.

The Federal Ministry of Justice confirmed the dramatic overcrowding in the forensic wards of the clinic. There is only a prospect for improvement in the long term. The Ministry hopes that the taking into operation of Asten correctional institution will provide some relief. The planned amendment to the Detention of Mentally Ill Offenders Act (Maßnahmenvollzugsgesetz) 2021 could also effect a reduction in occupancy.

No direct
improvement

In cooperation with pro mente plus, Kepler University Clinic has created an additional facility for interruptions in hospitalisation. There have also been considerations on how to create additional places for psychiatry with a forensic focus.

- ▶ *There shall be sufficient places for patients to withdraw in forensic departments.*
- ▶ *Restraints should only be carried out in the rooms designated for that purpose.*

Training and further education of employees – Vienna-Favoriten correctional institution

Special institution undergoing change

As the commission learned on their monitoring visit at the end of October 2020, the officers were informed in July 2020 that Vienna-Favoriten correctional institution will be the third institution for offenders pursuant to Section 21 (1) Austrian Criminal Code (*Strafgesetzbuch*) from the beginning of 2021. For the commission, the question arose as to how the prison officers are being prepared for the new tasks and whether mandatory further education modules have to be completed in this context.

Preparation for new tasks

In this respect, the Federal Ministry of Justice stated that there is not yet any obligation to complete modules created specifically for the detention of mentally ill offenders. The Ministry prefers to wait until the planned reform of the detention of mentally ill offenders is anchored in the law in order to include as many of the recommended amendments as possible in the modules.

In anticipation of the reform of the detention of mentally ill offenders, the implementation of mandatory further education in the sense of a qualification module (for deployment throughout Austria) was commissioned with the Correctional Services Academy (*Strafvollzugsakademie*). Furthermore, there is permanent raising of awareness of the officers deployed in the detention of mentally ill offenders: special attention is given to personal suitability when selecting the officers for deployment in this area.

Ongoing further education

Further education in the work area of detention of mentally ill offenders is available to all employees at Vienna-Favoriten correctional institution ("Competence-building in the detention of mentally ill offenders" – "*Kompetenzerwerb Maßnahmenvollzug*"). In addition, two seminars (motivational interviewing and de-escalation) are offered specially for Vienna-Favoriten correctional institution.

- ▶ *Prison officers should complete a relevant training module in order to be able to tackle the challenges of working in the detention of mentally ill offenders.*

Frequent weaknesses in follow-up care facilities

In autumn 2021 the commission visited several follow-up care facilities in Vienna, Lower Austria, Upper Austria and Tyrol. All of the visited houses

are operated by legal entities with whom the Federal Ministry of Justice has concluded a framework agreement. The commission was able to view the recreation rooms and get an impression of the quality of care in all cases. The commission received the full support of the officers present in each house who were eager to provide information and documents.

The very different structures in some cases make a comparison difficult. However, it is noticeable that the lack of barrier-free accessibility was observed in almost all houses. Entering the houses without help is thus not possible for persons with special needs. This structural deficit can only be removed by the subsequent installation of a ramp or a stair lift in a few cases.

Barrier-free accessibility

Another frequently voiced recommendation was implemented more quickly: the installation of a complaint letter box that can be used unobserved.

Complaint letter box

► *Follow-up care facilities shall have barrier-free accessibility.*

► *There should be a complaint letter box in every follow-up care facility, which can be used unobserved.*

2.5.7 Staffing

More permanent positions for law enforcement – Federal Ministry of Justice

It is encouraging that almost all positions in the law enforcement area of Vienna-Simmering correctional institution are filled. On 1 March 2021 a total of 98.78% of all 158 allocated law enforcement permanent positions were occupied. In comparison, the nationwide rate was 95.28% on 1 March 2021. In the view of the Federal Ministry of Justice, the available staff can compensate long-term leave of absence and sick leave thanks to the high rate of occupation.

Nationwide observations made by the NPM show, however, that despite full occupation of the allocated permanent positions, more (prison guard) staff is necessary in order to offer contemporary prisons with longer cell opening times and with an adequate programme of work and recreational activities (see NPM Report 2019, pp. 132 et seq.). The human resources shall be adapted to the needs of modern everyday prison life in order to guarantee appropriate living conditions for the detainees and prevent human rights violations.

More personnel for modern prisons

The Federal Ministry of Justice promised to request an additional 150 law enforcement permanent positions (E2b permanent positions) and 100 (E2c) trainee permanent positions. By June 2021, 30 law enforcement permanent positions had been made available to correctional institutions (E2b and

Increase in law enforcement permanent positions

E2a) as well as 100 (E2c) trainee permanent positions. Furthermore, 50 additional administrative permanent positions were allocated to the correctional institutions so that the prison guards are now relieved from working on administrative tasks.

Additional 80 new recruits

On 1 May 2021, 125 law enforcement permanent positions were unfilled in Austria. The Federal Ministry of Justice announced that there would be a further 80 new recruits in 2021 so that, considering the anticipated departures (retirement and termination) and continuation of the positive development, just 50 unfilled permanent positions in law enforcement can be expected at the end of the year.

The NPM endorses these measures. The objective shall be the full occupation of the law enforcement permanent positions. It cannot be precluded that a further increase in personnel will be required to adapt the human resources to the needs of modern everyday prison life. Only with sufficient staff can appropriate living conditions be guaranteed. Prisoners should spend most of the day outside their cell and have an adequate work and recreational programme. Regrettably, insufficient occupation and lock-up times of 23 hours per day continue to be the depressing reality in many correctional institutions (particularly in court prisons), which are often attributable to a lack of human resources amongst others.

► ***Human resources shall be aligned with the real needs of modern everyday prison life. Sufficient personnel is necessary to guarantee appropriate living conditions.***

Positive observations – Garsten correctional institution

During the monitoring visit to Garsten correctional institution in March 2021 the NPM commission noticed the high level of dedication on the part of the management of the institution, in particular. They took a lot of time for the visiting delegation despite the pending visit by the general director for the penal system and the execution of measures that restrict freedom. The prison warden as well as all other contact persons supported the NPM in all respects, provided detailed information and were cooperative.

Excellent work atmosphere

The pleasant way in which they are treated by the officers and the positive atmosphere in the building were also emphasised by the interviewed detainees. The prisoners appreciated that they can go through video-monitored door openings and can thus take certain routes in the building without prison guards.

A lot of work, sufficient staff

It is also positive that the sheltered workshops and companies that provide occupational opportunities in Garsten correctional institution were kept open despite the COVID-19 pandemic. This contributed to maintaining a constantly high employment rate.

The staff shortages criticised on previous visits (in particular in law enforcement) were rectified. The staffing level was increased.

2.5.8 Returns and releases

Inconsistent day release practice – Maria Lankowitz satellite facility, Graz-Karlau correctional institution

The commission observed on their visit in mid-February 2021 that day release had been suspended in Maria Lankowitz satellite facility due to the COVID-19 pandemic. Prison inmates who have work outside the correctional institution were not allowed to leave the same. Those affected feared that if they stayed away from work for longer, they would lose their job and thus the promise of continued employment after their release.

Leaving correctional institution not permitted

The continuing restrictions are experienced by both the inmates and the officers as increasingly problematic and in some cases disproportionate. A comparison was made to other satellite facilities or “day release prisoner houses” where freedom measures were allegedly granted. The NPM did not understand why there is no concept for preventive measures to enable the detainees in Maria Lankowitz satellite facility to take up their external employment again.

In view of the long duration of the restrictions, it is important to explain to the detainees in an understandable way why restrictions in Maria Lankowitz satellite facility (despite the current positive development) have to be upheld compared to other satellite facilities. In any case, the restrictions shall be lifted as quickly as possible so that the prison inmates can soon reassume their work as day release prisoners once again.

Restrictions shall be lifted as soon as possible

The Federal Ministry of Justice confirmed that due to the changing development in the COVID-19 infection rates, allowing day release for a longer period was not entirely possible. Additional preventive measures, for example to avoid longer contact with the other inmates from the satellite facility, were not possible due to the working hours system and the overlapping of the return times of the day release prisoners with the working times of the other inmates in the yard area.

The Federal Ministry of Justice also emphasised that the affected inmates have been allocated a job in the institution’s internal company in the satellite facility so that the inmates would have no loss of income. Furthermore, there is a longstanding cooperation between Graz-Karlau correctional institution and the relevant companies. The Ministry is thus confident that after the COVID-19 restrictions have been lifted it can organise a sufficient number of jobs for day release prisoners.

The development of the infection rates has enabled day release again for the inmates held in Maria Lankowitz satellite facility since the beginning of June 2021.

- ▶ *The pandemic-related restrictions shall be lifted as soon as possible so that prison inmates can take up their work as day release prisoners once again.*

No day release for women – Innsbruck correctional institution

Social rehabilitation
not supported

An inmate of Innsbruck correctional institution complained in summer 2020 that she would have had the opportunity to start a job outside the correctional institution. However, there was no day release regulation for female inmates. Her application for day release was refused for this reason. The job she had been promised was given to a male inmate instead.

The Federal Ministry of Justice conceded that, in view of the temporary housing of the police detention centre in the correctional institution and the related restructuring, the women's department had been relocated to another section of the building. In so doing, it was forgotten to set up a day release department for women.

In the view of the NPM, this constitutes unjustified discrimination against women in Innsbruck correctional institution.

- ▶ *Female detainees shall also be given the opportunity to work outside the institution.*
- ▶ *Women shall not be placed at a disadvantage compared to male detainees.*

2.6 Police detention centres

Introduction

In 2021 the commissions conducted a total of twelve visits in police detention centres as well as Vordernberg detention centre. As in 2020, the commissions examined compliance with the pandemic-related regulations of the Federal Ministry of the Interior for the prevention of COVID-19 infections in detention enforcement. The commission also concentrated on observing deficits in living conditions and on the documentation of detention as well as defects in the structural and hygiene condition of the buildings.

Twelve visits in
police detention

2.6.1 COVID-19 in police detention

The NPM also monitored ex-officio in 2021 the measures taken by the Federal Ministry of the Interior for organising detention enforcement in the COVID-19 pandemic. As explained in the NPM Report 2020 (p. 134 et seq.), the Ministry enacted a decree with fundamental restrictions at the expense of the detainees at the end of November 2020.

In March 2021 the NPM recommended once again that the Federal Ministry of the Interior offer long-term detainees the opportunity to take a free COVID-19 test at the latest on the fifth day of their ten-day arrival quarantine. The purpose of this recommendation was to terminate arrivals quarantine if the test result was negative. The COVID-19 Entry Regulation (COVID-19-Einreiseverordnung) of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection in force at the time stipulated a comparable “test clear” option.

However, the Federal Ministry of the Interior rejected this recommendation in April 2021. In justification, the Ministry referred above all to the incidence of the more infectious Delta variant of COVID-19 in the population. The Ministry reserved the right, however, to consider the suggested test option during the admission of detainees or after the end of their arrival quarantine.

COVID-19 testing still
only when there is
suspected infection

However, the reports on four monitoring visits in police detention centres by the commission indicated that the Federal Ministry of the Interior had not established a harmonised approach for (voluntary) COVID-19 testing for detainees between April and August 2021.

The commission learned on a visit to Innsbruck police detention centre in April 2021 that detainees had the option of taking a rapid antigen test. However, they still had to complete the ten-day arrivals quarantine even if the test result was negative. There was no such test offer observed on the monitoring visits in Hernalser Gürtel police detention centre in May 2021,

Inconsistent practice
with voluntary
COVID-19 tests

in Linz police detention centre in June 2021 or in Salzburg police detention centre in August 2021.

The NPM requested the Federal Ministry of the Interior to explain the reason for this inconsistent practice in October 2021. At the same time, it recommended including regulations in the decree of November 2020 for detainees who had already been vaccinated or had recovered from a COVID-19 infection prior to starting the detention.

The reason for this was the regulations of the Federal Ministry of Justice in force at the time. According to these, convicts no longer had to remain in quarantine for ten days after their admission to a correctional institution if they had received a (partial) vaccination more than 22 days before their beginning of their detention.

The NPM also requested the Federal Ministry of the Interior to provide the concepts of all nine Police Departments in relation to the regulated daily structure and the occupational opportunities for the persons detained in the detention centres. According to the decree of the Federal Ministry of the Interior of November 2020, these concepts had to be presented within three weeks after the decree was announced. The concepts should serve to compensate the negative impact of the restrictions stipulated in this decree. The statement of opinion of the Federal Ministry of the Interior on this topic was not yet available at the time of compiling this report.

Recording of the vaccination and recovery status

However, the Federal Ministry of the Interior reported in December 2021 regarding the visits to Hernalser Gürtel police detention centre in May 2021 and Linz police detention centre in June 2021 that the vaccination against and recovery from a COVID-19 infection on the part of detainees is considered in detention enforcement. The vaccination and recovery status of detainees has thus been recorded during admission to a police detention centre since August 2021. If a detainee can provide written evidence of full immunisation, a voluntary rapid antigen test shall be taken in the first aid area. If the test result is negative, the ten-day quarantine period is terminated and the detainee shall be assigned a communal cell immediately. The Federal Ministry of the Interior did, however, point out that the rapid antigen test shall be repeated on the fifth day for safety reasons and any testing shall be based on the voluntary cooperation of the affected detainee.

During the monitoring visit to Hernalser Gürtel police detention centre in May 2021, the NPM requested the concept from the Vienna Police Department for the pandemic-related regulation of the daily structure in Vienna police detention centre.

Police Department Upper Austria does not create concept

Regarding the visit to Linz police detention centre in June 2021, the Federal Ministry of the Interior conceded that the Police Department of Upper Austria had neglected to create this concept. The Ministry justified this on

the one hand with the argument that the police detention centre was closed for refurbishment at the time the decree was announced. On the other hand, the instruction by the Ministry to present a concept was adopted six months before the new taking into operation of the police detention centre at the beginning of May 2021. From the default of more than a year on the part of the Police Department of Upper Austria, the NPM deduced that the Ministry had failed to carefully monitor the implementation of the instruction to present a concept. The NPM therefore recommended that the Ministry thoroughly examine comparable instructions to the Police Departments in future.

As explained in the NPM Report 2020 (p. 135), the Federal Ministry of the Interior restricted the possibility of visiting detainees in a decree of November 2020. The detainees were only allowed to receive “glass visits” in the legally regulated cases, and detainees awaiting forced return were only allowed to receive visits from their closest relatives and important contact persons directly before the forced return.

Questionable restriction of visits

The NPM recommended to the Federal Ministry of the Interior ex officio in mid-February 2021 that this restriction be lifted, as “glass visits” to the inmates of correctional institutions by their relatives and other persons were possible again. Furthermore, the NPM pointed out that the Ministry had not stipulated any alternative for maintaining the detainees’ social contacts such as free telephone calls or video telephony in the decree of November 2020.

At the end of April 2021, the Federal Ministry of the Interior justified the criticised restriction with the need to prevent the infiltration or spread of a COVID-19 infection in detention enforcement in the best possible way. The Ministry also referred to comparable visiting restrictions in retirement and nursing homes and medical facilities in a transparent manner. Furthermore, the Ministry reported surprisingly that all police detainees had been able to receive “glass visits” again since February 2021.

Actual lifting of visiting restrictions

The NPM recognises this fact. At the same time, however, it upheld its criticism of the Ministry that there was until then – and still is – no change to the decree of November 2020. The NPM thus recommended that the Ministry promptly inform the NPM of any future amendment or supplements to the decree.

The commission noticed a time limit on the duration of detainee visits during the monitoring visit to Linz police detention centre in June 2021. In concrete terms, the detainees were able to receive a visit twice a week; however, the duration of the visits was limited to a maximum of 15 minutes. This rule contradicted the duration of 30 minutes per detainee visit stipulated in the decree of the Federal Ministry of the Interior of May 2019.

Time limitation for visits in breach of decree

The Ministry reported in December 2021 that all detainees had been able to receive half-hour-long “glass visits” again shortly after the visit by the commission. The Ministry pointed out that due to the rise in COVID-19 infection numbers before the visit by the commission and the associated COVID-19 restrictions, only a quarter of the places for “glass visits” had been available. The restriction was put in place to comply with the social distancing rules between detainees and visitors. At the same time, the Police Department of Upper Austria made every effort to offer all detainees the same opportunity to receive visits.

The NPM considered this justification unconvincing. On the one hand, the NPM did not have any directive from the Federal Ministry of the Interior to reduce the number of places for “glass visits” in detention centres by 75%. On the other, according to publicly available information on the pandemic situation, the number of COVID-19 infections in the district of Linz city, in Upper Austria and nationwide decreased steadily from April to the beginning of June 2021.

In the year under review, the NPM also addressed the conclusive discussion of deficits in dealing with the COVID-19 pandemic that were observed during visits to the detention centres in 2020 (see NPM Report 2020, pp. 136 et seq.)

Breach of arrival
quarantine regulation

The Federal Ministry of the Interior was able to refute several points of criticism. This related, for example, to the doubts about sufficient surface disinfection expressed during the visits to Hernalser Gürtel police detention centre in July 2020 or to Roßbauer Lände and Innsbruck police detention centres in October 2020. The Ministry was, however, not able to provide a plausible explanation of why a detainee who had been admitted to Graz police detention centre just five days previously was deployed to work at the food counter as observed on the monitoring visit in October 2020. For the NPM it was not understandable that this detainee had to be trained for his job as house worker, for organisational reasons according to the Federal Ministry of the Interior, during his arrivals quarantine.

The commissions also documented the available occupational opportunities inside and outside the cells in the detention centres on their visits in 2021.

Deficits in activities
for detainees

As explained in the NPM Report 2020 (p. 136 et seq.), only a few books and magazines and hardly any games were observed on the monitoring visit to Innsbruck police detention centre in October 2020.

The Ministry reported about the purchase of additional games and increasing the stock in the library of the police detention centre. This implied that there had been a lack of activities on the day of the visit contrary to the regulations of the Federal Ministry in the decree of May 2020. The Ministry also announced the installation of one television in nine

single cells and six cells for multiple inmates respectively pursuant to the regulations stipulated in the decree of November 2020.

During the visit to Graz police detention centre in October 2020 the commission observed that there was insufficient sports equipment in the men's recreation room ("sports room"). The Federal Ministry of the Interior reported in March 2021 that the Police Department of Styria had since – as recommended – acquired additional sports equipment.

During the monitoring visit to Hernalser Gürtel police detention centre in May 2021, all of the viewed cells had a television, however, these TV sets were only able to receive three non-foreign language channels. The Ministry explained that it had postponed the installation of a satellite system, which had been applied for from the Vienna Police Department in 2018, due to the – as yet – undetectable reason for water damage. According to information from the Ministry, the installation of the system can be expected in 2022.

On the monitoring visit to Linz police detention centre in June 2021, the commission observed that contrary to the decrees of the Federal Ministry of the Interior of May 2019 and November 2020 there was neither a basketball basket nor table football for the detainees. Regarding this criticism, the Federal Ministry of the Interior reported that table football has since been acquired from the closed Steyr police detention centre. Furthermore, the Ministry promised to mount a basketball basket in the yard of the police detention centre by the end of 2021.

- ▶ *There should be a harmonised offer for the detainees in all detention centres to take a voluntary COVID-19 test.*
- ▶ *The Federal Ministry of the Interior should continuously examine the need and appropriateness of the restrictions decreed to counter the COVID-19 pandemic in detention enforcement, and inform the NPM promptly of any changes.*
- ▶ *The Federal Ministry of the Interior should carefully monitor the correct implementation of its instructions to the Police Departments.*
- ▶ *During the COVID-19-related restrictions in detention enforcement, the detainees shall be provided with occupational and recreational opportunities, the scope of which at least meets the regulations set forth in the decree of the Federal Ministry of the Interior of November 2020.*

2.6.2 Overdue implementation of NPM recommendations

As recently documented in the NPM Report 2020 (p. 138), the NPM recommended in May 2016 and December 2017 implementing the standards adopted by the working group for living conditions in police detention centres.

Adaptation of
the Directive on
Workplaces

The Federal Ministry of the Interior made those recommendations requiring structural measures dependent on the announcement of the adapted Directive on Workplaces. As the Ministry did not announce the Directive on Workplaces in the first quarter of 2021 contrary to the statement of December 2020, the NPM requested an explanation for the latest delay.

In its statement of opinion on the NPM Report 2021 of the end of May 2021, the Ministry justified this delay with unfinished work on the specifications for a “model police detention centre”. These specifications should meet contemporary requirements as well as take the human- rights-related structural standards into consideration.

After the new announcement of the Directive on Workplaces was not made in the second quarter of 2021 either, the NPM requested an explanation in September 2021. At the end of December 2021, the NPM learned that the date for the announcement of the Directive on Workplaces was still unclear.

Separation of toilets
in cells for multiple
inmates

While viewing the refurbished Linz police detention centre in March 2021 (before being taken into operation in May 2021), the NPM observed that the toilets in the cells for multiple inmates were completely separated from the cell. The structural design thus complied with the relevant recommendation of the NPM of December 2017.

However, on a monitoring visit to Salzburg police detention centre in August 2021, it was observed that such a partition was missing in two cells for multiple inmates. The Federal Ministry of the Interior announced that a separation of the toilets in all cells for multiple inmates would only be implemented as part of the refurbishment of the police detention centre planned for 2024. The Ministry explained this delay with the ongoing refurbishment of Innsbruck police detention centre and the necessity to keep Salzburg police detention centre open until completion of the refurbishment work. The Ministry also pointed out that the detainees were able to choose a single cell but that the vast majority still do not avail of this option.

Alarm buttons not
marked

On this visit the commission also observed that the alarm buttons in two of the specially secured cells were not marked as such.

The Ministry responded that this deficit in the furnishings of the security cells had not resulted in delays in alarming the police detention centre staff to date. Furthermore, all of the detainees housed in the cells were told on arrival which button has to be activated to contact the staff. However, the Ministry reported that the buttons had been marked immediately after the monitoring visit. The NPM deduced that the management of the police detention centre recognised the addressed need for action.

The NPM recommended the Federal Ministry of the Interior in December 2017 to implement the hygiene standards in detention enforcement adopted in the working group (see NPM Report 2017, p. 143 et seq.). These standards stipulate that cells shall be kept hygienically clean, amongst others. In the year under review, the NPM discussed several hygienic deficits with the Federal Ministry, which the commissions observed during their monitoring visits to Innsbruck police detention centre and Roßauer Lände police detention centre in October 2020.

Hygienic deficits
in detention
enforcement

As described in the NPM Report 2020 (p. 149), the deficits in Innsbruck police detention centre included mouldy leftover food in one cell, soiled toilets as well as dirt on the floors in several cells and the bath in the male detainees' shower room. The Federal Ministry of the Interior did not contest these deficits and reported that a daily hygiene control had been ordered. In addition, according to the Ministry, the management of the police detention centre had organised a regular, intensive cleaning and disinfection of the surfaces by the house worker detainees.

On the monitoring visit to Roßauer Lände police detention centre, the commission observed that the toilet in one of the specially secured cells as well as the floor and the ceiling of the sanitary rooms on the third floor were extremely dirty (see NPM Report 2020, p. 149). The Federal Ministry of the Interior reported about the restoration of the hygienic state in the mentioned rooms immediately after the visit. It was thus evident that the Vienna Police Department recognised the addressed need for action.

The commission observed hygienic deficits in several rooms on a visit to Hernalser Gürtel police detection centre in May 2021. In particular, several walls in the hallways on the ground floor and the first floor were very soiled from the floor up to a height of approx. two metres by spilled liquids and dust that had dried in. The commission suspected that the staff from the cleaning company deployed in the police detention centre did not feel responsible for this cleaning. There was also a swastika drawn on the wall of a cell.

The Federal Ministry of the Interior reported that the Vienna Police Department and the management of the police detention centre had issued directives for improving damage management such as the quarterly recording of hygienic deficits in the entire police detention centre. In addition, the NPM learned that the contract with the external cleaning company expired at the end of August 2021 and another company has been commissioned to clean the hallways in the police detention centre since September 2021. The Ministry also reported that the swastika and forbidden symbols were immediately removed after the monitoring visit to the police detention centre.

Realisation of table visits As presented in the NPM Report 2020 (p. 139 et seq.), the NPM already discussed with the Federal Ministry of the Interior in the previous year the regulations on table visits announced in its decree of May 2019. These regulations deviated fundamentally from the standards adopted in the working group.

On the suggestion of the Ministry, a meeting took place at the end of March 2021 to discuss the next steps with representatives of the Ministry, Vienna Police Department, the DIALOG association and the NPM. At this meeting, the NPM learned that the risk of smuggling in health-impairing substances exists primarily in Vienna police detention centre. In addition, it is not possible for the staff there to assess within an observation period of less than two weeks after the admission of the detainees whether their conduct would justify excluding table visits.

Agreed trial operation for table visits The participants of the meeting agreed to allow table visits on a trial basis in Hernalser Gürtel police detention centre after the COVID-19-related restrictions in detention enforcement have been lifted.

According to the agreement, a six-month trial operation with an observation period of fourteen days should be followed by a second six-month trial operation with an observation period of maximum seven days. Furthermore, there should be an evaluation of the trial operation phase, in particular with respect to the number of table visits held and the number of exclusions from the same. This evaluation should differentiate between Hernalser Gürtel police detention centre and the other detention centres.

Within the framework of the meeting, the representatives of the Federal Ministry of the Interior also promised the completion of a spatial and functional concept for police detention centres in April 2021. On the basis of this concept, the need for structural measures required for enabling table visits should be evaluated in all police detention centres. In this context, the representatives of the Ministry stated that table visits shall be enabled immediately in those detention centres where no structural measures are required.

In May 2021 the NPM requested the Federal Ministry of the Interior to forward the mentioned concepts and the results of the announced evaluations. However, the Ministry failed to comply with this request up to the time of compiling this report.

As part of its monitoring visits, the NPM will continue to track the realisation of all (including structural) standards, which it recommended in May 2016 and December 2017. Only when these standards are actually realised has the Federal Ministry of the Interior implemented the recommendations of the NPM.

- ▶ *There shall be a sufficient number of cells available in all police detention centres, which are suitable for detention enforcement in solitary confinement pursuant to Section 5 and Section 5b (2) (4) Detention Regulation (Anhalteordnung).*
- ▶ *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, the activation of which has to be acknowledged at the cell.*
- ▶ *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 securing purposes should be carried out using video surveillance that is independent of any light source and observing the personal space of the detainees.*
- ▶ *Access to hygienic sanitary facilities for the detainees in police detention centres as well as the protection of their personal space at all times must be guaranteed 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 mattresses and textiles handed out to detainees must be clean.*
- ▶ *The cells and the general rooms accessible by the detainees shall be kept hygienically clean.*
- ▶ *Visits to the detainees should take place at a table unless there are specific, safety-relevant criteria as well as in the event of prisoners in court custody. The undisturbed course of table visits must be guaranteed – if necessary, through structural measures.*
- ▶ *A dedicated room with a table must be provided for visits by minor relatives in police detention centres.*
- ▶ *Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees in police detention centres.*

2.6.3 Further aspects of detention enforcement in police detention centres

In 2021 the NPM continued its *ex-officio* endeavours to establish the use of video telephony in the detention centres. As depicted in the NPM Report 2020 (p. 142 et seq.), the Federal Ministry of the Interior rejected the installation of video telephony for detainees with the argument that the scope of outside contact provided in the law is safeguarded in the already existing options (telephone call, letter and visit).

Video telephony

As part of the ongoing discussion on the topic, the NPM pointed out that after the visiting ban was lifted in correctional institutions in February 2021, convicts still had the opportunity to make more telephone calls and sometimes use video telephony. The NPM also stated that the Federal Ministry of Justice had been pursuing the implementation of video telephony before the COVID-19 pandemic. For the NPM, this endeavour was thus not solely attributable to the pandemic-related suspension of visits in correctional institutions.

The Federal Ministry of the Interior conceded that the visiting regulations in the court penal system actually stipulated the possibility for all convicts of occasionally using video telephony. However, the Ministry predominantly allowed those convicts use video telephony during their sentence who were unable to receive visits in the country due to the distance from their relatives abroad. Detainees in police detention awaiting forced return shall not be compared with these persons, as they could have left Austria of their own free will prior to the detention pending forced return.

The Federal Ministry of the Interior also stated that the purpose and objective of the penal system is different to temporary detention enforcement. As there is no necessity for facilitating video telephony as an additional form of communication for detainees, the Ministry does not intend to implement the same in detention enforcement.

For the NPM, the position of the Ministry is not understandable. The Ministry omitted in particular the fact that pandemic-related curfews or travel restrictions could hinder visits to the detainees in the police detention centres by their relatives or other important persons. The NPM will continue to pursue the facilitation of video telephony in detention enforcement using the means provided for in the Federal Constitution.

Digital documentation
of curative medical
detainee information

As explained in the NPM Report 2020 (p. 143), the Federal Ministry of the Interior justified the failure to establish the digital documentation of curative medical detainee information for all institutions by the end of 2020 with the pandemic situation at the time.

On monitoring visits to Vordernberg detention centre and Bludenz detention centre in February and March 2021 respectively, the commission observed that the announced application called "Detention File Prison Administration" (*Anhaltedatei-Vollzugsverwaltung*) including a medical module (*Medizinmodul*) was not available.

Further pandemic-
related delays

When confronted about this, the Federal Ministry of the Interior responded in May 2021 that the worsening of the pandemic situation as it happened at that time had created organisational challenges that were difficult to assess. Furthermore, the Ministry pointed out the technical complexity of the project. The Ministry assured that it would drive the earliest possible realisation of the planned documentation form and promised the implementation of the medical module in the third quarter of 2021.

The NPM requested another progress report in September 2021. The Federal Ministry of the Interior announced that the test phase of the medical module and the communication of detected errors to the company commissioned to programme the module had been completed in summer 2021. The Ministry promised that the programming work would be complete by the end of 2021. After positive examination of the application by the office of the medical superintendent, a training version of the medical module will be created with which to train the first aid staff deployed in the detention centres.

The Ministry promised the nationwide rollout of the medical module in the first six months of 2022, which is why the NPM will continue to monitor the steps taken by the Ministry to realise the medical module.

- ▶ *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.*

2.6.4 Fire protection in police detention centres

In 2021 the NPM also monitored the implementation of the recommendations by the Civil Society Dialogue Committee 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.). As described in the NPM Report 2020 (p. 144 et seq.), the pandemic situation caused delays in the implementation of the still open recommendations.

Ex-officio examination of fire protection

While viewing the refurbished Linz police detention centre in March 2021, the NPM could confirm that all of the cells were equipped with dual fire alarms or smoke and heat sensors. However, the Federal Ministry of the Interior stated in two obtained progress reports that the pandemic situation had hindered clearing the backlog of open recommendations of the Civil Society Dialogue Committee by the department responsible for officer protection in 2021 again. The NPM will therefore continue to follow the implementation of the recommendations for the improvement of fire protection in the detention centres.

- ▶ *The fire protection standard in police detention shall be aligned with that applicable for correctional institutions at least.*
- ▶ *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.*

2.6.5 Staff shortages in Hernalser Gürtel and Roßauer Lände police detention centres

As mentioned in the NPM Report 2020 (p. 146 et seq.), the NPM discussed the precarious staff situation in the two Viennese police detention centres with the Federal Ministry of the Interior again in 2021.

Additional staff from other areas The Ministry announced in February 2021 that it had instructed Vienna Police Department to cover potential short-term personnel requirements in the police detention centres in the future by providing staff from other organisational units. The Ministry explained this measure with the repeated reference by Vienna Police Department to understaffing in their reports on the closure of the open detention pending forced return in the police detention centres in October and November 2020. The Ministry also promised to evaluate the staff deployment in the Viennese police detention centres and the effectiveness of the organisational personnel measures of Vienna Police Department at the end of 2021.

Decrease in reported closures The instruction of the Ministry appeared to show first signs of success already in spring 2021, as only three short-term closures of open detention pending forced return in the Viennese police detention centres were reported by the Ministry to the NPM between January and March 2021.

However, in connection with the instruction of the Ministry, the NPM saw the need for clarification as to whether the staff taken from other organisational areas of Vienna Police Department has the necessary experience and qualifications for dealing with detainees awaiting forced return. The Ministry responded that the basic training and extra-occupational further education of the law enforcement officers covers all aspects of everyday life in the police force and thus how to deal with detainees.

Insufficient staff until November 2020 From the view of the NPM, the creation of an instruction by the Ministry to Vienna Police Department implied that there had been a deficit in the staff management from February 2019 to November 2020. The NPM attributes this deficit to the Federal Ministry of the Interior, as Vienna Police Department is subordinate to the same. It remains to be seen whether the measures from the Ministry result in a sustained improvement of the staff situation in the Viennese police detention centres.

- ▶ *The staffing level in the police detention centres shall correspond to the anticipated target situation. Understaffing shall be avoided in order to prevent strain.*
- ▶ *Detainees awaiting forced return shall be housed in open detention within 48 hours of admission to the police detention centre or detention centre.*
- ▶ *The exclusion of detainees awaiting forced return from open detention in the police detention centre should only be for reasons agreed with the NPM.*

2.6.6 Detention of mentally impaired persons who can harm others

In 2021 the NPM continued its observations regarding the case of a detainee awaiting forced return that the commission learned of on the visit to Roßauer Lände police detention centre in October 2020. As described in the NPM Report 2020 (p. 147 et seq.), he was severely mentally impaired, was at risk of harming others but did not accept that he was ill and was not willing to receive treatment. As the detainee had already been in preventive detention for three months, the commission saw the need to create a special concept for the care of such detainees.

In the discussion of this case with the Federal Ministry of the Interior, the NPM found no evidence of neglect in the medical care of the detainee awaiting forced return on the part of the Ministry or Vienna Police Department. Whether the over three months in solitary confinement had exacerbated his mental impairments, was a medical question that could not be answered in retrospect. The Ministry argued that there was no risk of self-harm, which would have justified his release and being moved to a psychiatric institution pursuant to the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*). Since such cases of detention are very rare according to the Ministry and the psychiatric department is available in the event of harm to oneself and/or others, establishing a dedicated care and treatment setting in police detention is not proportionate to the actual need and required expense.

Structural deficits
not ascertainable

Independently of the isolated case of the detainee awaiting forced return, however, the NPM recommended the Ministry to regularly examine the fitness for detention of mentally ill persons, in particular, who have been in police detention for a long time, and to avoid detention lasting several months with all legally available means as a general rule. In addition, the NPM stated that persons displaying behaviour that could harm themselves or others shall, after confirmation from medical expertise, be taken to a psychiatric department pursuant to the Hospitalisation Act and released from police detention.

- ▶ *Detainees shall be detained with respect for their dignity and in the gentlest way possible.*
- ▶ *The detention of detainees awaiting forced return in police detention centres shall be avoided with all legally available means.*
- ▶ *The fitness for detention of mentally ill persons shall be examined at regular intervals. If behaviour that could harm the detainee or others is diagnosed by a medical expert, the detainee shall be moved to a psychiatric department pursuant to the Hospitalisation Act and released from police detention.*

2.6.7 Deficits in food for detainees

Pursuant to Section 13 (2) Detention Regulation (*Anhalteordnung*), all detainees in police detention are entitled to sufficient food as well as a warm meal once a day. Furthermore, consideration shall be given to medically prescribed food (light food, purpose food, diet food) or religious obligations (special food).

Vorderberg
detention centre

As explained in the NPM Report 2020 (p. 152), many detainees complained about the quality of their food during the monitoring visit to Vorderberg detention centre in August 2020. The Federal Ministry of the Interior was able to refute this criticism when confronted with the same.

On a follow-up visit to Vorderberg detention centre in February 2021 the commission observed that the range of food did not include any classified diabetic food.

The Federal Ministry of the Interior claimed that the food for the detainees classified as diabetics by the out-patient clinic of the detention centre was already adapted before the visits by the commission. Furthermore, the Ministry reported that the lunch menu for the detainees had been enhanced with the option of low-calorie and low-fat diet food in April 2021. The NPM welcomed this adaptation of the menu.

Steyr police detention
centre

During the monitoring visit by the commission to Steyr police detention centre in February 2021, all five of the interviewed detainees complained that they had received no breakfast since being admitted to the police detention centre. The detainees had received a bread ration once a day. However, according to the detainees, they had been given neither tea nor coffee nor butter nor jam for the duration of at least two to a maximum of fourteen days.

The Federal Ministry of the Interior contested this allegation and stated that Garsten correctional institution had prepared the food for the detainees from the taking into operation of the police detention centre until its closure at the end of April 2021. This food included the daily package of a breakfast, a lunch and an evening meal. According to the Ministry, the detainees received the bread ration for the next day as well as butter, jam etc. including cheese and cold cuts in the evening hours of the respective previous day.

In support of this food offer, the Ministry made reference to corresponding invoices from Garsten correctional institution. The NPM subsequently requested presentation of invoices or other documents as evidence of the reported breakfast offer. The Ministry provided several invoices from Garsten correctional institution, which however only contained the items "bread ration", "lunch", "fruit" and "overhead costs external persons".

As these documents failed to provide evidence of the claimed supplies of spreads or toppings for bread for the detainees' breakfast, the NPM considered the statement of the Ministry not credible and criticised the withholding of breakfast from the detainees for days.

► *Pursuant to Section 13 (2) Detention Regulation (Anhalteordnung), a breakfast shall be prepared for all detainees, which consists of a choice of hot drinks and a bread ration including a usual selection of spreads/toppings for bread.*

2.6.8 Inadequate fixtures and fittings in police detention centres

On their monitoring visits, the commissions regularly examine the condition of fixtures and fittings in the police detention centres. There were deficits in this area too in 2021. However, it must be stated that any deficits identified are often quickly removed and the commissions can confirm the implementation of promised improvement measures.

As stated in the NPM Report 2020 (p. 149), the commission observed several inadequacies in the fixtures and fittings during the monitoring visit to Innsbruck police detention centre in October 2020.

Innsbruck police
detention centre

The Federal Ministry of the Interior was able to provide a plausible argument for most of the disputed deficits. However, the NPM criticised that the video surveillance of the security cells in the police detention centre had no pixeling or redaction of the toilet areas in the cells contrary to the standards adopted by the working group. The Ministry promised to rectify the technical error. The NPM also criticised that (removed after the visit) coat hooks were on the walls of the cells of the persons detained pursuant to the Austrian Code of Criminal Procedure (*Strafprozessordnung*), which could make suicide easier.

The commission observed several deficits when viewing the refurbished Linz police detention centre in March 2021. On a follow-up visit in June 2021, the commission found that these deficits had not been removed even though the Federal Ministry of the Interior had promised the same.

Linz police detention
centre

These included the lack of a vandal-proof veneer for the heating inflow pipes or the failure to remove the regulator from the heaters in the arrival cells of the police detention centre. The commission also observed that there was no video surveillance that is independent of any light source (infrared camera) in any of the specially secured cells. Furthermore, until June 2021, the open cable ducts in the ceilings of the hallways on the second, third and fourth floors of the police detention centre were not clad or covered. Besides, the commission found that prior to the monitoring visit in June 2021 the sharp corners of the concrete base or lying area in the specially secured cells of the police detention centre had been blunted by fitting a

metal edge protector. This edge protector, however, had metal edges, which could pose a risk of injury.

The Federal Ministry of the Interior justified the deficits up to the monitoring visit to the police detention centre in June 2021 with delays that were in the scope of responsibility of the companies commissioned to perform the work. The Ministry also reported that the veneer for the heaters and the installation of infrared cameras in all specially secured cells in the police detention centres was complete. It also promised that the cable ducts would be covered in the first half of 2022, as this involved more complicated work.

The NPM attributed the delays to the Police Department of Upper Austria and the Federal Ministry of the Interior, as the deficits had not been included in the planning for the refurbishment of the police detention centres, welcomed however the implemented and promised improvements.

The Ministry provided a plausible explanation for the metal edge protectors on the corners of the lying areas in the security cells. There are no plans to convert or redesign the lying areas, as the technical and financial investment would be disproportionately high. This type of edge protector has been used for a long time in other police detention centres without any problems.

Salzburg police detention centre

On a monitoring visit to Salzburg police detention centre in August 2021 the commission had to stop a conversation with a detainee in one of the visiting rooms because of the annoying echo. This acoustic barrier resulted from the pane of glass used to separate the detainee and visitor areas.

The Federal Ministry of the Interior responded to the recommended installation of an intercom system in the visiting room that Salzburg Police Department had approved the same and a company had been commissioned to install it. The Ministry promised the completion of the installation work for 2021.

- ▶ *The condition and furnishing of cells pursuant to the Detention Regulation (Anhalteordnung) shall facilitate the safe and humane detention of persons at all times.*
- ▶ *Standards for detention enforcement that are agreed with the NPM and that can only be implemented with structural measures shall be implemented without delay.*
- ▶ *The technical monitoring of cells for all security purposes in police detention centres should be performed by video surveillance that is independent of all light sources and guarantees the privacy of the detainees.*
- ▶ *The design of rooms intended for receiving visitors to the detainees in police detention centres should not have acoustic barriers that impair holding a conversation.*

2.6.9 Deficits in the documentation of detention

The complete and correct documentation of official acts serves to make the actions of law enforcement officers and the course of official acts transparent. In the same way, law enforcement officers can subsequently provide information on the course of an official act and protect themselves from potentially incorrect claims. In the police detention centres, detention is predominantly documented in the “detention log” form and in the “Detention File Prison Administration” (*“Anhaltedatei-Vollzugsverwaltung”*) application.

Correct documentation promotes transparency

As described in the NPM Report 2020 (p. 151), the commission observed deficits in the documentation of detention in specially secured cells on the monitoring visit to Innsbruck police detention centre in October 2020. The Federal Ministry of the Interior was unable to refute several points of criticism in the discussion of these deficits.

Poor documentation

For example, the NPM observed that in the reports on measures concerning two detainees the reference to Section 5b (2) (4) of the Detention Regulation (Anhalteordnung) as the legal basis for placement in a specially secured cell was missing. In the case of another detainee, the Ministry conceded that the intervening officer had mistakenly entered “Section 5 (2) (4) of the Detention Regulation” in the “Justification” column of the measures report. Only the reason provided by the detainee for the behaviour that is the grounds for the security measure shall be entered in this column. The NPM also criticised that the measures report on another detainee did not contain any reference to the risk of abuse or of self-harming or harm to others pursuant to Section 5b (2) (3) of the Detention Regulation. Until the visit to the police detention centre, an outdated and a current printout of the same page were in the measures report of another detainee, making the documentation unclear.

On the monitoring visit to Bludenz police detention centre in March 2021, the commission observed that there was an outdated version of the the Detention Log III form on “police medical officer expert opinion” (*Anhalteprotokoll III – Polizeiamtsärztliches Gutachten*) in the detention file of a detainee who had been moved from Wolfurt police station. As explained in the NPM Report 2018 (p. 145), the suicide prevention working group had unanimously agreed a new version of this form in 2018 for documenting the examination of detainees.

Outdated version of form used

The Federal Ministry of the Interior responded to the criticism of this documentation deficit with the assumption that the fee-based doctor consulted by the officers of Wolfurt police station had an outdated version of Detention Log III with him and had used the same. The Ministry reported that after the criticism by the NPM the commanding officer of Wolfurt

police station instructed the other officers to actively inform any consulted medical staff to use only the current version of Detention Log III in future.

► *Detention in police detention centres shall be documented completely and transparently.*

2.6.10 Vordernberg detention centre

As explained in the NPM Report 2020 (p. 152), the NPM confronted the Federal Ministry of the Interior in relation to several deficits observed on a monitoring visit to Vordernberg detention centre in August 2020. The Ministry was able to refute all of the points of criticism.

Follow-up visit for health care positive

The commission conducted a follow-up visit in February 2021. In the visit report, the commission highly praised the integrated, psychiatric, specialised diagnostic and therapy per video consultation. The commission also observed that there was a Nyxoid® nasal spray in the detention centre out-patient clinic.

During the visit the commission noticed, however, that both the floor of an unoccupied specially secured, padded cell and that in residential group 8 were dirty. Furthermore, the wastepaper and rubbish bins in residential group 8 and several common rooms were full. A diabetic detainee complained about the lack of special food for diabetics and the irregular reading of his blood sugar levels. Finally, while examining the “cell labelling” of a security cell, that is, the information about the inmate written on the door, the commission observed that his religion was noted there. The commission feared potential religiously motivated discrimination in this respect.

The Federal Ministry of the Interior could provide a plausible explanation for all of the points of criticism and thus refute the same.

2.6.11 Positive observations

On all visits to detention centres in 2021, the commissions observed the high level of cooperation of the staff and the correct way they dealt with the detainees.

Bludenz police detention centre

The visit to Bludenz police detention centre in March 2021 took place in a very open and trusting atmosphere. The commission praised the well-functioning medical care of the detainees and permanent availability of the head doctor responsible for the police detention centre. Furthermore, the commission assessed the respectful way in which the staff dealt with the detainees as extremely positive and suitable for avoiding problems with them in the best possible way. In this context, the commission emphasised that detainees were only rarely placed in specially secured cells in the

police detention centre. According to the commission, the outdated building structure of the police detention centre once again was the only thing that spoiled the positive impressions made during the visit.

On the monitoring visit to Linz police detention centre in June 2021, the commission praised several observed measures. For example, there was a large board in the admission rooms of the police detention centre with instructions for completing the detention logs. Furthermore, there were new signs and orientation aids throughout the police detention centre, some of which were in the form of pictograms. The information sheet with the daily routine that is given to all detainees also had such pictograms. In addition, a snack machine had been installed in the entrance area to one of the stations in the police detention centre.

Linz police
detention centre

2.7 Police stations

Introduction

121 visits to police stations The commissions visited 121 police stations in the year under review. This is equivalent to an increase of 237% compared to 2020 (51 visits). As in previous years, the focus of the visiting delegations was on the proper documentation of measures that deprive liberty as well as the structural furnishings and fittings of the stations and departments.

Monitoring priorities Within the framework of the newly defined monitoring priorities, in 2021 the NPM intensified its focus on the proper documentation of detention in the detention book and barrier-free accessibility of all police stations in Austria. The results of the evaluation are summarised in chapter 2.7.2.

While examining the structural furnishings and fittings, the NPM noticed that seven police stations had no properly marked alarm button in the detention rooms (see chapter 2.7.5).

Lack of doctors The lack of doctors and associated possible long waiting times in the police stations after arrests remains an issue (see NPM Report 2016, p. 149; NPM Report 2018, p. 157). A working group was set up inside the Federal Ministry of the Interior in 2021 that should sound the possibilities for making working in the public medical service more attractive. An adjustment of the salary should also be achieved through the Federal Chancellery.

2.7.1 Monitoring priorities

New monitoring priorities defined in 2021 In 2021 the NPM – after consultation with the Human Rights Advisory Council – defined the new monitoring priorities: “proper documentation of detention in the detention book” and “barrier-free accessibility” (see NPM Report 2020, p. 155).

On their monitoring visits, the commissions regularly take a look at the detention books of the respective police stations and repeatedly find deficits (see chapter 2.7.3). Police stations with usable cells shall maintain an analogous detention book if they do not use the electronic “Detention File Prison Administration” (*Anhaltedatei-Vollzugsverwaltung*) application.

The lack of barrier-free accessibility in police stations has been a critical issue for the NPM for years. Originally, police stations should have been barrier-free by the end of 2015. This deadline was extended by four years. The Federal Ministry of the Interior should have moved or found an alternative organisational solution for all non-barrier-free police stations by the end of 2019. The commissions observed in 2021 too, that many police stations do not have a barrier-free entrance (see chapter 2.7.5). They took

external persons with the relevant expertise and self-representatives with them on some of the monitoring visits.

The commissions conducted 121 monitoring visits to police stations in the period under review, 2021, for which the visit reports for almost all visits were available to the NPM at the time of reporting. In 62 visit reports the commissions selected the monitoring priority "barrier-free accessibility" exclusively. In another 17 visit reports the commissions addressed the monitoring priorities "barrier-free accessibility" and "proper documentation of detention in the detention book". The NPM used this total of 79 visit reports as the basis for its evaluation. At the time of the evaluation, 68 investigative proceedings were complete and eleven still unfinished.

Monitoring priorities addressed on 79 visits

In the area of short-term police detention, the commissions addressed the monitoring priority "barrier-free accessibility" in about two thirds of all visits, and the monitoring priority "proper documentation of detention in the detention book" in some 14% of the visits in 2021.

Barrier-free accessibility addressed

The commissions observed proper and transparently maintained detention books in nine cases. Three of the visited police stations had no detention room, which is why the commission did not submit a recommendation. In one case, the NPM did not pursue the observations as they could not be substantiated. The NPM criticised the poor maintenance of the detention books in two cases. The Federal Ministry of the Interior rectified the deficits immediately. Two investigative proceedings were not complete at the time of compiling this report.

Criticism in only two cases

The evaluation of the monitoring priority "proper documentation of detention in the detention book", which received considerably less attention, indicated that there were no observations for the *Laender* Burgenland, Styria and Carinthia. In the interest of completing the full picture and obtaining an overview, the NPM intends to continue pursuing this monitoring priority in order to be able to make a valid depiction of the situation nationwide in 2022.

A total of 35 police stations were barrier-free, which is why the commissions did not express any criticism. One police station could not be entered because of a lack of personnel. In two cases, suspected lack of barrier-free accessibility could not be substantiated. In 28 cases, the NPM criticised the local situation. In eight of these police stations, the Federal Ministry of the Interior removed the deficits immediately or promised rapid improvements.

Criticism in 28 cases

The evaluation of the monitoring priority "barrier-free accessibility" showed that this was considered by all commissions, albeit not to the same extent, and resulted in 60 initial visits. A considerable east-west gradient was noticeable. A total of 73% of all visits to police stations on the topic of

barrier-free accessibility took place in the *Laender* Vienna, Lower Austria and Burgenland.

Working group
for barrier-free
accessibility in the
Federal Ministry

After being confronted with the high number of monitoring visits to police stations regarding barrier-free accessibility, the Federal Ministry of the Interior set up a working group. The NPM had the impression that it was the intensive visiting activity of the commissions that had given the topic impetus. At the same time, the NPM also welcomed that the Ministry did not only react to the actually observed deficits but was deploying the working group for the purpose of conducting an analysis with a broader scope. The NPM will maintain this monitoring priority again next year, particularly in light of the fact that a large number of police stations have not yet been visited by the commissions.

2.7.2 Inadequate documentation of detention

The commissions regularly view the detention books and detention logs on their monitoring visits. Restrictions of freedom constitute serious infringements, which is why they must be fully documented.

Persons who are arrested have rights of information and notification (see most recently NPM Report 2020, p. 156 et seq.). Failure to respect this is a violation of the constitutionally guaranteed right to personal freedom. Public security officers shall inform detainees of their rights and document the same. The detained person shall confirm the receipt and availing or waiving of rights of information and notification. If a person refuses to sign, the law enforcement officer 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 the 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. Once again, the NPM complained about the inadequate distribution of information sheets. In some cases, the detention logs were not complete and the signatures of the law enforcement officers performing the official acts were missing.

No detention book

Effective July 2017, a decree was enacted by the Federal Ministry of the Interior, according to which all police stations with usable cells are obliged to maintain a detention book (see NPM Report 2019, p. 172). The decree clearly regulates the entries that shall be made in the detention book. The commission observed on its monitoring visit to the satellite location of Jenbach police station in Achenkirch that there was no detention book. The Federal Ministry of the Interior rectified this deficit. In Perchtoldsdorf police station, the NPM criticised that the food brought in by a relative

had not been noted in the detention book. The police station at Innsbruck train station failed to consistently note the gender of the detainees and the cell used. The NPM criticised inadequate entries in the detention book in Steinach am Brenner police station. There was no detention book in Söll police station; the Federal Ministry of the Interior ensured that this deficit was rectified.

As not all police stations in the Hollabrunn district have a detention room, all persons who are arrested by law enforcement officers from other police stations are detained in Hollabrunn police station. The NPM criticised that not all detentions are documented in a transparent manner in Hollabrunn police station. The department head reacted swiftly and stipulated in an instruction that a note on the police station handling the case shall be made in the detention book.

Regarding the eight-hour detention of four family members together in the only detention room in Eugendorf police station, the NPM criticised that the special circumstances of multiple occupancy (detention in the unlocked detention room, reference to the separate interrogations of the group) were not adequately reflected in the detention book. There was merely one general entry. In Bad Ischl police station too, the NPM criticised the incomplete documentation of all circumstances surrounding the brief simultaneous detention of several persons in one detention room.

Documentation of multiple occupancy

► *Detention in police stations shall be documented seamlessly and in a transparent way.*

2.7.3 Multiple occupancy of detention rooms

A commission viewed the detention documentation and criticised that at the beginning of March 2020 four men were detained overnight in pairs in the two detention rooms of Lienz police station.

The Federal Ministry of the Interior responded that originally only a brief stay in the police station was planned for the four until their return to Italy. For this reason, they were not moved immediately to Innsbruck police detention centre. Only in the course of the official act did it become clear that there would be no return to Italy. The affected persons were eventually taken to Innsbruck police detention centre after some 28 hours of detention in Lienz police station.

Delayed transfer to Innsbruck police detention centre

The Federal Ministry of the Interior was of the view that sending several persons arrested during an official act to different police stations is neither reasonable from a time perspective nor expedient for the processing of a related official act.

Ministry sees no problem with multiple occupancy

In the view of the Ministry, there is nothing wrong with the mere temporary detention of several persons in a cell in a detention room without a planned overnight stay. Use in accordance with the requirements for a detention room for the purpose of secured detention during an official act (waiting for interpreters and/or legal counsel, transfer) does not constitute overcrowding of detention rooms.

The NPM states that the valid Directive on Workplaces stipulates a sufficiently large detention room of up to 20 m² for the short-term detention of several persons. For detention of a person for up to 48 hours in a police station, approximately 10 m² are prescribed for a detention room divided into an entrance area and cell. Detention rooms are usually only fitted with somewhere to sleep and a toilet that is not separate from the rest of the room.

The NPM could understand that, generally speaking, if several persons are arrested at the same time in relation to the same subject matter that is processed as one official act, sending the affected persons to different police stations can lengthen the total duration of the detention and requires considerable effort.

Multiple occupancy only allowed as an exception

In the view of the NPM, exceptions to the basically prescribed single occupancy in a detention room can be made in isolated cases if the following conditions are fulfilled. The detention room that is large enough for the number of arrested persons shall only be used for short-term detention during the execution of an official act. The affected persons shall be given the opportunity to use another sanitary facility outside of the detention room in the police station if required. Indispensable for the NPM is that in such exceptional cases particular attention is paid to transparent documentation of the detention and that affected persons shall under no circumstances be detained together overnight in one detention room.

Inadequate documentation of detention circumstances

In this particular case, the NPM considered it proven that four persons had been detained for some 28 hours in the two detention rooms at Lienz police station. Due to the lack of relevant documentation in the detention book, it remained uncertain whether the affected persons were allowed to use a toilet outside of the detention rooms and to leave the cell for short periods. The NPM did not understand why the men were not moved immediately to Innsbruck police detention centre as soon as it was clear that their detention would be overnight.

The NPM criticised the disproportionate overcrowding in the two detention rooms at Lienz police station as a case of maladministration.

► *In general, detention rooms shall not have multiple occupancies. Overnight multiple occupancy is ruled out in any case.*

- ▶ *In the event of unavoidable multiple occupancy of detention rooms, the detention shall be limited to the shortest time possible, and the detainees shall be allowed to use a separate sanitary facility.*
- ▶ *Short-term exceptions shall be duly justified and the circumstances of the detention documented with particular care.*

2.7.4 Deficient structural conditions

If the commissions observe deficits in structural conditions in police stations 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.

Elimination of deficits often promised on-site

The commission criticised that there were no light switches in the detention rooms of Vösendorf police station and the cell of Perchtoldsdorf police station. Detainees have thus no control over the lighting in the cell. Those affected, 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 and criticised the deficit (see NPM Report 2017, pp. 160 et seq.). The Federal Ministry of the Interior rejected implementation of the recommendation primarily for suicide-prevention reasons.

On the monitoring visit to Salzburg-Gnigl police station the commission criticised that the alarm button in the detention room was neither marked nor activated. The deactivation of alarm buttons is an absolute exception for the event that the detained person uses the call system excessively or in an abusive manner. The NPM therefore criticised the deactivated call bell. In the detention room of Bad Ischl police station the NPM criticised a defective alarm button that was not marked. Also in Lenzing police station, Wagramer Straße police station, Gmunden police station and Pappenheimgasse police station, the commissions observed alarm buttons that were not marked in the cells. In Fürstenfeld police station the NPM criticised the acoustically and optically barely perceivable alarm. The Federal Ministry of the Interior eliminated these deficits promptly.

Alarm buttons not to be switched off for convenience

A detention room should ensure that persons can be safely detained for a brief period. The Directive on Workplaces stipulates that a detention room should be fitted amongst others with a table, seats and/or benches. The furniture should be anchored in the ground or to the walls and the barred windows have impact-resistant panes and lockable handles. An alarm button is only stipulated for detention rooms with cells.

Unsafe cells While viewing the detention room of Schwanenstadt police station, the commission observed that this was only fitted with one chair and expressed safety concerns regarding the built-in plasterboard walls. Due to the immediate fitting with anchored furniture, which had already been ordered before the commission's monitoring visit but had not been delivered on time, the NPM considered the deficit of missing furniture eliminated. The Federal Ministry of the Interior assumed that a reinforced wall construction provided adequate safety, however conceded that damage was possible. The NPM criticised that the detention room could not be considered vandal-proof and recommended alteration.

In Steinach-Wipptal police station the NPM criticised that the mobile furniture conformant with the Directive on Workplaces was missing in the detention room. The Federal Ministry of the Interior addressed the recommendations by the commission quickly. The NPM considered the use of wooden beds with feet in the cells in Fürstenfeld police station to be a safety risk from the suicide prevention perspective (strangulation risk). The Ministry quickly initiated a redesign of the sleeping cells.

In Perchtoldsdorf and another police station the NPM criticised the structural deficits in the detention room. The Ministry promised to refurbish the damp masonry. The NPM considered the inadequate fire protection in St. Johann in Tirol police station eliminated due to the immediately improved emergency exit plan. In Gmunden police station the Ministry took up the criticism of the non-existent vandal-proof measures in the detention room and installed a Perspex veneer. The heating is thus no longer accessible from the cell for the detainees. The NPM criticised the Haugsdorf police station fixtures and fittings, which are in need of refurbishment. The Ministry was unable to commit to a schedule for the planned refurbishment of the entrance area.

Many structural deficits On their monitoring visit to Kopernikusgasse police station, the commission observed an extremely outdated video surveillance system in the specially secured cell in the detention area. In response, the Federal Ministry of the Interior installed a modern surveillance system.

In Stockerau police station the commission criticised that the optical signal lamp for the two detention rooms was concealed by a printer and was thus not fully visible. The commission found a toilet without a rim in one of the two cells. The Ministry moved the alarm lamp to the more visible area at the desk in the on-call duty room during the ongoing examination. Regarding the missing toilet rim, the Ministry explained that the repair had already been commissioned prior to the monitoring visit. The cell was not occupied at the time of the visit, and it is planned to use the other intact cell until the repair has been completed.

On the visits to Kirchberg an der Pielach and Rabenstein an der Pielach police stations, the commission observed that the intercom systems at the entrance were not working. As the stations were not manned and it was not possible to contact the law enforcement officers, the monitoring visits had to be called off. The Ministry repaired the defective call system in Kirchberg an der Pielach police station immediately. In the case of Rabenstein an der Pielach police station, the Ministry did not confirm the defect in the call diversion function. It appeared plausible to the NPM that the technical inspection several weeks after the monitoring visit to the station did not detect a defect. The NPM welcomed the prompt inspection.

Non-functional intercom systems

In line with the definition of monitoring priorities, the commissions observed in 2021 that many police stations did not have barrier-free accessibility (see chapter 2.7.2). Numerous police stations were only accessible by stairs. In some stations even the call system was not barrier-free. The Federal Ministry of the Interior explained that due to the COVID-19 pandemic no meetings with the municipalities had been possible to implement improvements. Many police stations are housed in local municipality buildings.

Lack of barrier-free accessibility

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.

For persons in wheelchairs in particular, stairs, high thresholds, heavy doors, too narrow doorways and narrow entrance gates pose insurmountable obstacles. The Ministry followed the recommendations for improvement of the NPM in some cases and flattened differences in levels, widened a doorway to the room open to the public, provided a room with barrier-free accessibility for official acts, installed call systems lower down in entrance areas, placed soap dispensers and mirrors lower and repaired stiff security doors. In one case, the Ministry promised to make an intercom system more recognisable for the visually impaired persons. In several police stations, the Ministry presented concrete schedules for the move to a new station.

Improvements for persons with impaired mobility

In the year under review, the commissions criticised the lack of tactile floor information for persons who are blind or have impaired eyesight in 14 police stations. The Federal Ministry of the Interior reported that an internal working group had started examining and updating the existing decrees in February 2021. Work is being done to visualise the existing barrier-free police stations with icons on the internet. In addition, guidelines for a barrier-free model police station have been developed. According to these, tactile paving in the entrance area shall lead to the call station of the

Lack of tactile paving in police stations

respective department or, in the case of permanently staffed police stations with an intercom system, to the entrance gate. As external persons are not allowed to move around unaccompanied inside police stations, tactile paving is not necessary in the indoor area according to the Ministry. The NPM shares this view and recognises the steps taken to date. Regrettably, in the vast majority of these examinations the Ministry was unable to provide a schedule for this topic detailing when the implementation of barrier-free accessibility can be expected.

No barrier-free
detention rooms

During a monitoring priority visit, the NPM was able to clarify that not one barrier-free detention room has been set up in police stations across the country. There are only a few barrier-free cells for detaining persons with impaired mobility in some police detention centres and these are not planned for other types of detention rooms.

2.7.5 Inadequate non-smoker protection

During the monitoring visit to Leibnitz police station in March 2020, the commission perceived a smell of cigarette smoke and a bar table with smoking utensils inside the station.

General smoking ban
in police station

The Federal Ministry of the Interior stated that there is a blanket smoking ban for the whole police station and that this is known to the officers. However, smoking is allowed outside the rear entrance of the police station. A bar table is used for this which was placed inside the building on the day of the visit because of rain and snow. The officers have been instructed to empty the ashtrays in future when they bring the table inside the police station during bad weather. The NPM welcomed the instruction and considered the inadequate non-smoker protection eliminated.

Ministry took
measures

On the monitoring visit to Stockerau police station too, the commission could smell cold cigarette smoke in the area in front of the two cells. The Federal Ministry of the Interior conceded that a bar table and an ashtray had been placed in a small connecting passage for the smokers on the staff. Smoking was not allowed in the detention room and in all other rooms in Stockerau police station. By immediately opening a dedicated smoking room in an auxiliary building of Stockerau police station, the Ministry met the requirements of effective non-smoker protection.

► ***Police stations are public buildings and therefore statutory non-smoker protection shall be observed.***

2.7.6 Staff shortages in Bad Aussee police station

On their monitoring visit to Bad Aussee police station, the commission criticised that four officers were missing due to the heavy workload and recommended an adjustment of the actual staffing level (14) to the systematised level (18).

In its statement of opinion, the Federal Ministry of the Interior stated that the difference to the actually available staffing level is just 11.11% and with systematisation generally a regular deviation of 10-20% is considered normal. The Ministry did not meet the request of the NPM to provide the actual amount of overtime worked by the officers in the period from September 2020 to February 2021. The reason given for this was that the effort involved would be too high.

For the NPM, it is understandable that the staffing level in a police station can be temporarily below the planned target level for different reasons (sick leave, re-allocation, training, etc.). Above-average overtime should at least be avoided through organisational measures, as stress and strain can also have a negative impact on detained persons.

In principle, the NPM shares the view of the Federal Ministry of the Interior that in emergency organisations sometimes not all of the officers can be available all of the time. The NPM therefore considers it reasonable that the 20% deviation of the actually available staff is not a problem as long as the workload in the police station does not exceed the average.

20% absence with low workload is reasonable

In this particular case, the NPM noted that the Ministry did not want to answer the question regarding the overtime load for the officers in Bad Aussee police station during the queried period. The NPM took the heavy workload observed by the commission as the basis for the assessment and thus criticised the staffing shortage in Bad Aussee police station on the day of the visit.

- ▶ ***The staffing levels in police stations should always be equivalent to the planned target level. Understaffing can cause stress and strain. Both have a negative impact on the detainees.***

2.7.7 Missing notice of Detention Regulation

During a monitoring visit to the police station at Innsbruck train station, the commission critically observed that no abbreviated version of the Detention Regulation (*Anhalteordnung*) was put up in the detention rooms. The officer-in-charge who was asked about this informed the delegation that the notices are destroyed almost immediately. The notice was also missing in Söll police station.

The Federal Ministry of the Interior pointed out that after the completed investigative proceedings on Hall police station in Tyrol (see NPM Report 2019, p. 176), all police stations of Tyrol Police Department were instructed to ensure that the notice is put up on the wall of the cells. The Ministry stated that (now) a relevant notice was available.

Pursuant to Section 1 (3) of the Detention Regulation, the rules for the daily routine and the rights and obligations of the detainees set forth in this instruction shall be put up in their abbreviated form in the cells of the detention rooms of a security authority. Section 27 of the Detention Regulation stipulates that for detention in a detention room of a police station sections 1 and 2 of the Detention Regulation shall be applied analogously. The notice pursuant to Section 1 (3) of the Detention Regulation can be limited and shall be available in several languages (Section 1 (2) Detention Regulation).

Putting up Detention Regulation mandatory

From Section 27 of the Detention Regulation it is clear, in the view of the NPM that at least an abbreviated form of this regulation shall be put up in police stations.

In the view of the NPM, the reasons for not putting up the notice provided by the commanding officer during the meeting appeared plausible; however, they do not justify failing to put up a new notice. The NPM considered the deficit eliminated due to the implemented improvement.

► *In detention rooms of police stations at least an abbreviated version of the Detention Regulation shall be put up on the wall.*

2.7.8 Lack of confidentiality of examinations by the public medical officer

As explained in detail in the NPM Report 2017, the NPM recommended the Federal Ministry of the Interior to provide separate examination rooms in the detention area, if possible, in any case however to implement technical measures to guarantee a confidential medical examination (see NPM Report 2017, p. 161 et seq.)

Examinations often take place in the detention area

The monitoring visit in 2020 (see NPM Report 2020, p. 162 et seq.) indicated that the consulted doctors in Hohenberg police station actually used an arrivals room in the detention area more frequently than the examination room provided. This is a former, rarely used, adapted cell. On their follow-up visit, the commission observed once again that detainees were often medically examined in the detention area.

The Federal Ministry of the Interior stressed that the provided cell was not dedicated for medical examinations and there was no obligation for the

doctors to use it. The NPM continues to uphold its recommendation and criticised the non-exclusive use of a cell provided for medical examinations in Hohenbergstraße police station.

- ▶ *Medical examinations and treatments of persons in detention shall be performed alone with a doctor as a general rule.*
- ▶ *Where possible, separate examination rooms shall be provided in police detention. In any case, technical precautions shall be taken to guarantee a confidential medical examination.*

2.7.9 Positive observations

The commissions document their observations in a visit report on every monitoring visit. Commissions 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.

Frequently, the commissions praised the exemplary willingness to cooperate, the harmonious working atmosphere, the faultless documentation of detentions, preventive measures (local police officers, senior citizens regulars' tables, talks in schools, certification as dementia-friendly police station), clean and well-equipped cells as well as barrier-free and contemporarily designed police stations.

Cooperation and good facilities

The commission praised the high sanitary and hygiene standards in the barrier-free, modern and purpose-built Leoben police station – Erzherzog Johann Straße. In addition, the commission highlighted the willingness to cooperate in the well-staffed and equipped police station, the exemplary documentation of arrests and the good police medical care.

Leoben police station
- Erzherzog Johann
Street

The commission could only find words of praise for the Meidling city police commando. In addition to the perceived willingness to cooperate, the commission took positive note of the available psycho-social support programmes for the officers, the low-threshold complaint management and the conscientious handling of allegations of maltreatment.

Meidling city
police commando

The commission was impressed by the complete barrier-free design on their visit to Rust am See police station. In particular, the commission praised the foldable desk in the primary contact room. This enables persons in a wheelchair to present their issues "at eye level". In Schützen am Gebirge police station, the commission praised the tactile paving that enables persons with impaired vision to enter the station autonomously.

Rust am See and
Schützen am Gebirge
police stations

| | |
|---|---|
| Schmiedgasse police station in Graz | The commission considered Schmiedgasse police station in Graz exemplary. In particular, the commission praised the information forms used during interrogations, which are also available in an easy-to-read version. Despite the location in an old building, barrier-free accessibility has been implemented well and Braille interpreters are involved when required. |
| Wolfsberg police station | On the monitoring visit to Wolfsberg police station, the commission observed the exemplary implementation of barrier-free accessibility (roofed access ramp, adequate height of the intercom system, automatic door opener, own carpark for the persons with disabilities). The commission noted the conclusive detention documentation and the cleanliness of the police station extremely positively. |
| Hohenbergstreet police station, Graz-Lendplatz police station | After a monitoring visit to Hohenberstraße police station, the non-barrier-free entrance door criticised by the commission was removed immediately. During the visit to Graz-Lendplatz police station, the officer-in-charge showed great interest in optimising barrier-free accessibility in the conversation with the commission. |
| Velden am Wörthersee police station | A positive aspect for the commission on their monitoring visits to Velden am Wörthersee police station was that the parking for persons with disabilities criticised on the previous visit had since been implemented. The commission also praised the perceived high level of expertise of the officers in the station as well as the active provision and acceptance of supervision. |
| Parking for persons with disabilities | As part of the visits with the monitoring priority “barrier-free accessibility”, the commissions occasionally addressed the lack of parking for persons with disabilities in the vicinity, which, however, often have to be ordered by the respective municipality for public roads. Nevertheless, the Federal Ministry of the Interior took up these recommendations and contacted the relevant municipality to achieve an improvement where appropriate. |
| Problem awareness and assistance | In several police stations, the commissions noted positively that the officers working there went to great pains to compensate for the lack of barrier-free accessibility through their high level of commitment. For example, the officers in Trumau police station go to the residence of a client to take down the details of an issue, if required. In the Baden district police commando, the rooms of the barrier-free accessible Baden police station are used. In Leobersdorf police station, official acts are executed in the easily accessible garage of the building when required. |
| Landeck police station | During a monitoring visit to Landeck police station too, the officer-in-charge immediately displayed problem awareness in the concluding meeting with the commission and promised to implement recommendations for more precise and transparent maintenance of the detention book. |

2.8 Coercive acts

Introduction

In the year under review 2021, the commissions observed a total of 29 acts of direct administrative power and coercive measures. These included police operations at demonstrations, football games, raids, events, examinations regarding basic reception conditions and major police operations in the border region.

29 operations
observed

Some observations could not be included in this NPM Report yet because the examination by the NPM was not complete. The football game between *Rapid Wien* and Dinamo Zagreb is however mentioned as an example in this report (see chapter 2.8.4).

The NPM criticised police operations at demonstrations, in particular (see chapter 2.8.3). Once again, the poor audibility of public address announcements was observed. Several operations at football games, in the border region and checks pertaining to foreign nationals were observed in 2021 due to the COVID-19 pandemic.

This year there were no monitoring priorities for the commissions for the observation of coercive acts. The reason for this was the very few observations by the commissions due to the COVID-19 pandemic.

No monitoring
priorities

The NPM was notified of the observation of 42 forced returns by air and returns pursuant to the Dublin III Regulation and one return by bus by the Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*). Most of the flights were to Nigeria, Georgia, Armenia, Afghanistan, Russia and Pakistan. Return flights were to France, Romania, Bulgaria, Greece, Lithuania and Switzerland.

2.8.1 COVID-19 at police operations

As was widely reported in the media, many demonstrations were held in 2021 against the coronavirus measures and/or against the Federal Government. Large numbers of participants took part in these demonstrations in Vienna and other major cities. The commissions observed many of these demonstrations. In addition to the criticism of some major demonstrations in western Austria in particular, there were also demonstrations at which the behaviour of the police was exemplary

Demonstrations
against coronavirus
measures

2.8.2 Targeted checks

Targeted campaign
Bogenmeile in
Innsbruck

At the turn of the year 2018/2019 there were several targeted checks in the *Bogenmeile* weapon-free zone in Innsbruck. The NPM already criticised the inadequate announcement of the regulations regarding the weapon-free zone in the NPM Report 2019 (p. 186 et seq.), upon which Tyrol Police Department established the legal status.

Identity checks in
the event of „urgent
suspicion“

The question of whether the identity checks pursuant to Section 35 (1) (2) (a) of the Austrian Security Police Act (*Sicherheitspolizeigesetz*) that were performed in the bars in the *Bogenmeile* were lawful was still open. The NPM made a conclusive assessment regarding this question this year. Section 35 (1) (2) (a) of the Austrian Security Police Act regulates that “the authorities of the public security service have the power to establish the identity of a person if there is the urgent suspicion that a serious crime could occur at the place where that person is”.

The Federal Ministry of the Interior noted in its statement of opinion that serious crimes had been committed in the *Bogenmeile* in Innsbruck in the past, which, in the view of the Ministry, is why the entire *Bogenmeile* as such is considered a police hotspot. The local suspicion with respect to committing “serious crimes” is thus not merely limited to the street but covers the bars in the vicinity, in particular. An “urgent suspicion” thus suffices. It is not necessary that such punishable acts occur at precisely the time when the identity of persons is being checked.

The commission did not share this legal view. The rationale of the Ministry is considered too general and does not address the requirement of an “urgent and specific suspicion” at the time of the identity checks, as called for by teaching and case law. The NPM concluded that the teaching on the matter is not quite consistent in its assessment.

Suspicions shall be
specified

However, the jurisdiction is unambiguous when the Supreme Administrative Court of Austria states in its decision ZI 2008/04/0216 that the urgent suspicion suffices if actions (serious punishable crimes) occur abstractly at the place where the affected person is. However, the specific suspicion of committing serious punishable actions is “not dispensable” for performing an identity check pursuant to Section 35 (1) (2) Austrian Security Police Act. The Supreme Administrative Court of Austria thus calls for an urgent and a specific suspicion in the view of the NPM.

Although the Ministry informed the NPM that both the officer-in-charge and a representative from the authorities were at the scene who had knowledge of the “urgent suspicion”, the Ministry was unable to name a specific suspicion that would have given grounds for the identity checks. The NPM consequently criticised the performed identity checks.

2.8.3 Demonstrations

The commissions observed 14 demonstrations against the COVID-19 measures throughout Austria, some of which were also designated as “walks”. It must be mentioned in this context that the commissions not only criticise measures and official acts but also make positive observations that the NPM reports back to the Federal Ministry of the Interior as well.

14 demonstrations
with COVID-19
relevance

On 9 January 2021, the demonstration “Walk: Peace, Freedom, No Dictatorship, No Test and Mandatory Vaccination” (*“Spaziergang: Friede, Freiheit, keine Diktatur, gegen Test und Impfpflicht”*) and the vigil “Hall Shows Consideration. In Memory of the over 6,000 Deceased” (*“Hall nimmt Rücksicht aufeinander. Gedenken an die über 6.000 Coronatoten”*) took place in Hall in Tyrol. The local commission responsible for the region observed both gatherings.

The challenge with these two demonstrations was to separate the demonstration against the COVID-19 measures from the vigil counter event. As violent clashes between the two groups could not be ruled out, the Innsbruck District Authority enacted police safety measures pursuant to Section 54 (5) Austrian Security Police Act (*Sicherheitspolizeigesetz*).

Pursuant to Section 54 (5) Austrian Security Police Act, the safety authority has the power to record personal data of those present with video and audio recording equipment to prevent dangerous attacks on the life, health or property of persons. The condition for ensuring the legality of the video and audio recordings is that these measures are announced in such a way that they reach as broad a group of those affected as possible.

Announcement of
video and audio
recordings mandatory

The NPM came to the conclusion that announcements on boards and signs were sufficient. However, it interpreted the provision of Section 43 (5) Austrian Security Police Act differently than the Federal Ministry of the Interior. The Ministry held the view that the intention of the legislators with this provision was to relativize or restrict the scope of the target group with the formulation “as broad a group of those affected as possible”.

In the view of the NPM, the formulation is not intended to restrict the target group. Rather, the NPM interprets the formulation such that, by using the required channels, as large a number of persons as possible should be reached. The NPM thus spoke out in favour of a broad interpretation to the Ministry.

On 30 January 2021, the demonstration “Peace, Freedom, for a Better World” (*“Friede, Freiheit, Für eine bessere Welt”*) took place at the Landhausplatz in Innsbruck. At this demonstration too, there were issues with the announcement of video and audio recordings pursuant to Section 54 (5) Austrian Security Police Act. According to the commission’s observations, the demonstrators were only informed once by loudspeaker

that video and audio material would be made. The internet link containing the relevant announcement was temporarily unavailable.

The NPM informed the Federal Ministry of the Interior in this context that all of the pertinent information on the ordered video and audio recordings shall be completely visible on the website when Tyrol Police Department decides to use this information channel to announce the use of video and audio recordings at events.

The NPM also criticised the announcements during the course of the gathering. As this was not a stationary but a dynamic demonstration, a once-off microphone announcement did not suffice to comply with the requirements of Section 54 (5) Austrian Security Police Act in the view of the NPM. The announcements should have been repeated several times.

The NPM therefore recommended developing a specific concept that would determine which means of communication shall be used at which type of demonstration in order to fulfil the statutory requirements in individual cases.

Once again problems with announcements

On 30 January 2021, another demonstration took place in Innsbruck – “Borders Kill” (*“Grenzen töten”*). At this police operation too, an adequate announcement regarding the use of video and audio recordings was missing. The Federal Ministry of the Interior pointed out that this information was published on the official notice board of the Police Department. Nevertheless, the NPM criticised the inadequate announcement and referred to the other observations and recommendations in this connection.

Other announcements during the demonstration were barely audible too. The Ministry explained that this was attributable to the considerable noise level from the demonstration itself. The NPM did not accept this argument, as demonstrations are loud by their very nature, and demanded improvements in the tactical communication.

Encirclement and use of pepper spray

A further point of criticism was that approx. 35 to 40 demonstrators were encircled by law enforcement officers for over two hours. Even if, according to the statement from the Federal Ministry of the Interior, those encircled were not cooperative, the encirclement went on for too long in the opinion of the NPM. It also criticised the use of pepper spray because the Ministry was unable to explain how the use of the same averted attacks against law enforcement officers. At the same time, however, the NPM welcomed that the Ministry followed the recommendation of the NPM and will preventively involve emergency (rescue) services when pepper spray is used in future.

The points of criticism were similar at the demonstrations “Peace, Freedom, Sovereignty, No To Kurz!” (*“Friede, Freiheit, Souveränität, Nein zu Kurz!”*) and “Antifascist Demonstration” (*“Antifaschistische Kundgebung”*) on 20

February 2021 in Innsbruck. Here too, the NPM criticised the poor audibility of announcements on the use of video and audio recordings.

The Ministry conceded that the loudspeaker announcements were disrupted due to technical problems. However, “the efforts to make the announcements loud and clear, and as understandable as possible in different directions, in any case – also from an objective perspective – was apparent at all times”.

Again problems with loudspeaker announcements

For the NPM, neither the efforts nor the justification of the Ministry, according to which the announcement pursuant to Section 54 (5) Austrian Security Police Act shall be displayed at the premises of Tyrol Police Department and in a press release in the *Tiroler Tageszeitung* newspaper, sufficed.

The NPM also criticised that the head of the authority requested an “actual leader of the demonstration” to communicate the use of video and audio recordings to the demonstrators through his public address system. This person made the following derisory and ridiculing announcement to this effect: “Make sure your hair looks nice. – Smile please. – We are being filmed by the police”.

For this demonstration too, the NPM requested a concept to determine which communication channels shall be used for announcements at which type of demonstration (stationary or dynamic).

The NPM also criticised that it was not possible for demonstrators to follow the police instructions and leave the site because the exits communicated to them were closed for approx. 10 minutes. Although the Federal Ministry of the Interior asserted that it was possible to leave the location at all times, the statements of some law enforcement officers indicated that there was a misunderstanding or communication failure.

Exits closed - poor communication

- ▶ *When personal data of demonstrators are to be established using video and audio recordings, the police shall announce these measures in such a way that they reach as large a group of affected persons as possible and all medial channels shall be used to this end.*
- ▶ *The police shall ensure that loudspeaker announcements can be clearly heard by demonstrators so that the tactical communication is improved and official acts are in compliance with the law.*
- ▶ *The NPM recommends a concept to determine which channels shall be used for announcements at which type of demonstration (stationary rally, protest march) in order to comply with the statutory requirements in individual cases.*
- ▶ *As the use of pepper spray is possible at demonstrations, emergency (rescue) services should be preventively involved in order to avert injury and health risks.*

2.8.4 Football games

Forbidden use of pyrotechnics A football game between Rapid Wien and Dinamo Zagreb gave grounds for criticism because banned pyrotechnics and fireworks were ignited in the fan block of the guest team. As a result, a Dinamo Zagreb fan suffered serious injury to his hand. The examination of the police operation is not complete yet. In recent years, however, the Federal Ministry of the Interior has held the view in similar cases that it does not lie within the responsibility of the police to see if fans bring banned pyrotechnics into the stadium, but rather the responsibility of the security staff deployed by the organiser.

2.8.5 Positive observations

As in the previous years, many police operations were run correctly and in an exemplary manner.

Football game A commission observed a police operation during the friendly game between FC Red Bull Salzburg and FC Barcelona in the Red Bull Arena in Salzburg on 4 August 2021. The commission observed that all measures required to ensure a coordinated procedure were organised in moderation and in full.

COVID-19 border control On 22 May 2021, a COVID-19 check was performed by the Austrian Federal Army and the police force at Arnoldstein border crossing point. According to the information from the commission, the operation by the Federal Army and federal police was correct.

Demonstrations In February 2021, a demonstration against the COVID-19 measures took place at Salzburg-Freilassing border crossing point. The commission observed that any consideration of measures was made under the aspect of proportionality at all times and the law enforcement officers succeeded in intervening in a de-escalating manner. The communication was friendly and calm. A second demonstration for basic rights took place at the Residenzplatz in Salzburg at the end of December 2020. There too, the police exercised calm and restraint to ensure the orderly run of the demonstration.

Another commission observed the demonstration "Free Austria for the Protection of Our Rights and Freedom of Association" ("Freies Österreich zum Schutz unserer Rechte und Versammlungsfreiheit") in Wiener Neustadt on 6 February 2021. The commission assessed the new police communication teams particularly positively. In addition, the commission praised the consistent de-escalating strategy of law enforcement in the sense of "good practice".

The commission praised the police operation at two other COVID-19 demonstrations in January 2021. The commission emphasised in this

context the professional, calm and overall de-escalating strategy applied by law enforcement as “good practice”.

At the “Protest Against Police Violence” (“Kundgebung gegen Polizeigewalt”) demonstration in front of the Landhaus in Innsbruck on 12 February 2021, the commission reported positively that the law enforcement officers had remained in the background. The police also refrained from using video material.

This restraint appeared particularly expedient to the commission due to the incidents of 30 January 2021 during the “Borders Kill” demonstration (encirclement, pepper spray, etc.) and contributed to calming the situation and to de-escalating the volatile atmosphere. The commission was very impressed that its recommendation to have paramedics on standby at demonstrations where an escalation is feared had already been implemented.

Positive reaction from criticised demonstration

Another demonstration in Vienna on 7 February 2021 went without criticism. All measures (identity checks, body searches etc.) were implemented in moderation and in strict compliance with the proportionality principle. In situations in which demonstrators attempted to provoke others verbally, the law enforcement officers remained friendly and professional, which helped calm the situation.

On 21 March 2021, the demonstrations “Stand Up Against Racism” (“Aufstehen gegen Rassismus”) and “Tyrol Walks for Freedom and Peace” (“Tirol spaziert für Freiheit und Friede”) took place in Innsbruck. The commission noted positively that several of their recommendations had already been implemented by the police since the anti-coronavirus demonstrations in January and February 2021. The commission was particularly pleased that a tactical and communication vehicle was successfully deployed. The NPM had recommended this several times in the past.

Deployment of a tactical and communication vehicle

A commission visited the Roßauer Lände police detention centre on 10 April 2021 where persons arrested during a demonstration were detained. The commission observed that the detainees were given enough to eat and drink. There were no grounds for criticism.

Good treatment of detainees

The demonstration “Art and Culture in Times of Coercive Measures, Human Dignity and Freedom of Opinion” (“Kunst und Kultur in Zeiten von Zwangsmaßnahmen, die Menschenwürde und die Meinungsfreiheit”) also ran smoothly from a human rights perspective in Linz on 23 April 2021.

At the march held “Against the Planned Mandatory Vaccination” (“Gegen die geplante Impfpflicht”) at the Karmeliterplatz in Graz in December 2021, the commission observed that the mask checks were performed politely and professionally. From the NPM’s point of view, the police successfully pursued the “3D philosophy” (Dialogue, De-escalation, Drastic Measures).

Foreign national and border police control

A commission observed an operation for combatting cross-border criminality/illegal migration in the area of Kittsee border crossing in the Neusiedl am See district on 24 February 2021. The commission found the police operation well-coordinated and professional both in terms of the organisation and the execution. The NPM passed this praise of the exemplary performance of service to the Federal Ministry of the Interior.

Foreign national controls took place at several locations in the Hallein district also. The commission observed that the controls were planned in a very structured manner and praised the respectful communication on the part of the police.

Annex

AUSTRIAN OMBUDSMAN BOARD

| | |
|---|---|
| <p>Retirement and nursing homes, facilities for persons with disabilities, child and youth welfare facilities, hospitals and psychiatric wards in medical facilities</p> <p>Ombudsman Bernhard ACHITZ</p> | <p>Adelheid PACHER</p> <p>Kerstin BUCHINGER</p> <p>Johannes CARNIEL</p> <p>Patricia HEINDL-KOVAC</p> <p>Alexandra HOFBAUER</p> <p>Markus HUBER</p> <p>Michaela LANIK</p> <p>Donja NOORMOFIDI</p> <p>Alfred REIF</p> <p>Elke SARTO</p> <p>Dietrun SCHALK</p> |
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| <p>Forced returns, demonstrations and police operations, barracks, police detention centres, police stations</p> <p>Ombudsman Walter ROSENKRANZ</p> | <p>Martina CERNY</p> <p>Corina HEINREICHBERGER</p> <p>Dominik HOFMANN</p> <p>Dorothea HÜTTNER</p> <p>Stephan KULHANEK</p> <p>Thomas PISKERNIGG</p> |

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