

AUSTRIAN  
OMBUDSMAN BOARD



# Annual Report

## 2014

International Version



## Preface

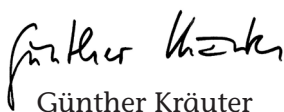
The international version of the 2014 annual report of the Austrian Ombudsman Board (AOB) for the first time includes both, the AOB's ex-post investigative proceedings relevant to human rights as well as the AOB's mandate as the Austrian National Preventive Mechanism (NPM).

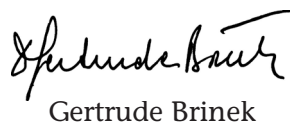
Chapter I of this report provides general information on the structure of the AOB, its public relations work and international activities, as well as a brief summary of each member on the accomplishments and key areas for the reporting period.

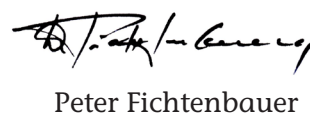
Chapter II presents the key figures for 2014 and outlines the performance records and most important results of the AOB's traditional role of ex-post control of public administration. This part of the report focuses on fundamental rights cases of the AOB's ex-post control and illustrates structural weaknesses by examples. The number of citizens approaching the AOB with their concerns and complaints once again increased significantly compared to the previous year.

Chapter III equals the annual report on the activities of the National Preventive Mechanism (NPM), which is delivered to the UN-Subcommittee on Prevention of Torture on a yearly basis. This very broad mandate as National Preventive Mechanism (NPM) according to the OPCAT includes a mandate as independent monitoring authority according to Article 16.3 of the UN Convention on the Rights of Persons with Disabilities (CRPD) as well as a mandate to monitor and concomitantly examine the behavior of organs authorized to carry out coercive measures. In its preventive work, the AOB focuses on finding ways to make progress towards lasting, high-level solutions. In this area, perseverance and tenacity are key to achieving sustainable improvements.

We would like to thank the Federal Ministries and other federal, regional and municipal bodies for their willingness to cooperate during the past year. We also thank the commissions for their commitment and the Human Rights Advisory Council for its on-going support. Our particular thanks go to all the employees of the AOB, who contribute significantly to the fulfilment of our constitutional mandate.

  
Günther Kräuter

  
Gertrude Brinek

  
Peter Fichtenbauer

Vienna, July 2015

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## I. THE AUSTRIAN OMBUDSMAN BOARD

### 1. Introduction

The first part of this report will provide information on how ex-post control for public administration was carried out and what conclusions the Austrian Ombudsman Board (AOB) reached. The second part will show how the AOB fulfils its role and function as the “Human Rights House of the Republic of Austria” and what the results are that it achieved in the implementation of its preventive responsibilities during the past year.

The AOB does not only have national responsibilities. It also plays a role in an international environment. There are therefore three major focal points that will be set out in this report on the AOB’s activities:

As an institution providing judicial protection, the AOB helps citizens to obtain justice if they feel they have not been treated fairly by public administration authorities. The investigation of individual complaints is also a yardstick to determine how public administration is working. It helps identifying weaknesses or adverse developments in public administration. Monitoring and control of public administration should ultimately promote transparent, efficient and citizen-friendly handling of cases and comprehensible, traceable decision-making processes.

Efficient and citizen-friendly public administration as goal

With regard to its new responsibilities, the AOB aims at preventing to the greatest extent possible or at least significantly reducing violations of human rights and of the rights of persons with disabilities. It is important to recognise that a considerable portion of the positive work that is achieved in this area must be attributed to the commissions of the AOB and the Human Rights Advisory Council.

Preventive activities to protect human rights

The AOB has been advancing international cooperation for many years. This cooperation has been institutionalised through the International Ombudsman Institute (IOI); the AOB operates the headquarters of its General Secretariat. Cross-border networks have become an even greater priority as a result of the AOB’s preventive responsibilities. The sharing of experience with other European institutions has therefore been intensified in order to ensure the quality of the activities undertaken and to develop comparable methodologies in monitoring and control activities.

International networking

#### 1.1 Structure of the AOB

The AOB consists of three members, who are each appointed for six years. At the end of April 2013, the National Council elected Günther Kräuter and

The members of the AOB

Peter Fichtenbauer as new members of the AOB. Gertrude Brinek, who has been ombudswoman since 2008, was confirmed for a second term of office.

Ombudsman Günther Kräuter is responsible for social, nursing and health matters. At the federal level, his investigative authority comprises health, pension and accident insurance as well as matters concerning labour market administration and youth and family. At the *Laender* level, his area of competence comprises social and health administration, youth welfare, issues concerning persons with disabilities, animal rights and the veterinary sector. As of July 2013, Günther Kräuter has also taken on the position of the Secretary General of the International Ombudsman Institute (IOI).

The area of competence of Ombudswoman Gertrude Brinek at the federal level comprises administration of the judiciary, the penal system, public prosecution, taxes, fees and duties and preservation of cultural heritage sites. At the *Laender* level, her area of competence comprises local governments and all communal matters, cemetery administrations as well as communal and municipal transport services.

At the federal level, the area of responsibility of Ombudsman Peter Fichtenbauer comprises police law, law relating to aliens and legislation on asylum, national defence, agriculture, forestry and water management, nature conservation and environmental protection, skilled trades and operational facilities, nursery schools, schools and universities. At the *Laender* level, Peter Fichtenbauer monitors matters concerning traffic and agriculture as well as municipal taxes and levies.

In 2013, the AOB had an average of 90 employees who were organisationally assigned to the three areas of responsibility of the members of the AOB, the administration and the International Unit. The appended organisational chart provides the details.

## **2. The members of the AOB take stock**

### **2.1 Ombudswoman Gertrude Brinek**

Being able to look back at a successful year is a suitable point to undertake some further-reaching reflections.

Again and again I ponder the question: When is the AOB successful? If the authorities make fewer mistakes and the number of complaints goes down? If the number of complaints goes up? If everyone knows about the AOB as an institution where they can turn to with their complaints?



Comparison brings certainty! “It’s wonderful that we can voice our concerns with the AOB!” (Mr M. to the AOB). Based on these criteria formulated by citizens, in our area of competence, my staff and I are primarily committed to three principles. We want to carefully examine the complaints that people bring to our attention. We want to convince the authorities that citizens have the right to good public administration and finally, we want to consistently drive the protection of basic rights and human rights forward.

People are often guided by specific notions of justice. But they give up when they get the impression that authorities are stalling or hiding behind something or someone. Sometimes neighbours become the targets of accusations, if authorities are drawn into a quarrel. Clarification with regard to the legal situation can be both in equal measure: valuable help and/or bitter disappointment, especially when decisions by independent courts are at issue. Nevertheless, clarification of the legal situation continues to be an integral part of our day-to-day work.

Our work is oriented towards sustainability. That is why I have always pursued and systematically initiated contact to young people beyond the solution of individual problems. In this, the statutory obligation of the AOB to work together with educational institutions and the scientific community is a proper and very important instrument. Lectures, for example at the University of Applied Sciences in Wiener Neustadt, are welcome opportunities to present the work of the Austrian Ombudsman Board.

We have designed the entry area on the ground and first floor of our building professionally and in a visitor-friendly way. The activities of the AOB are now presented in all of their diversity and complexity in a contemporary and efficient way. The facts speak for themselves: illustrative examples, figures and data from our work presented in the new visitor centre VA.TRIUM show that the headquarters of the AOB is a house of rights and legal protection and of human rights as well. As the initiator of these contacts, I am delighted to see the considerable demand and the opportunity to confront especially school children with simple but very fundamental legal questions and to enhance their awareness of human rights.

From my perspective, human rights will remain mere political lip service as long as people do not derive binding consequences from their knowledge of these rights. Therefore, it must be possible to experience the rights of children – as special human rights – in our everyday lives in a tangible way. They will not be effective in a sustained way until children and adolescents know their rights. We would like to cordially invite school children, teachers and students from all over Austria to visit the AOB and to become acquainted with human rights work as the core and heart of our activity in both theory and practice.

Establishing the AOB as an institution of human rights education is already bearing fruit. I would also like to thank the Danube University Krems for its invitation to be involved in the award of the Children's Rights Prize and the clerical college of education in Krems for its especially established human rights centre as part of its study programme and for its great interest in our work.

With its "open lecture" on children's and human rights at clerical college of education in Krems, I was able to create a lively picture of the AOB's work and directly address multipliers. The AOB publication "Young people and their rights" is an essential medium to transport the idea of making young people aware of their rights (and thus – and this is particularly important – the rights of others) from the perspective of their own environment. This publication found a great deal of interest at the UN Committee on the Rights of the Child (CRC) so that we were able to publish an English version with the help of the Federal Ministry for Europe, Integration and Foreign Affairs, which can now be used as a best-practice example with international contacts.

I was very pleased to accept the invitation to present it before the UN Human Rights Council in Geneva as its author. In a panel discussion of the UN Human Rights Council with several distinguished participants, I was also able to present an Austrian field of competence with regard to human rights assessments and experience with human rights in the areas of the penal system and criminal justice. The international reaction is a confirmation and motivation for further work in this area that is so important.

Just how much the state governed by the rule of law can affect the latitude that human beings have in their lives is experienced by people as they get older or during or after an illness or accident. In these already difficult situations, questions surrounding legal guardianship and the consequences of court decisions can present an additional problem. The AOB has dealt with complaints in these areas for many years. People perceive it as extremely degrading when those affected – and often their family as well – are not integrated into the decision-making processes in questions of everyday life and in major financial arrangements too. As ombudswoman, I make every effort to support all endeavours to make improvements for this constantly growing group of people. During my participation in a symposium by the University of Applied Sciences in Linz, the range of human rights was expanded to include the rights of persons with disabilities. In the reform working group of the Federal Ministry of Justice, the AOB was able to argue persuasively based on the complaints received on a daily basis. It was able to develop solutions jointly with its dialogue partners to implement steps that precede full legal guardianship (keyword "welfare for the elderly"). Now it is up to the government and Parliament, the *Laender* Diets and district authorities to get down to brass tacks and to pass effective reforms that will take away people's feelings of powerlessness.

When I participated in this year's "*Kirchberger Gespräche*" ("Discussions in Kirchberg"), an events forum for the continuing education of judges, I was able to show how our judicial system is experienced and evaluated by citizens: Many people have the feeling – and let us leave it open, whether it is subjective or objective – that they must helplessly accept decisions "from above".

I also deal with specific dire situations in the area of enforcement of the law on building codes and development and planning law. Due to how our areas of competence are distributed, this is a major focus of my activity in addition to issues involving regional and municipal government authorities. It is quite possible that all over Austria many buildings were built contrary to how they had originally been approved. It is quite possible that purchasers of houses only learn of this circumstance after the intervention of building authorities – sometimes decades later – and then face serious legal and economic consequences. The authorities who grant approval deem it appropriate to insist on compliance with the legal norms.

Enforcement by the building authorities to create or restore a status that complies with applicable law puts many people in a dire situation because they lack the funds to do so. This is reinforced by the feeling of being treated unequally when neighbours are apparently not harassed by the authorities. And it is really bad when we actually find that this is indeed the case. I can only emphasise again and again that the proverb "Where there is no plaintiff, there is no judge" leads to an incredible loss of confidence in public administration and is not viewed as a friendly gesture by the authorities.

In addition to standardisation, practice within the context of a federal government requires a high degree of information and service so that the citizens do not lose confidence in a nation governed by the rule of law.

With regard to the question I posed at the beginning about the success of the AOB, I would like to summarise as follows: With the resources that we have, we are able to satisfactorily respond to people's complaints, to process them to the best of our ability, to address the obvious distortions of the nation governed by the rule of law and to function as a contemporary and humane actor who has (almost) no competition in the field of providers of legal protection.

## 2.2 Ombudsman Günther Kräuter

The Austrian Ombudsman Board as an institution is “constantly learning” and in permanent motion. It takes on international and domestic suggestions and views them as enrichment for its own development processes. Looking back at 2014, during which I had the honour of being responsible for the further development of the AOB as one of its members and also for the work in my area of competence, I can assert with a clear conscience that there was an enormous amount of movement. In addition to a sharp rise in the number of complaints, under my leadership, we significantly enhanced the AOB’s public presence by redesigning the website and the regular newsletter. By opening the AOB for school classes and other groups interested in our work, my colleagues and I have created the requirements for even more direct and low-threshold contact. I would like to thank the commissions, the Human Rights Advisory Council and everyone else who fostered and supported these activities by way of creative, critical or confirming remarks. In particular, I owe a debt of thanks to the staff of the AOB, all of whom identify with the objectives of the organisation and who implement these objectives with a great deal of motivation and commitment despite their increasing work load.

Another important project that has aroused keen public interest and that I am extremely committed to both personally and as a responsible stakeholder is the participation of the AOB as the national human rights institution in the development of a National Action Plan for Human Rights. The public is being informed about the progress of this project on the AOB website on an ongoing basis. The AOB functions as a platform and a bridge between NGOs and representatives of the government (see pp. 38 et seq.).

According to the current social report, more than 1.5 million people or 18% of the population are facing poverty and the risk of exclusion. When housing and living costs rise due to inflation and (transfer) income does not keep pace, existential fears increase and, at the same time, the many deficits of the social net that is supposed to prevent poverty become more visible. In conversations with many complainants, NGOs that operate in the social sector, self-help groups and in written petitions, I often see that in the current crisis people of all ages see themselves pushed to the fringes of society; they fear for their future perspectives and/or are already heavily impacted by poverty. The dramatic downturn and the negative changes on the labour market unfortunately made another significant contribution to the fact that for many, gainful employment does not provide adequate social security or does so only in the short term. This does not only affect atypical employment relationships (fixed-term work, marginal employment, part-time or temporary work, internships and volunteer jobs, contract work or new kinds of self-employment and similar types of jobs), but also so-called “normal employment relationships” in the low-wage sector. I attribute the substantial

increase in complaints and investigative proceedings in my socio-political area of competence to the fact that precarious employment relationships and the working poor have long ceased to be peripheral phenomena. The problematic situations that result from this are an existential burden and threat to more and more people and their families.

Although the number of those employed has been rising overall, in 2014, the unemployment rate sadly reached record figures. For the first time since 1955, the unemployment rate as defined nationally (i.e. percentage of unemployed persons of the total of non-self-employed and unemployed persons) rose to two digits and as of the end of December 2014 was 10.2 %. Looking at economic and labour market forecasts, the number of those affected by unemployment is supposed to continue to increase until 2018. It is therefore not surprising, that complaints with regard to labour market administration and the needs-based minimum benefit system are rising sharply under such conditions. It is due to this fact that the so-called “activating labour market policy” creates pressure, because it makes sanctions possible and sometimes even has an exclusionary effect without eliminating dire situations or arranging for gainful employment that pays a living wage. One can see why people are dissatisfied, when looking at unspecific qualification measures and training that are perceived as useless or stigmatising and that do not increase the possibility of obtaining permanent employment. As a consequence, giving those who have to use the services of the Public Employment Service Austria more co-determination and the possibility to participate presents a major challenge. Instruments and processes are necessary to bring their expertise in execution into the political decision-making structures as well, for example the Board of Directors of the Public Employment Service Austria.

I can give a largely positive summary of the AOB’s preventive human rights work during the past year. In addition to measurable successes by the NPM (e.g. elimination of net beds) – the implementation of which actually reduces the risk of violations of the law – we can also see the effects of an intensive dialogue that has taken place with responsible decision makers. Recognising and pointing out risk factors for intrusions into and violations of human rights through the work of our commissions and consistently working together with those affected to achieve improvements is a demanding process, but one that creates sustainable change. One of our main objectives is to raise awareness on all levels for the fact that persons who are dependent on help, nursing care or other forms of support are entitled to humane treatment, autonomy and self-determination. Moreover they must not subordinate themselves due to a lack of sufficient resources, (structural) institutional violence or inflexible and unsuitable settings. Measures that enable social inclusion for everyone without discrimination are not an act of charity but are absolutely essential in a democratic and values-oriented society. This applies not only – but especially – to persons with disabilities, children and adolescents who are growing up away from their families, as well as persons requiring nursing

Award of twinning  
project for Macedonia

care. Utilising its experience from ex-post control and relying on the reports of its commissions, the AOB is participating in two research projects, whose objective it is to strengthen preventive strategies against possible human rights violations during institutional care (nursing homes, psychiatric institutions, institutions and facilities for persons with disabilities).

It is very important for me that the investigations undertaken by the AOB make the objective reality of the lives of persons who are socially disadvantaged in many ways the topic of political debate, and that processes that exclude or marginalise people and undesirable social developments are identified as such and changed. From my perspective, building awareness is the pivot and hub of how the UN Convention on the Rights of Persons with Disabilities can be implemented. Inclusion can only be put into practice, when the Federal Government and the *Laender* create coordinated framework conditions to make it possible for people with disabilities to belong to society from the very outset and to receive support services underpinned by legal claims in various life circumstances. Only when disability is understood not as a person's deficit but as the result of societal barriers can sustainable processes leading to true inclusion and participation of people with disabilities be successful. The situation is similar with regard to the implementation of the UN Convention on the Rights of the Child. If the Federal Government is willing to accept that around 800 unaccompanied minor refugees are "warehoused" in federal initial reception centres without any socio-pedagogical care, without providing proper placement in child and youth welfare facilities and without fulfilling caretaking obligations, this is not only a violation of their obligations under international law but also against Austrian (constitutional) law. Until 2011, protection of child welfare as a priority in a general legal context was always a basic principle of child law. Once it was anchored on a constitutional level, it became a review criterion and an interpretative guideline for the consideration of the interests of all children and adolescents (see pp. 54 et seq.). I hope - no, I expect - that in the next year I will be able to report to Parliament that minor refugees, who often arrive here in an extremely traumatised state, are being treated differently.

## 2.3 Ombudsman Peter Fichtenbauer

The AOB has existed since 1977 and has proven itself extremely well as an institution that monitors public administration. The biggest change in the Constitution with regard to the competencies of the AOB became effective on 1 July 2012 and expanded its previous activities by the important responsibility of preventive protection of human rights.

In its traditional range of responsibilities, however, the legislators could not bring themselves to expand its responsibilities, namely, to monitor and control divested entities that are now private companies providing public services. Implementing this recommendation would be consistent, as it would put the AOB on the same footing as the Austrian Court of Auditors, the second major controlling body under the Austrian Constitution. Although there was wide agreement among almost all parties in the National Council, the decision was postponed in negotiations, ultimately to the detriment of all citizens. Personally, I regret this course of action very much and will continue to advocate for this topic.

The Austrian Constitution gives the members of the AOB the opportunity to address topics *ex officio*. When there is the suspicion of maladministration or violations of human rights, the AOB is not limited in its actions to complaints by individuals, which can only be investigated as to content when there is a concern and the proceedings have been concluded. Therefore, important topics with regard to the competent authorities can be addressed and investigated by way of an *ex-officio* investigative proceeding. All the rights that the AOB has vis-à-vis authorities in individual investigative proceedings, such as being entitled to full support and cooperation by the authorities and access to files, can also be utilised in *ex-officio* investigative proceedings.

During the year under review, I initiated 47 *ex-officio* investigative proceedings in my area of competence. Often reports in the media are triggers for such investigation, as they sometimes reflect the mood of and criticism by the general public. Naturally, I also often act on relevant suggestions from persons who are not themselves affected by maladministration. My area of competence is diverse and broad, which is why the topics range from inadequate traffic measures to the danger of the insufficient operational readiness of the Federal Army to topics concerning the environment and education.

In early summer 2014, construction work on the motorway into Vienna from the west aroused a great deal of attention, as it made life difficult for drivers. The repairs led to annoying traffic congestion in very hot weather. Even though one would not assume that this was a classic case of maladministration, when examined more closely, numerous points of criticism regarding the management of the construction site and police coordination came to light and authorities also saw a need for action. National defence also required a

closer look, as it became evident that the operational readiness of the Federal Army is in danger due to financial cuts. I initiated *ex-officio* investigative proceedings with regard to the operational readiness of equipment, the weapons training of new recruits and the operational readiness of the Eurofighter planes and the Black Hawk helicopters. The plan to swear in new recruits only in the barracks instead of at public venues has now been withdrawn.

As of 1 January 2014, the new Administrative Courts began their work. For the AOB, this reform means that complaints regarding administrative proceedings, which were ruled on by a court at the jurisdictional level, can no longer be investigated as to content. In the first year after this reform, it was important for me to observe how often I can no longer provide people with assistance because a matter is no longer within my area of competence. I determined that the number was kept within reasonable limits. Particularly persons who were affected by administrative criminal proceedings in the area of traffic matters increasingly took their cases to the Administrative Courts; as a result, assistance by the AOB was no longer possible. However, I would like to emphasise that the implementation of this reform of the jurisdiction of the Administrative Courts, which had been discussed for decades, was the right thing to do, as an improvement of the quality of the decisions and a greater acceptance of court rulings can be expected.

Topics associated with schools are especially important for me, as a good education for children and adolescents is the foundation to enable our society and our nation governed by the rule of law to function. In this respect, my attention is particularly on those children who must live with chronic illnesses – some from the time of their birth. This is a phenomenon that is apparently becoming more frequent. It is true that these children learn amazingly quickly how to deal with the uncertainties of their illness, but they need greater support from their teachers and school authorities. Here, courage and the willingness to engage with the situation are required. Naturally, the legislators and the authorities have to create the legal framework conditions for this to occur. Only those teachers who feel that they are on a firm legal foundation will be willing to fully support children with chronic illnesses. My colleagues and I intend to draw attention to these problems in an event in order to be able to initiate improvements.

Flooding is a natural disaster that requires increased attention. In a broadcast in May 2014, together with the staff of the TV programme *BürgerAnwalt*, I recapitulated what happened after the flooding in the Eferdinger Basin and the major damages that occurred in June 2013 as well as the measures that could result in an improvement of the situation in the future. Sometimes people not only lose all their possessions but are uprooted by resettlement plans. From my perspective, the objective must be to improve coverage by natural disaster insurance, accompanied by legislative measures. I am



very pleased that the Federal Ministry of Justice has now taken steps in this direction and has established a working group, where the relevant Federal Ministries as well as business and industry are also participating. Naturally the AOB will also be playing an active role.

### 3. Public relations

It is particularly important for the AOB to inform the public about its responsibilities and activities on an ongoing basis. Therefore, public relations work was again expanded in this past year. For example, the AOB presented the reports it prepared in 2014 to the National Council and the Diets of Vienna, Lower Austria and Salzburg at press conferences. The AOB also expanded its very good cooperation with journalists by way of press releases, interviews and background discussions.

Public relations work expanded

The AOB informed representatives of the media regularly and comprehensively about its work, for example, investigative proceedings, comments on draft legislation and suggestions to legislators. The AOB also reported on current events and activities that the public is interested in, e.g. the opening of the visitor centre VA.TRIUM. It also commented publicly on relevant topics, including on the occasion of the International Human Rights Day, the Universal Children's Day and the International Day of Persons with Disabilities.

As a result of its expanded public relations work, the media presence of the AOB has continued to rise. In 2014, there were 1,700 reports about the work of the Austrian Ombudsman Board in Austrian print media and on Austrian public radio and television channels.

In addition to the expanded public relations work in the past year, it is particularly the television programme *BürgerAnwalt* ("Advocate for the People"), broadcasted by the Austrian public television channel ORF, that offers an important platform for the issues handled by the AOB and which has enabled the AOB to have wide-ranging impact during the past ten years, by showing the most important issues handled by the AOB. Every week as many as 440,000 viewers follow the discussions in the studio, where complainants, representatives of government agencies and the ombudspersons have the opportunity to voice their opinions and discuss real-life problems in a solution-oriented way. After the broadcast, every programme is available for online viewing for a week on the ORF TVthek website.

TV programme with wide-range impact

## 4. International activities

### 4.1 International Ombudsman Institute (IOI)

Vienna Meeting of the IOI Board of Directors

The annual meeting of the IOI Board of Directors took place in Vienna in late October 2014 and Secretary General Günther Kräuter received around 30 guests from all parts of the globe on the premises of the Austrian Ombudsman Board. The IOI, whose headquarters have been at the AOB since 2009, links more than 170 independent ombudsman institutions from more than 90 countries in Africa, Asia, Australasia & Pacific, Europe, Caribbean & Latin America, as well as North America.

New members

During the meeting in Vienna, twelve ombudsman institutions were accepted as new members of the IOI. John Walters, Ombudsman of Namibia, became President, taking over from New Zealand Chief Ombudsman Dame Beverley Wakem who had held the office since 2010. For their extraordinary services to the IOI, Dame Beverley Wakem and former Ombudsman and Secretary General of the IOI Peter Kostelka were named honorary life members by the Board of Directors.

The Board of Directors concluded numerous projects that had been implemented during the IOI's 2013/2014 fiscal year and initiated new projects for the year to come.

IOI election reform

For example, a far-reaching election reform was resolved. This reform - if accepted by the General Assembly - will not only make electronic voting possible, but for the first time, give all voting members of the IOI the right to vote directly for the offices of the IOI President, the two IOI Vice-Presidents and the IOI Treasurer.

Policy paper on privatisation of public services

Furthermore, the Board of Directors adopted a policy paper on the subject of privatisation of public services. More and more frequently, ombudsman institutions worldwide are facing the problem that private providers take over public services and thus, citizens no longer have the possibility to direct a complaint to a public institution such as the Austrian Ombudsman Board. The IOI policy paper resolved in Vienna summarises the position of the IOI vis-à-vis this increasing privatisation of public services and is intended to provide support to ombudsman institutions worldwide in again incorporating monitoring and control of such privatised services into their area of responsibility.

Cooperation agreement with Institute of Latin American Ombudsmen

In the effort to deepen the cooperation with like-minded regional and international organisations, a cooperation agreement was signed between the IOI and the Institute of Latin American Ombudsman (ILO). Other cooperation agreements with other regional ombudsman institutions are planned. Ombudsman Günther Kräuter also took advantage of his

participation at the annual meeting of the International Coordinating Committee of National Human Rights Institutions (ICC of NHRIs) in Geneva to conduct successful talks regarding a cooperation agreement between the ICC and the IOI; these were the first steps toward closer cooperation between these two globally active organisations.

A well-attended round table at the World Bank headquarters in Washington D.C. marked the deepening cooperation with the World Bank. The objective of this event was to inform the employees of the World Bank about the activities of ombudsman institutions and to make them aware of the importance of these institutions as a key element in the democratic development of nations governed by the rule of law. Furthermore, the IOI organised two online seminars in close cooperation with the World Bank on the topic of “Open Government Partnership” in English and Spanish, which were very favourably received by the international ombudsman community.

Cooperation with the World Bank

During the meeting of the Board of Directors, the groundwork was also laid for interesting initiatives in the area of training and continuing education. For example, the cooperation with the Asian Ombudsman Association (AOA), which has been successfully implemented since 2013, will be continued in 2015. Training on the topic of “Dealing with difficult complainants” will take place for the Asian members of the IOI in close cooperation with the ombudsman institution in Thailand. The successful anti-corruption training, which was organised in 2013 by the IOI in cooperation with the International Anti-Corruption Academy (IACA) 2013 in Vienna, will be offered in May 2015 in the Caribbean and tailored to the requirements of the members in that region. European members can take advantage of a training focused on NPM/OPCAT, which was developed in close cooperation with the Association for the Prevention of Torture (APT); the ombudsman institution in Latvia will invite members to attend this training in June 2015. Additionally, there are plans to offer the renowned training developed at the Queen Margaret University in Scotland on the topic of investigative proceedings in the area of public administration for Spanish-speaking members of the IOI; the training is set to take place in Latin America.

Training and continuing education for IOI members

To mark its 20<sup>th</sup> anniversary, the Anti-Corruption and Civil Rights Commission of Korea (ACRC) invited members to the Asian Global Ombudsman Conference in Seoul. More than 200 Korean and international guests took part in the conference. The IOI was represented by Secretary General Günther Kräuter, who was one of the speakers and also participated as the moderator of a panel discussion. The topic of the conference was future development and networking of ombudsman institutions. The participants addressed the future challenges that ombudsman institutions must face worldwide and discussed the role of new technologies in their work, among other topics.

Asian Ombudsman Conference in Korea

European Ombudsman Conference in Tallinn In September 2014, the Estonian ombudsman institution organised the Ombudsman Conference of the European Region of the IOI, which takes place every two years. The motto of the conference, which brought representatives of ombudsman institutions from all over Europe to Tallinn to share ideas and experience, was “The role of ombudsman institutions in a democracy”. In her opening address, European Ombudswoman Emily O’Reilly highlighted the cooperation between ombudsman institutions in Europe that is continuously growing closer and more supportive. The subsequent discussions addressed practice-oriented questions, such as the increasingly comprehensive activity of ombudsman institutions within the framework of European and international guidelines and standards. IOI General Secretary Günther Kräuter and Ombudswoman Gertrude Brinek attended this conference.

Ombudsman institution in Turkey In his function as the IOI Secretary General, Ombudsman Günther Kräuter attended the second International Symposium of Ombudsman Institutions, which took place in October in Ankara. Two years after the establishment of the Turkish Ombudsman Institution, the attendees from the international community were able to see the progress made by the still young institution for themselves. In his speech, IOI Secretary General Günther Kräuter expressed the importance of international cooperation and his satisfaction that the Turkish ombudsman institution had applied for membership in the IOI, which was confirmed at the end of October.

## 4.2 International cooperation

### 4.2.1 United Nations / UN conventions

Coordinating Committee of NHRIs As a national human rights institution, the AOB has observer status in the International Coordinating Committee of National Human Rights Institutions (ICC of NHRIs). In March 2014, Ombudsman Günther Kräuter took part in the ICC annual meeting in Geneva both as Chairperson of the AOB and in his function as IOI Secretary General. The overarching theme of the meeting was “The Role of Prevention in the Promotion and Protection of Human Rights”. NHRIs from all over the world discussed numerous topics, including their experiences with the Universal Periodic Review of the United Nations and the importance of National Action Plans for Human Rights. This international networking has a high priority for the AOB’s work as national human rights institution, as it enables intensive dialogue that furthers worldwide protection of human rights.

Debate on legal protection in the UN Human Rights Council There was a debate at the 27<sup>th</sup> meeting of the UN Human Rights Council on legal protection of persons who are imprisoned. Ombudswoman Gertrude Brinek spoke about the experience of the Austrian National Preventive Mechanism

and explained her position on measures that could improve the situation of prisoners. Representatives of states and NGOs discussed possibilities to improve protection of prisoners and detainees awaiting trial with the goal of developing best practice examples in order to deal with existing challenges, such as the increasing use of pre-trial detention. Ombudswoman Gertrude Brinek took advantage of her stay in Geneva to present the English version of the Publication “Young people and their rights” upon the occasion of the 26<sup>th</sup> anniversary of the UN Convention on the Rights of the Child.

A working group of the European Network of National Human Rights Institutions (ENNHRI) on the subject of “Protection of the rights of persons with disabilities” organised the first meeting ever between representatives of national human rights institutions and the Committee on the Rights of Persons with Disabilities (CRPD). The CRPD is responsible for compliance with the UN Convention on the Rights of Persons with Disabilities. At this meeting, the participants, including an expert from the AOB, were able to report directly to the competent UN committee about the challenges associated with monitoring at the national level; they also pointed out the importance of the role played by the UN committee to support the process.

NHRIs meet with CRPD in Geneva

In December 2014, Ombudswoman Gertrude Brinek met with experts from the Justice Section of the UN Office on Drugs and Crime (UNODC). The topics during this meeting focused on legal support during preliminary proceedings and pre-trial detention, prison management – primarily treatment of women and youth – criminality and the possibility of preventing children and adolescents from engaging in criminal behaviour.

UN Office on Drugs and Crime (UNODC)

#### 4.2.2 Council of Europe

AOB experts again actively participated in several events organised by the Council of Europe in 2014.

In April, Ombudsman Günther Kräuter, in his function as Chairperson of the AOB, was one of the speakers at an expert conference on the topic of “Human rights and disabilities”. The goal of the conference organised by the Federal Ministry of Labour, Social Affairs and Consumer Protection under the auspices of the Austrian Chairmanship of the Council of Europe was to present political perspectives and legal instruments of the Council of Europe and the United Nations. Representatives from member states, international organisations, the scientific community, ombudsman institutions and civil society pointed out how important it is for persons with disabilities to participate independently in social, professional and political life.

Expert conference on human rights and disabilities

Collaboration between the Council of Europe, the European Union Agency for Fundamental Rights (FRA), the European Network of Equality Bodies (EQUINET) and the European Network of National Human Rights Institutions

Workshop on asylum and migration

(ENNHRI) resulted in a meeting in Vienna to promote cooperation between national monitoring institutions. In a workshop, in which an AOB expert participated, the subject of “Asylum and migration” was discussed. Focal points were forced returns, unaccompanied minor refugees and alternatives to detention.

ECRI state report on anti-discrimination

During preparation of the Austrian State Report on the subject of anti-discrimination, two ECRI delegates visited the AOB in order to report to ECRI, an independent monitoring body of the Council of Europe that monitors compliance with human rights in connection with combating racism and intolerance. All member states of the Council of Europe are being examined during the current fifth monitoring cycle as to their situation relative to racism and intolerance; subsequently, state reports and recommendations will be submitted to help resolve problems that have been found.

CPT meets with NPM

In September, the CPT made its sixth visit to Austria and met with the NPM for the first time. Members of the AOB and two heads of commissions informed the monitoring entity deployed by the Council of Europe about current problems identified at places of detention in Austria and shared information about national and international human rights standards. The ban of net beds, the way that abuse allegations against the police are dealt with, incarceration of juvenile offenders and the shortage of personnel in correctional institutions were at the centre of discussions. During the ten-day stay, the CPT carried out announced and unannounced visits in the Vordernberg detention centre, the Stein and Vienna-Josefstadt correctional institutions, the Otto Wagner Hospital, as well as various police stations and other places where persons may be deprived of their liberty.

### 4.2.3 European Union and European Network of Ombudsmen

The AOB was awarded a twinning project of the European Commission to support the ombudsman institution in Macedonia. Beginning in 2015, the AOB - in collaboration with the Ludwig Boltzmann Institute for Human Rights - will send a team of experts to Macedonia to further an in-depth sharing of experiences between the AOB and the ombudsman institution of Macedonia. Both Ombudsman institutions function as *ex-post* control bodies and as the NPM.

The duration of the project will be eight months. Within the scope of this project, sensitisation and awareness campaigns for the situation of Roma, street children and people with special needs will be jointly developed. Additionally, monitoring and control visits in social institutions and places of detention are planned. These will be followed by the development of recommendations for the improvement of conditions in the visited institutions and facilities. Furthermore, joint PR activities are planned to

enhance the visibility and transparency of the work of the ombudsman institution. The sharing of experience provides the opportunity to both strengthen the bilateral relationship between the two institutions and to enhance international collaboration.

An AOB expert also took part in an EU conference whose theme was the fifth anniversary of the Charter of Fundamental Rights of the European Union. In order to guarantee the effective implementation of the Charter of Fundamental Rights in the member states, the need for training particularly of civil servants and members of the legal professions must be identified and evaluated. The conference in Brussels also addressed the question of the acceptance of the Charter of Fundamental Rights.

Conference on  
EU Charter of  
Fundamental Rights

In the year under review, the AOB was again able to expand the traditionally good cooperation within the European Network of Ombudsmen.

In April, an AOB expert took part in the ninth meeting of the liaisons of the network, which took place in Strasbourg. The focus of the meeting was the network's future. The participants discussed better servicing as well as an improved perception of the network's work in the member states, among the main stakeholders and the general public.

Meeting of Network of  
Ombudsmen

In her function as Chairperson of the AOB, Gertrude Brinek participated in the ninth regional seminar of the European Network of Ombudsmen; the seminar was organised by the ombudsman institution of Wales (Great Britain). The event's motto was "Ombudspersons and petitions committees: voices for those who are voiceless". Speeches and discussions addressed topics such as the rights of young people and of the elderly, the right to high quality health care and social services and the UN Convention on the Rights of Persons with Disabilities.

9<sup>th</sup> regional seminar in  
Wales

#### 4.2.4 OSCE

The NPM is actively participating in the OSCE dialogue about responsibilities, challenges and opportunities of further development of national human rights institutions. The traditionally good cooperation was of particular interest this year, as Switzerland, in its function as the country chairing the OSCE, defined the topic of "prevention of torture" as the priority for 2014.

Thematic focus:  
prevention of torture

Therefore, the NPM was glad to present a report about its activities during the meeting of the OSCE Human Rights Committee in Vienna. NPM experts also participated in an additional meeting of the Human Dimension Committee, which was dedicated to the topic of torture prevention. Moreover, the experts visited an APT meeting that brought NPM institutions from all over Europe to Vienna prior to this additional OSCE meeting to share their experiences in the areas of police and torture prevention.

#### 4.2.5 International networking

Sharing of experience and ideas in German-speaking countries

In order to share experiences with other German-speaking preventive mechanisms, the NPM sent representatives to an initial meeting in Berlin in April. The goal of this meeting was to establish collaboration between the NPMs of Germany, Austria and Switzerland; the focal points were sharing ideas about effective prevention work, successful work methodologies and tried-and-tested strategies in the individual countries. Due to the great success of this first meeting, the NPM will plan a subsequent meeting in Austria.

South-East-European NPM Network

Since October 2013, the NPM has also been a member of the South-East Europe NPM Network (SEE NPM Network). This association of ombudsman institutions from Albania, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Slovenia and Austria, which have been entrusted with NPM responsibilities, provides a forum where knowledge and experiences are shared and mutual support is provided. The Austrian NPM was again represented at three of these Network meetings in 2014.

Slovenian Ombudsman institution

The first meeting of the SEE NPM Network was organised by the Slovenian ombudsman institution in Ljubljana. During a visit at the police detention centre in Ljubljana, the participants gained insight into the day-to-day work of the Slovenian NPM.

NPM workshop in Macedonia

An SEE NPM workshop in Macedonia was about monitoring and control of psychiatric institutions and prevention of and protection from torture and abuse. This was prompted by the current situation in Macedonia and the fact that doctors working in psychiatric institutions do not accept any form of external monitoring and control. Therefore, doctors were also invited to the workshop so that they could inform themselves about internationally established control mechanisms and practices. A lecture held by a commission member was particularly well received by the participants due to his practical experience.

OPCAT forum in Belgrade

Representatives of the SEE NPM Network were invited to an OPCAT forum organised by the Serbian Ombudsman in November in Belgrade in order to discuss an approach to abolishing torture and the struggle against impunity in this area. The participants shared their experiences about the situation in initial reception centres, prisons and psychiatric institutions.

The NPM makes its expertise available to colleagues from around the world within the scope of bilateral meetings as well.

Bilateral meeting with Tunisian delegation

The NPM was very pleased about Tunisia's initiative, which is the first country in the entire Middle East to take steps toward creating its own NPM. In February, a Tunisian delegation was received in Vienna for meetings to share experiences. The goal of the visit was to support Tunisia in the establishment of an NPM, respond to questions about financing and dealing with challenges as well as discuss the criteria for selecting members for such



a preventive mechanism to monitor human rights. The Tunisian delegation also met with representatives of the Human Rights Advisory Council and the commissions.

At the end of April 2014, the NPM received a delegation of the Macedonian ombudsman institution to a working visit in Vienna. The goal of this three-day visit was to inform the delegation about the set-up and work methodologies of human rights monitoring and control in Austria. Particular attention was paid to national and international human rights standards, cooperation with ministries and the institutions to be monitored, as well as the role of civil society. The Macedonian delegation also had the opportunity to accompany commission members during a visit of an institution for persons with disabilities and to obtain meaningful insight into the practical work.

Macedonian NPM in Vienna

In Greece, the national ombudsman institution was entrusted with the responsibility of being the national preventive mechanism and it is now in the process of implementing this new mandate. To mark this occasion, the Greek ombudsman organised an NPM workshop in Athens. An expert from Vienna supported the event with a presentation about set-up, function and activity of the Austrian NPM.

NPM workshop in Athens

In connection with its own activities, in April, the NPM received Miloš Jankovic from the Serbian ombudsman institution in Vienna. Since 2013, he has been a member of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT) and, as one of the authors of the country reports, he is also responsible for reporting about Austria. In direct discussions with Mr. Jankovic, the NPM received important information about reporting to the SPT.

Visit of the European SPT rapporteur

In October, NPM experts participated in a workshop about NPM recommendations, which was organised by the Ludwig Boltzmann Institute for Human Rights. The focus of the workshop was on monitoring and control follow-ups and the implementation of recommendations. Another topic was the interfaces of National Preventive Mechanisms with the SPT, the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and the APT (Association for the Prevention of Torture).

Workshop on NPM recommendations

#### 4.2.6 Bilateral contacts

Within the scope of a one-week study trip, a delegation of the ombudsman institution of Uzbekistan headed by Ombudswoman Sayora Rashidova visited the Austrian Ombudsman Board. In 1995, Uzbekistan was one of the first member states of the Commonwealth of Independent States (CIS) to establish an ombudsman institution. Currently, the institution is implementing a

Ombudswoman from Uzbekistan in Vienna

reform process; also existing laws regarding the ombudsman institution are being amended. During its visit at the AOB, the delegation gathered valuable ideas and impulses for the reform process.

Group of European students visit AOB

At the end of April 2014, a study tour through Europe brought 30 students from the European Law Students' Association (ELSA) to Vienna, where they visited the UN and the AOB. Ombudsman Günther Kräuter informed them about the historical development, the responsibilities and the organisational structure of the AOB, as well as its new duties as the national human rights institution.

Students from Ukraine in Vienna

In May, Ombudsman Peter Fichtenbauer welcomed a student group from the Ukraine, which visited the AOB in order to gather information about the mechanisms for the protection and promotion of human rights that have been established in Austria. Ombudsman Peter Fichtenbauer spoke with the students - among other topics - about the role of the AOB and the influence of the ombudsman institution on legislation, among other topics.

Slovenian Ombudswoman visits AOB

Also in May 2014, Ombudswoman Gertrude Brinek received her Slovenian colleague, Ombudswoman Vlasta Nussdorfer, in Vienna. The focus of the discussions was on the sharing of experience with regard to the international cooperation of the two ombudsman institutions with institutions such as the European Network of National Human Rights Institutions (ENNHRI), the South-East Europe NPM Network (SEE NPM Network) and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The Slovenian delegation showed great interest in the close cooperation of the Austrian Ombudsman Board with Austria's public broadcaster ORF and the weekly television programme *BürgerAnwalt*.

Symposium on complaint system in China

Around 70 participants came to Vienna in mid-June for a symposium about the complaint system in China. During the two-day event, experts from the scientific community and politics spoke about topics such as ombudsman institutions from a comparative law perspective, state-run complaint portals on the Internet and the petition systems in Austria and China. In his opening speech, Ombudsman Günther Kräuter provided information about the function of the AOB as the contact partner for complaints by citizens and responded to questions about the content of focal points for the Austrian Ombudsman Board. University professor Gerd Kaminski, the organiser of the event and head of the Boltzmann Institute for Research on China and Southeast Asia, spoke about the development and the future of the Chinese complaint system "Xinfang" and emphasised that the Austrian AOB model could serve as a role model for similar institutions in China.

Korea Anti-Corruption Commission in Vienna

In late August, Ombudsman Günther Kräuter received a 26-person delegation from the Anti-Corruption and Civil Rights Commission of Korea (ACRC) who had come to share ideas and experiences with the AOB. The

sharing of ideas took place in close cooperation with the International Anti-Corruption Academy (IACA). The delegation was particularly interested in how the AOB prepares its recommendations and in its perspective regarding the increasing privatisation of public services. They also showed a keen interest in the television programme *BürgerAnwalt*.

Other bilateral meetings that took place were with the ombudsman of the Sindh Province, Pakistan, as well as with the Mexican and Cuban ambassadors to Austria.

#### 4.2.7 Events

A lively sharing of ideas and experiences with international organisations at lectures and panel discussions marked the period under review. The publication “Young People and their Rights” was presented at the 27<sup>th</sup> session of the UN Human Rights Council in Geneva on 10 September 2014, and on 9 September 2014, during meetings at the United Nations Office on Drugs and Crime (UNODC) in Vienna about children’s rights and Austria’s NPM experience, as well as during working visits by CPT representatives. Furthermore, discussions with representatives of diplomatic missions of European and overseas states and partner ombudsman institutions expand the range of the NPM’s work and open up new possibilities for collaboration, partnerships and future activities. Dialogue partners and guests have particularly emphasised the exemplary organisation of the Austrian NPM and have paid tribute to its form and resources.

An example of viable cooperation and human rights education is the workshop with representatives of civil society on the topic of “Police.Power. Human Rights”. It builds on an existing good tradition and opens up new paths for cooperation, especially those that go beyond ongoing working groups and meetings within the NPM.

Viable cooperation  
and human rights  
education

Collaboration with the Viennese adult education centres has a very good basis that has provided the opportunity to transparently present the monitoring and preventive activities of the NPM, particularly in connection with the initiative “Vienna becomes a human rights city”, as well as in numerous panel discussions.

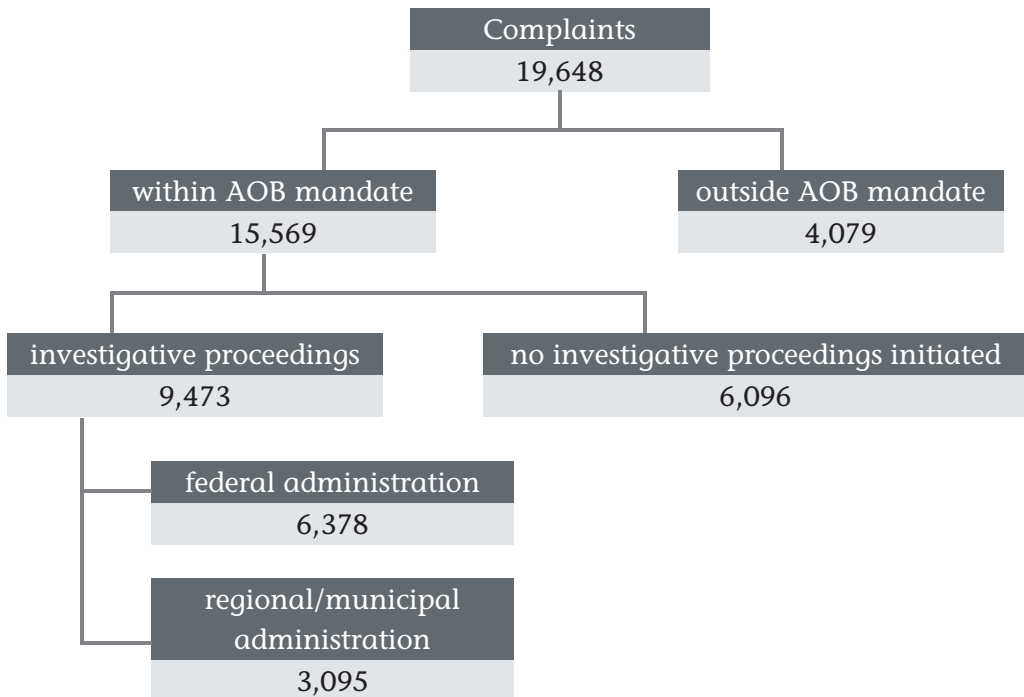
The opening of the new visitor and information centre VA.TRIUM at the premises of the AOB is an impressive signal for human rights education and the promotion of human rights awareness.

## II EX-POST CONTROL

### 1. Performance record

#### 1.1 Monitoring public administration

The AOB has been monitoring and controlling public administration in Austria in compliance with the Austrian Federal Constitution for 38 years. Every sovereign administrative act for which the Federal Government is competent, as well as its actions as holder of private rights, fall within the remit of the AOB’s investigative mandate. Every citizen can turn to the AOB regarding alleged maladministration, provided that all legal remedies have been exhausted. The AOB is obligated to investigate each admissible complaint and to notify the affected party of the result of the investigation. In the event of suspected maladministration, the AOB can take action itself and initiate *ex-officio* investigative proceedings. It is also authorised to file petitions before the Austrian Constitutional Court of Austria to review the legality of a regulation issued by a federal agency.



Number of complaints rose by 2.1 %

In the past year, the AOB received a total of 19,648 complaints. This means that on average the AOB received around 84 complaints each working day. The number of complaints continues to be very high and has even risen by 2.1% compared to the previous year. In 9,473 cases – that is around 48% of the complaints – the AOB initiated formal investigative proceedings.

In the case of 6,096 complaints, there were either insufficient indications of maladministration or the administrative proceedings had not yet been concluded. However, in these cases, the AOB was able to inform the persons affected regarding the legal situation and provide information. A total of 4,079 complaints were outside of the AOB's mandate. In these cases, the AOB provides information regarding further advisory and/or counselling services.

### 1.1.1 Investigative proceedings within the federal administration 2014

The AOB's investigative activities cover all public administration, i.e. all authorities, government agencies and departments whose duty it is to implement federal law. The AOB carried out a total of 6,378 investigative proceedings in matters involving federal administration. This corresponds to an increase of 24.8% compared to the previous year.

At 1,751 cases, almost as many investigative proceedings were initiated in the internal security sector as in the previous year. Thus, around 27% of all investigative proceedings fall into this area. This development has emerged in recent years and is due primarily to the large number of complaints dealing with the law on aliens and asylum law. Complaints did not relate solely to matters involving the Federal Ministry of the Interior and agencies subordinate to it, but primarily concerned the Federal Administrative Court.

1,733 investigative proceedings were initiated at the federal level with regard to the social security systems sector. Around a quarter of all investigative proceedings concerned social insurance law or problems surrounding the labour market. Compared to the previous year, the number of complaints that required making contact with those offices and agencies responsible for making decisions rose by 39% (2013: 1,238). Particularly deficiencies in the area of the Public Employment Service Austria (Arbeitsmarktservice, AMS), the assessment of entitlement to care and nursing allowances and problems surrounding pension insurance law were causes for complaints. The number of complaints regarding persons with disabilities continued to be high.

Every fourth complaint concerns social affairs sector

There were 1,056 investigative proceedings initiated based on complaints concerning the judiciary. This corresponds to 17% of all investigative proceedings. Compared to the previous year, the number of complaints in this area rose by 13%. The main reason is the increase in individual complaints regarding the penal system. This is due to activities by the commissions within the scope of the AOB's new responsibilities as the National Preventive Mechanism (NPM). The AOB's monitoring competence covers administration of the judiciary, police departments and prisons, the penal system and investigations into delays in court proceedings.

Administration of judiciary: complaints have risen sharply

Investigative proceedings in federal administration	number	%
Federal Ministry of the Interior	1,751	27.48
Federal Ministry of Labour, Social Affairs and Consumer Protection	1,733	27.19
Federal Ministry of Justice	1,056	16.57
Federal Ministry for Transport, Innovation and Technology	405	6.36
Federal Ministry of Finance	389	6.10
Federal Ministry of Agriculture, Forestry, Environment and Water Management	228	3.58
Federal Ministry of Family and Youth	212	3.33
Federal Ministry of Science, Research and Economy	200	3.14
Federal Ministry of Health (excl. health and accident insurance)	169	2.65
Federal Ministry of Education and Women's Affairs	106	1.66
Federal Ministry of Defence and Sports	63	0.99
Federal Ministry for Europe, Integration and Foreign Affairs	31	0.49
Federal Chancellery	29	0.46
<b>TOTAL*</b>	<b>6,372</b>	<b>100</b>

\*six cases did not fall into the area of responsibility of any of the Ministries; the AOB maintains them as files to be handled by the Chairperson of the AOB

### 1.1.2 Investigative proceedings of regional and municipal government authorities in 2014

The Federal Constitution leaves it up to the Constitutions of the *Laender* to put monitoring and control of the administration of the *Land* within the area of responsibility of the AOB. All *Laender*, with the exception of Tyrol and Vorarlberg, have utilised this provision. In 2014, the AOB conducted a total of 3,095 investigative proceedings of regional and municipal government administration. In comparison to the previous year, the number of investigated cases in this sector rose by 7% (2013: 2,893).

complaints concerning regional and municipal authorities go up

Not surprisingly, Vienna, the most populous *Land* by far, has the highest percentage of investigative proceedings (37.9%). Lower Austria had 20.9% of the cases, while Styria and Upper Austria had 13.1% and 10.8% of the cases respectively. In comparison to the previous year, complaints have increased in all *Laender* with the exception of Carinthia, Upper Austria and Salzburg.

The highest increases were in Burgenland (+34.7%), followed by Lower Austria (+11%) and Vienna (+10.4%).

Investigations of regional and municipal government administration	2014	2013	Change in %
Vienna	1,174	1,063	10.4
Lower Austria	647	583	11.0
Styria	406	385	5.5
Upper Austria	334	368	-9.2
Burgenland	198	147	34.7
Carinthia	174	185	-5.9
Salzburg	162	162	0
<b>TOTAL</b>	<b>3,095</b>	<b>2,893</b>	<b>7.0</b>

Most of the complaints at the regional and municipal level concerned the sectors of regional planning and building law and were therefore directed to the competent Ombudswoman Gertrude Brinek. The number of cases investigated by Ombudsman Günther Kräuter regarding youth welfare, the needs-based minimum benefit system and issues concerning persons with disabilities continued to be high. On the other hand, problems surrounding traffic police and the enforcement of citizenship law were the focal points of the investigative activities of Ombudsman Peter Fichtenbauer.

Focal points in the *Laender*

Complaints relative to regional and municipal government administration - focal points	number	%
Regional planning and housing, building law	725	23.42
Need based minimum benefit system, youth welfare, persons with disabilities, basic welfare support	714	23.07
Municipal affairs	447	14.44
Citizenship, electoral register, traffic police	354	11.44
Health care system and veterinary sector	199	6.43
Finances of the <i>Laender</i> , regional and municipal taxes	191	6.17
Regional and municipal roads	142	4.60
Educational system, sports and cultural matters	94	3.04

Office of the <i>Land</i> Government, public services and compensation law for regional and municipal employees	52	1.68
Trade and industry, energy	49	1.58
Nature conservation and environmental protection, waste management	48	1.55
Agriculture and forestry, hunting and fishing laws	43	1.39
Transport and traffic on regional and municipal roads	35	1.13
Science, research and arts	2	0.06
<b>TOTAL</b>	<b>3,095</b>	<b>100</b>

### 1.1.3 Resolved complaints relative to federal and regional administration

Determination of maladministration in 17% of the cases

Of the investigative proceedings initiated in 2014, a total of 8,895 as well as 1,703 from previous years were concluded. In the reporting year, a total of 10,598 investigated cases were resolved. Compared to the previous year, this is an increase of 15%. In 1,814 cases, maladministration on the part of the authorities was determined. This means that 17% of all of the resolved complaints were justified. One investigative proceeding resulted in a joint determination of maladministration by the entire Board with a recommendation being issued. The members of the AOB did not see any reason for any criticism in the case of 4,564 complaints.

The AOB informed the persons affected within an average of 45 days regarding the result of the investigation.

93 *ex-officio* investigations

Under the Austrian Federal Constitution, the AOB can initiate investigative proceedings *ex-officio* if it has concrete suspicions regarding maladministration. As was the case in the previous years, the members of the AOB made use of this right, initiating 93 *ex-officio* investigative proceedings (2013: 61).

	case files of other years	2014
maladministration on the part of the authorities	392	1,422
no maladministration found	950	3,626
complaints outside the AOB mandate	361	3,847
<b>TOTAL</b>	<b>1,703</b>	<b>8,895</b>

in 2014 a total of 10,546 case files were created / concluded case files in 2014 reached 84.3%



### 1.1.4 Citizen-friendly communication

Measuring the AOB's success must include its degree of acceptance by the population. The figures set out above show that many citizens turn to the AOB when they feel they have been treated unfairly by authorities. It plays an important role that the AOB can be contacted in a simple and informal way. Complaints can be submitted personally, by telephone or in writing. The information service for all those seeking help can be reached under a cost-free service number. Taking stock of 2014, the following picture emerges:

#### Communication with the Public

- 232 consultation days with about 1,620 personal contacts
- 9,102 people contacted the AOB personally or by phone
- 15,830 people wrote to the AOB (5,513 women, 8,906 men, 1,410 groups of people)
- 26,731 documents comprised the AOB's correspondence
- 16,227 letters and e-mails were sent to authorities
- 104,000 hits were registered on the AOB's website

During consultation days, citizens in all of the *Laender* have the opportunity to discuss their concerns personally with an ombudsperson. These opportunities are utilised extensively by citizens. In the year under review, 232 consultation days with more than 1,600 personal talks were held; more than in the previous year (2013: 224 consultation days).

Consultation days	2014	2013
Burgenland	15	16
Carinthia	15	18
Lower Austria	35	30
Upper Austria	22	20
Salzburg	15	20
Styria	28	25
Tyrol	12	10
Vorarlberg	6	5
Vienna	84	80
<b>TOTAL</b>	<b>232</b>	<b>224</b>

## 1.2 Budget and personnel

**Budget restrictions** The budget structure of the AOB – as is the case with the entire Federal Government – is broken down according to the requirements of the budget law into a cash flow statement and an operating statement. The cash flow statement sets out incoming and outgoing payments. The operating statement shows the deferred revenues and expenditures on an accrual basis.

In 2014, the AOB had a budget in accordance with the cash flow statement of EUR 10,046,000 (2013: EUR 10,209,000) and in accordance with the operating statement of EUR 10,039,000 (2013: EUR 10,115,000). In the following, only the cash flow statement is explained, because it represents the actual cash flow (for details, please refer to Federal Budget Statement (Bundesvoranschlag 2014, section 05, AOB).

In the cash flow statement, EUR 5,717,000 (2013: EUR 5,592,000) were for outgoing payments for staff expenditure and EUR 3,336,000 (2013: EUR 3,628,000) for outgoing payments for general administrative expenditures, including for example, payments for the commissions and the Human Rights Advisory Council of the AOB, expenditures stemming from statutory obligations regarding remuneration of members of the AOB, administrative internships, printed materials, supply of energy, and other expenses. Additionally, the AOB must make payments stemming from transfers for pensions of former members of the AOB, as well as pensions for survivors of former members of the AOB amounting to EUR 894,000 (2013: EUR 868,000). And finally, EUR 73,000 (2013: EUR 95,000) were available for payments from property, plant and equipment and EUR 26,000 (2013: EUR 26,000) for advances on salaries.

Federal budget statement of the AOB (in millions of Euros)			
Cash flow statement 2014		Cash flow statement 2013	
10,046		10,209	
Staff expenditures		General administrative expenditures	
2014	2013	2014	2013
5,717	5,592	3,336	3,628
Transfers		Property, plant and equipment, advanced salary payments	
2014	2013	2014	2013
0,894	0,868	0,099	0,121

In 2014, the AOB had a total of 73 permanent positions in the federal personnel budget (2013: 73 permanent positions). This means that the AOB is the smallest supreme body of the Republic of Austria. With part-time staff, persons working reduced weekly hours, administrative internships and staff posted from other local and regional authorities, 90 persons on average are working at the AOB. The 48 members of the six commissions, as well as the 34 members and substitute members of the Human Rights Advisory Council of the AOB do not count as AOB staff members.

73 permanent positions

## 1.3 Projects

### 1.3.1 National Action Plan for Human Rights

In its work programme 2013–2018, the Austrian Federal Government has set the objective of strengthening its commitment to human rights and the rule of law. To this end, a National Action Plan for Human Rights is set to be resolved in accordance with the previous governmental accord, which places the existing action plans in the human rights area within a joint framework and adds to them in collaboration with the AOB.

In May 2014, the AOB invited 292 NGOs and the three human rights institutes that are active in Austria, as well as representatives of the Federal Chancellery and the Federal Ministry for Europe, Integration and Foreign Affairs to a kick-off event. The purpose of this meeting was to inform civil society about this government project and to include it in the process early on. A communication platform was set up on the AOB website and all of the proposals made by NGOs for projects to be concretely realised by 2018 were published. They will be systematically compiled by the AOB based on the articles of the Universal Declaration of Human Rights. Likewise, all recommendations addressed to Austria by international human rights bodies, as well as suggestions for projects by individual Federal Ministries and *Laender* will be compiled according to topic. This preliminary work is the foundation, which will provide the basis for the consultation process within which the future content of the National Action Plan for Human Rights will be discussed, developed and determined. Representatives of the Federal Government, the AOB and civil society – the latter in an advisory capacity – form a consultation group that will prepare the next steps of the process and inform the public about it (in this regard, see also p. 38 et seq.).

Integration of civil society due to the AOB

### 1.3.2 Visitor centre

In 2014, a focal point of the Austrian Ombudsman Board's work was to open the house more widely in order to encourage an awareness of the law and citizens' rights and human rights education. In the new visitor centre

VA.TRIUM, all citizens can obtain high quality and interesting information about the development and meaning of human rights and the work of the Austrian Ombudsman Board as an institution providing judicial protection. Awareness of human rights, democracy and the responsibilities of an institution providing judicial protection should be strengthened, especially in young people. In this way, the Austrian Ombudsman Board fulfils its statutory obligation to cooperate with educational facilities and to inform the public about its activities. Practical examples illustrate in a lively and educationally descriptive manner what it means to have rights and to be able to legitimately and effectively insist that they be complied with.

### **1.3.3 Website redesign**

The website of the AOB is an important source of information. Current notifications and numerous service offerings, such as the online complaint form, make the website attractive for an ever larger user group. In 2014, the complaint form was downloaded 2,024 times. The website was accessed around 104,000 times.

**Website re-launch** The website relaunch in 2014 enhanced this online service. The goal of the new website was to communicate in a more citizen-friendly way and to inform the population even better than before about the responsibilities of the AOB. In order to make this goal possible, the AOB began a digital transformation process within the institution itself. For this purpose, a dedicated digital team was established whose job it is to ensure a target group-appropriate and user-friendly Internet presence.

The new website also focuses on the people who turn to the AOB with their complaints. It provides comprehensive and easily understandable information about the requirements and conditions of a complaint. It is possible to access the online complaint form with just a click. The website is also a platform for human rights topics, for example, the development of the National Action Plan for Human Rights. For anyone who is interested, there is also an extensive pool of topics with new information about the various areas that the AOB investigates. Additional areas are being added to the website, for example, a more detailed explanation of the National Preventive Mechanism, an “easier reading project” and a relaunch of the IOI website.

### **1.3.4 Events**

As a functioning and modern parliamentary ombudsman institution that feels committed to citizens, Parliament and the public in equal measure, the AOB is motivated to cultivate and maintain contact to public authorities

(e.g. Ministries, the highest courts, regional governments, municipal administration authorities). In the past working year, the exchange of information and ideas continued as in previous years and was maintained and expanded.

In 2014, encounters with school children and students as well as universities and other institutions of higher learning were increasingly pursued and practiced. The AOB welcomed school classes primarily from Vienna and Lower Austria. The AOB opens these possibilities, which are based to a large degree on its cooperation with the Federal Ministry of Education and Women's Affairs, to all educational institutions in the country. The AOB also welcomed youth organisations and representatives of administration and cultural associations. In these encounters, an awareness of the law and citizen's rights and the knowledge of democracy, politics and citizens' rights, especially in young people, were in the focus. Meeting with members of the AOB and its employees is a real-life complement to teaching content and learning in school. The AOB publication "Young people and their rights" (Edition Ausblick, Vienna 2013) has been and continues to be a helpful guide for young people.

Taking into consideration its voluntary commitment in accordance with the targeted outcomes under the Federal Budgetary Framework Act (*Bundesfinanzrahmengesetz*), in collaboration with the Federal Ministry of Education and Women's Affairs, the AOB has made the fact that more men than women file complaints with the AOB a topic for debate. In this context, hypotheses were discussed and facts interpreted. In a concluding round-table, gender-specific attitudes were identified and further steps in the process considered.

### **1.3.5 Further activities**

In preparation for an eight-month cooperation project with the ombudsman institution in Macedonia (EU twinning project), AOB employees were prepared and trained for the linguistic challenges of specialist terminology in an international human rights training programme in a series of seminars.

Invitations to the AOB, as an expert organisation, and its members and employees to publish in various specialist media were gladly accepted.

To increase the professionalism of its employees, the AOB offered communication workshops ("Training on the Job") to enable them to be confident, friendly, competent and efficient in their interaction with citizens. A priority was increased competence in telephone conversations.

## 2. Anti-Discrimination

### 2.1 National Action Plan for Human Rights

Currently, preliminary work is being undertaken to prepare the first National Action Plan for Human Rights of the Federal Government; civil society and the AOB are included in this process. Many of the suggestions pertain to measures to improve equal opportunities and prevent discrimination.

AOB builds bridges to civil society

On 9 May 2014, an NGO forum with around 70 participants took place at the premises of the AOB. Representatives of the Federal Government provided information to civil society regarding the consultation process associated with the preparation of the National Action Plan (NAP) for Human Rights. Those present were invited to submit suggestions for concrete projects to be included in the NAP and implemented during the current legislative term until 2018.

Suggestions regarding equal treatment and anti-discrimination

The AOB has set up a communication platform on its website where all information about the NAP for Human Rights as well as all contributions submitted by civil society will be published unabridged. Many suggestions address the topics of equal treatment and anti-discrimination and revisit longstanding recommendations previously made by human rights bodies at both the European and the international level (Council of Europe, UN), as well as suggestions made by the AOB (Annual Report 2012, p. 62) and other national institutions. The fundamental demand is the consolidation and simplification of anti-discrimination legislation, which is currently fragmented and spread out across more than 40 different laws and legal acts. The demand is for the creation of comprehensible legislation and the simplification of equal treatment institutions in order to ensure access to justice for victims of discrimination.

Levelling up and simplifying equal treatment legislation

The different levels of protection should be eliminated and a levelling-up process should create a uniform, broad protected area for all types and areas of discrimination. These are two issues that are also being pursued by the Federal Ministry of Labour, Social Affairs and Consumer Protection. It is intended to ensure that, in the future, cases, such as the one in early 2015, when according to reports in the media, a homosexual couple was kicked out from a Viennese café (there is no protection against discrimination in such cases; protection against discrimination due to sexual orientation only applies to the workplace), will be relegated to the past.

An improvement of legal protection possibilities is being recommended. For example, the ability to file a claim for abatement and removal and a claim for injunctive relief in the event of perceived discrimination should be established, specifically, but not exclusively in the case of a lack of accessibility, truly effective compensatory damages should be introduced and the law in respect of the right of collective redress, which is currently only possible to a very limited extent in the area of equal opportunities for persons with disabilities, should be expanded.

Legal protection and institutions

However, institutions specialising in equal treatment must have adequate resources to fulfil their responsibilities effectively, particularly in the *Laender*.

Several National Action Plans (NAP) that provide for human rights measures for groups that are especially susceptible to discrimination, such as a NAP on Disability, a NAP for Gender Equality in the Labour Market and a NAP on Integration currently already exist. According to the governmental accord, these already existing sectoral National Action Plans will be placed in a common framework and supplemented by the new NAP for Human Rights.

Accordingly, the suggestions made by civil society also contain concrete measures regarding equal treatment and protection from discrimination against particularly vulnerable groups, such as persons of different ethnic origin. Sensitisation measures to counter racism and prejudice are seen as necessary both for authorities empowered by the State (police, courts, public prosecutors' offices, etc.) as well as for the general public. Another recommendation is to create an independent office to examine allegations of discrimination and racist behaviour and abuse by public officials – in particular by police and prison guards. An anonymised job application form for the civil service is recommended to reduce discrimination against persons with foreign names who are looking for work. Additional suggestions in this area include improvements in asylum law, an improvement of the incitement provision in criminal law, data collection of racially motivated actions and the implementation of all fundamental rights for indigenous ethnic groups.

Anti-racism and integration of persons with different ethnic origins

Many suggestions relate to the elimination of barriers and inclusion of persons with disabilities. It has been suggested that individual provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD) be included in the Austrian Federal Constitution and that it be made mandatory that accessibility – as part of mainstreaming of persons with disabilities – be a consistent objective. Furthermore there should be a clear distribution of responsibilities with regard to action by the State.

Accessibility and inclusion of persons with disabilities

The problem of diverse and unclear standards and benefits for persons with disabilities at both the federal and the *Land* level is often mentioned. There are particular calls for coordination with the *Laender* and the creation of action plans by the *Laender*, as well as the harmonisation of various benefits provided by the *Laender* for persons with disabilities. There are

recommendations that the numerous *Land*-specific provisions regarding accessibility should be eliminated. Instead, uniform, Austria-wide accessibility standards in accordance with the UN CRPD for all areas of life, including buildings, means of transport and means of communication, should be established. The implementation status of the Federal Government's staged plans should be evaluated and agreements between the Federal Government and the *Laender* should be formed to enable the staged plans of the *Laender* to be implemented as soon as possible. Deinstitutionalisation of facilities for persons with disabilities, which is advocated in the UN CRPD, should be driven forward quickly; a step-by-step plan to reduce institutions and large shared accommodations, as well as a binding financing plan for the Federal Government and the *Laender* should be developed.

Protection of women, children, homosexuals and transsexuals

Specific measures to protect women and children from violence, to prevent violence against homosexuals and transgender persons and measures toward full legal equality of homosexuals have also been recommended.

The content of the recommendations made by civil society will be compiled by the AOB in a structured document based on the Universal Declaration of Human Rights. Likewise, the Federal Government will compile all recommendations made to Austria by international human rights organisations and structure them thematically; it will also structure the NAP project suggestions made by the individual Federal Ministries and the *Laender*. This preliminary work is the foundation, which will provide the basis for the consultation process within which future content of the National Action Plan for Human Rights will be discussed and developed.

Informational events and workshops in 2015

In order to prepare and support this process, a NAP consultation group has been constituted, which consists of representatives of the Federal Government, the AOB and civil society – the latter in an advisory capacity. Participants from civil society are Amnesty International, Caritas, Diakonie and the NGO Initiative Human Rights Now (Initiative Menschenrechte Jetzt); the Legal and Constitutional Service of the Federal Chancellery and the International Law Department (*Völkerrechtsbüro*) of the Federal Ministry for Europe, Integration and Foreign Affairs are participating on the part of the Federal Government. Currently, informational events and workshops are being planned, to which the general public will be invited this year.

The completion and resolution of the NAP for Human Rights of the Federal Government is planned for late 2015. Implementation of the measures stipulated in this NAP is planned for the current legislative period up to 2018. It is to be hoped that many of the suggestions mentioned herein will be acted upon and that the NAP for Human Rights can contribute to a further improvement of protection from discrimination in Austria.



## 2.1.1 Equal Treatment Commission and the Ombud for Equal Treatment

### Duration of proceedings

A short duration of proceedings is important particularly in low-threshold proceedings such as those before the Equal Treatment Commission. The political decision-makers have already made positive steps in order to accelerate the proceedings. However, there is still much to be done. In particular, necessary financial and personnel resources must be made available.

With the establishment of the Equal Treatment Commission, the legislators intended to create a low-threshold, efficient handling of discrimination cases before a specialised body. A short duration of the proceedings is absolutely necessary in this context; nevertheless, there are frequent delays.

With the most recent amendment of the Austrian Federal Equal Opportunities Act (Federal Law Gazette I No. 107/2013), several items were amended that are intended to accelerate the proceedings. For example, the number of members of the senates was reduced, the possible presence of other parties was newly regulated and the obligation to clarify the possibilities for a settlement was created. Nevertheless, it is questionable whether these statutory amendments will result in an effective improvement of the problem.

Amendments of the law to accelerate proceedings

In March 2014, the Ombud for Equal Treatment approached the AOB, as the duration of proceedings in Senate I of the Equal Treatment Commission was as long as two years; this was additionally exacerbated by the fact that the position of the Chairperson was vacant between October 2013 and March 2014.

Duration of proceedings still lengthy

Senate I of the Equal Treatment Commission is responsible for examining cases of discrimination in the workplace due to gender and has to deal with a particularly high number of petitions. In this area, lengthy proceedings are particularly burdensome for those involved, especially if they are still in a valid employment relationship. Lengthy proceedings have an adverse impact, if – concurrently to the proceedings before the Equal Treatment Commission – a lawsuit is pending, in which the decision by the Equal Treatment Commission plays a role.

In her remarks to the AOB, the new Chairperson of Senate I of the Equal Treatment Commission emphasised that every effort is made to ensure that all pending cases are resolved quickly. The Chairperson announced a change in how the proceedings would be conducted in the future: Petitions for examination would be put on the agenda more quickly than before and the petitioning parties would initially be brought to the table without hearing other respondents in order to give them the opportunity to describe the still

Accelerated initial hearing date

recent events and to encourage settlement negotiations as is stipulated in legislation.

Adequate resources  
necessary

However, it is not anticipated that this will result in a significant acceleration of the proceedings, the Chairperson emphasised. To achieve this, structural changes are necessary. It is viewed as a fundamental problem that the chairmanship is an honorary position but from the work involved, it is a full-time job. There is also a significant bottleneck with regard to personnel in the secretariat and clerks.

Unequal access to  
justice in the *Laender*

Furthermore, the fact that a below average number of petitions is received by Senate I of the Equal Treatment Commission from the *Laender*, with the exception of Vienna and Lower Austria, shows that there is unequal access to justice in the individual *Laender*. As a solution, the establishment of additional Senates I of the Equal Treatment Commission is recommended – at least in the jurisdiction of each of the Higher Regional Courts.

The Federal Ministry of Education and Women’s Affairs emphasised in its remarks to the AOB that Senate I has more personnel resources available than the other Senates of the Equal Treatment Commission. However, it announced that the evaluation and further development of equal treatment instruments planned within the scope of the government programme will take the idea of reducing the duration of the proceedings into consideration.

The AOB has long advocated an acceleration of the proceedings before the Equal Treatment Commission. Therefore, any steps taken thus far by the legislators in this direction are welcome. However, it is absolutely necessary that sufficient financial and personnel resources be made available, which is why a serious discussion of the suggested measures is urgently recommended.

### Support and representation of victims of multiple discrimination

Victims of multiple discrimination are advised and supported by several members of the Ombud for Equal Treatment, who specialises in different types of discrimination. However, in accordance with the amendment to the law, they may only be represented by one member in the proceedings before the Equal Treatment Commission. It must be ensured that victims of multiple discrimination can also continue to have full support and representation by the Ombud for Equal Treatment that is competent as to the specific content.

The Ombud for Equal Treatment approached the AOB, as ambiguities in the law have come up during proceedings before the Equal Treatment Commission since the most recent amendment of the Austrian Federal Equal

Opportunities Act (*Gleichbehandlungsgesetz*). These ambiguities pertain to proceedings regarding discrimination for multiple reasons, so-called multiple discrimination.

For example, discrimination by the employer of a Muslim woman who wears a hijab can be deemed discrimination due to ethnic origin, but also due to her religion or her gender. In accordance with the statutory requirements, different attorneys of the Ombud for Equal Treatment are competent for advising and supporting this victim of discrimination, depending on the reason for the discrimination; previously the attorneys of the Ombud for Equal Treatment jointly represented the victim in proceedings before the Equal Treatment Commission.

Discrimination for multiple reasons

Since the most recent amendment of the Austrian Federal Equal Opportunities Act, this is no longer possible. Against the backdrop of the reduction of the size of the senates, the amendment stipulates that the entire case can be represented before the Equal Treatment Commission only by a single attorney from the Ombud for Equal Treatment. This also applies to cases of multiple discrimination.

This means that victims of alleged multiple discrimination can still be advised and supported by the competent and specialised members of the Ombud for Equal Treatment. The submission of the petitions for examination to the Equal Treatment Commission and procedural steps in written form in the proceedings before the Equal Treatment Commission can continue to be made by the competent attorneys of the Ombud for Equal Treatment. However, in the actual proceedings before the Equal Treatment Commission, only one member of the Ombud for Equal Treatment can represent the entire case.

Advice and support by several specialised attorneys of the Ombud for Equal Treatment

The Ombud for Equal Treatment criticised this amendment because it fears that this will result in an inevitable breach of competence with regard to the attorneys who are appointed for clearly defined areas of competence. The Ombud for Equal Treatment also found it unclear whether the steps undertaken by a member of the Ombud for Equal Treatment in proceedings before the Equal Treatment Commission, e.g. the withdrawal of a petition, can even have legal effect outside of the statutory purview of an attorney.

Representation in proceedings before the Equal Treatment Commission only by one specialist

In their remarks to the AOB, the Federal Ministry of Education and Women's Affairs and the Federal Ministry of Labour, Social Affairs and Consumer Protection did not share these misgivings. They pointed out that any necessary clarifications between the individual members of the Ombud for Equal Treatment can be undertaken either prior to the session of the Equal Treatment Commission or during the session by way of a brief phone conversation. Furthermore, the Ombud for Equal Treatment can change the attorney representing the victim in the course of the session.

Presence of both members of the Ombud for Equal Treatment admissible

However, the Chairperson of Senate I of the Equal Treatment Commission, which is competent for cases of multiple discrimination, shared the concern that actions by the members of the Ombud during proceedings with regard to issues outside of his or her area of competence can be problematic. She does not consider it optimal for the treatment of the case if two members of the Ombud for Equal Treatment are present who switch back and forth. She stated that it is reasonable and legally admissible that both members of the Ombud for Equal Treatment can follow the entire proceedings live. She therefore announced that, in the future, in cases of multiple discrimination, she would permit the presence of both members of the Ombud for Equal Treatment, with only one member sitting at the attorney's table and the other member taking the role of an observer. If the second attorney needs to make a comment or undertake a procedural step, the attorneys can change places. In this way, support of the client that is within the law during the proceedings by the competent member of the Ombud for Equal Treatment is ensured; from the perspective of the Chairperson of the Equal Treatment Commission this cannot be guaranteed solely by way of assignments prior to the hearing and telephone queries during the hearing in a way that is procedurally efficient.

The AOB hopes that this will guarantee unrestricted and legally secured support for victims of multiple discrimination.

#### **Similar responsibilities, different time limits**

Another topic that should be rethought during the evaluation of the equal treatment instruments is whether it makes sense to have different time limits for the Equal Treatment Commission, which is competent for private business and industry, and the Federal Equal Treatment Commission, competent for the Federal Civil Service.

Federal Equal Treatment Commission informs about time limits upon AOB recommendation

The AOB became aware of deficits in the provision of information regarding procedural requirements by the equal opportunity bodies due to the complaint of an individual impacted by this issue. Petitions to the Federal Equal Treatment Commission, which is competent for the examination of alleged discrimination in the Civil Service are only possible within certain time limits (six months or three years in the case of alleged sexual harassment or harassment, 14 days in the event of termination of an employment relationship). However, the information provided on the website of the Federal Equal Treatment Commission is insufficient. The website did not specify the necessity of adhering to time limits, but only contained a link to the text of the law, from which one can derive the time limits to which one is bound. This information regarding such an important requirement for an

examination definitely deserves to be criticised. Upon the recommendation of the AOB, an explicit note containing the time limits was placed on the website of the Federal Equal Treatment Commission.

This note regarding the necessity of adhering to time limits is all the more important as there are no time limits whatsoever with regard to bringing a case before the Equal Treatment Commission, the parallel body for examination and arbitration of discrimination cases in private business and industry. Petitions to this body can be made at any time. In these cases, there is only an indirect time limit, to the extent that the person affected also wishes to appeal to a court after the Equal Treatment Commission has been involved in order to enforce compensation for damages, as the Equal Treatment Commission can only give recommendations. Once a petition has been submitted to the Equal Treatment Commission, the time limits for filing a legal action are suspended.

The AOB brought it up for discussion whether these differing regulations on time limits in proceedings that are otherwise relatively uniform are justified. As a possible explanation for the differing regulations, the Federal Ministry of Labour, Social Affairs and Consumer Protection and the Federal Ministry of Education and Women's Affairs mentioned the greater degree of transparency in civil service employment law. However, it was indicated that this question would be discussed during the evaluation process of the equal opportunity instruments.

The problem of the time limits that was addressed here is another – albeit minor – facet of the fragmented regulatory framework in equal opportunity law and the resulting more difficult access to justice. Therefore, the AOB welcomes the indication that this question will also be addressed during the evaluation process of the equal opportunity instruments.

Evaluation announced

### 2.1.2 Discrimination based on nationality or ethnicity

#### AOB meets European Commission against Racism and Intolerance (ECRI)

Recommendations by international bodies for the protection of human rights are an important guideline for the further development of protection against discrimination.

Combating discrimination of all types has long been a particular concern for the AOB. By investigating individual cases that are brought to the AOB by the persons directly involved, but also by many NGOs and counselling centres, the AOB gains insight into structural problems and discrimination patterns. The AOB has several instruments available to contribute toward prevention

of such discrimination to the greatest extent possible in the future. It can give general recommendations to public administration to change their practice, it can make suggestions for amendments to laws and it can report to Parliament regarding structural problems and suggestions for improvement. By organising and participating in events and training on topics related to anti-discrimination, experience can be shared and information can be disseminated through the AOB as an institution that ensures legal protection and as the Human Rights House of the Republic of Austria. The AOB is also asked again and again by European and international bodies for the protection of human rights about its experiences and receives requests for suggestions for improvements.

**AOB reports to ECRI** The European Commission against Racism and Intolerance (ECRI) is an independent monitoring body of the Council of Europe that monitors compliance with human rights in connection with combating racism and intolerance. The fifth monitoring cycle is currently ongoing, during which all of the member states of the Council of Europe are being examined as to their situation relative to racism and intolerance. This process is concluded by the country report that contains recommendations for the solution of any problems that have been found.

When the Austrian country report was being prepared, a delegation from ECRI visited the AOB in November 2014. The AOB reported to ECRI regarding structural deficits and its efforts to achieve improvement of the protection against discrimination, as it reports regularly in the anti-discrimination section of the Annual Report. The report from ECRI will likely be published in September 2015, including a statement from Austria.

**Improvement of prohibition of discrimination under administrative criminal law?**

Efficient protection against discrimination requires adequate legal bases as well as sensitivity and knowledge on the part of the enforcing authorities. This is also a fundamental requirement so that the persons affected have confidence in the agencies empowered by the State.

**Amendment of the law upon AOB recommendation** As of September 2012, upon recommendation of the AOB the prohibition of discrimination under administrative penal law relative to access to public assets and services due to ethnic origin, religion or disability (Section III (1) (3) of the Introductory Act to the Administrative Procedure Acts was changed. This amendment of the law was supposed to effect an extension of criminal liability to discriminating practices that the AOB had previously determined in two findings of maladministration in 2007 and 2011. In these cases the AOB found that job and residential advertisements specified as

only for Austrians and the denial of access to a restaurant to men with a foreign appearance and similar discriminating practices were not sufficiently prosecuted and punished by the authorities (Annual Report 2012, p. 74).

Previously, the Legal and Constitutional Service of the Federal Chancellery had already reacted to the first recommendation of the AOB, stating in a circular letter to all government agencies that racial discrimination was not a petty offence, but that such offences had to be prosecuted and punished with all available means. The objective of the present amendment of the law was to achieve an improvement of the protection against discrimination of ethnic minorities in their access to public goods and services in accordance with the recommendations of the AOB and international bodies for the protection of human rights, such as the European Commission against Racism and Intolerance (ECRI). In order to discriminate against the person affected due to his or her ethnic origin, it is not required to have a particular intention, nor need the sole motive of the offender be to discriminate. This was intended to deprive any subsequent defensive allegations of their basis.

In order to examine if this amendment of the law actually effected an improvement of the protection from discrimination, the AOB is currently undertaking an *ex-officio* investigative proceeding, in which all the *Laender* are requested to provide information on the number and result of all proceedings carried out since the new provision entered into force. The AOB would like to thank the *Laender* for their responses to the comprehensive questions and for transmitting the files.

Follow-up investigation to identify improvement

At the same time, the AOB is examining the enforcement of similar provisions of the Austrian Federal Equal Opportunities Act, which specifically make discriminating job and residential advertisements punishable under the law. In this area, the Ombud for Equal Treatment has the right under the law to petition for the initiation of administrative criminal proceedings to participate in these proceedings as a so-called legal party and to file appeals against official decisions and penal orders. In this regard, the AOB receives information from the Ombud for Equal Treatment about suspected deficits in the enforcement of these provisions by the competent authorities. At the time of the editorial deadline of this report, the investigation was still ongoing. Nevertheless, preliminary findings can already be reported.

Investigating enforcement of Austrian Federal Equal Opportunities Act

The fact is that the provision under trade and industrial law, according to which merchants and vendors can have their trade/business licence revoked in the case of serious violations, has never been applied. A reason for this could be that the authorities do not have sufficient information about repeated violations against the prohibition of discrimination by a merchant or vendor. After all, warnings or penalties for violation of the prohibition against discrimination previously imposed on the same person can be determined by the authorities only if they were imposed in the same administrative district. In order to be able to find out if penalties were imposed

Repeated violations of the prohibition against discrimination

outside of the administrative district, the authorities depend on information from the Ombud for Equal Treatment.

*Laender* request  
central register  
of administrative  
penalties

In this regard, the *Laender* have informed the AOB that they have already pointed out this problem multiple times to the Federal Government and requested the establishment of a central, Austria-wide register of administrative fines, since central databases already exist in many sectors that are even more sensitive under data protection law. Up to now, the Federal Government has refused this, citing data protection and privacy.

As a result, the provision of the Austrian Federal Equal Opportunities Act, according to which persons who violate the statutory requirement for non-discriminatory job and residential advertisements are to be warned at the first violation and are to be fined for additional violations, can only be inadequately enforced.

Furthermore, the question of whether the authorities stay or discontinue the proceedings by way of an official notice or solely by way of an internal note in the case file (whereby in the first case, the Ombud for Equal Treatment can pursue a legal remedy) is not clearly stated under the law and is enforced differently by the individual *Laender*. This should also be clarified within the scope of the evaluations of the equal opportunity instruments.

*Laender* announce  
improvement

Some *Laender* have informed the AOB in their statements that they are making improvements based on the points of criticism and deficits, which they are aware of now from the investigative proceeding. For example, the competent employees at government authorities in some *Laender* were informed in writing about the procedure in the proceedings initiated by the Ombud for Equal Treatment. One *Land* stated that it took the enforcement of the prohibition of discrimination under administrative criminal law into particular consideration with regard to the training of administrative staff.

#### **Are tuberculosis screenings necessary?**

Even medical measures are only permissible if they are actually necessary and reasonable to protect health.

The fact that persons from certain EU states, who would like to reside in Austria for the long term, must submit to mandatory tuberculosis screenings in the first years of their residency was already previously the subject of an investigative proceeding by the AOB (Annual Report 2009, p. 46).



The Federal Government obligates the *Laender* to require targeted serial screenings for tuberculosis for persons who are not subject to regular health monitoring and who have an increased risk of tuberculosis, in order to prevent the introduction of this disease to the greatest degree possible. This obligation is implemented very differently by the individual *Laender*.

Mandatory TB screenings for migrants from certain countries

In addition to refugees, persons eligible for asylum, prostitutes, homeless persons, inmates of correctional institutions and sometimes persons in drug substitution programmes, foreigners who do not fall into the above mentioned categories must undergo serial TB screenings in the first years of their residency in Austria. In most of the *Laender*, persons from countries in the EU and EEA, as well as from Switzerland, the USA, Canada, Australia and New Zealand are exempt. Other *Laender* describe the group of persons who must undergo TB screenings generally as persons who “were exposed to a particularly high risk of infection prior to their entry into Austria” or persons “whose personal or social situation causes a serious immune weakness or high risk of infection that are not only temporary”.

Furthermore, the question of how often they must undergo this screening is regulated differently from *Land* to *Land*. In five *Laender*, it depends on the result of the first screening, but in any case, annual screening is mandatory in the first three to seven years of their residency in Austria. In four *Laender*, the screening must only be repeated if necessary.

Different regulations in each *Land*

In the 2014 reporting year, a woman from Serbia, a non-EU country, turned to the AOB. She had been living in Carinthia for three years and thus far, had to undergo a mandatory TB X-ray screening every year. She perceived it as discrimination that despite a lack of pathological findings, she was ordered to undergo screenings in the next two years as well. She referred to studies by the WHO, according to which Serbia does not show an increased risk for tuberculosis. If, for example, she lived in Burgenland, she would not have to undergo any more screenings, as the regional legislation there requires such screenings only for three years and not for five years like in Carinthia. In some other *Laender*, a follow-up screening is required only when necessary. From a medical standpoint, it was not comprehensible for her that in her case, tuberculosis could still break out.

In accordance with Section 8 of the European Convention on Human Rights (ECHR), mandatory tuberculosis screenings are an interference with the protected physical integrity of the individual and are permissible only if they are prescribed by law, necessary for the protection of health and reasonable. Unnecessary or excessive measures would amount to discrimination based on nationality.

In order to be able to assess this correctly, the AOB first of all obtained a medical opinion from the Institute for Medical Microbiology and Hygiene of the Austrian Agency for Health and Food Safety, which is the national reference

AOB obtains medical opinion

centre for tuberculosis. The Institute informed the AOB that the incidence of tuberculosis, i.e. the number of new cases, has gone down significantly in Serbia in recent years and is even lower than in some EU countries, but is still higher than in Austria. The Institute recommends that the list of countries, whose citizens are subject to serial tuberculosis screenings, be revised on a regular basis in accordance with the epidemiological development in the individual countries. From a professional and economic point of view, follow-up screenings are justified only when there are clear grounds to suspect latent tuberculosis at the time of the first screening.

Follow-up screenings justified only when disease is suspected

With these medical findings, the different enforcement practice in the individual *Laender*, in particular the annual follow-up screening that is automatically mandatory in several *Laender* regardless of the result of the initial screening, is not considered appropriate by the AOB.

Ministry announced Austria-wide regulation

The Federal Ministry of Health stated to the AOB that the nine different regulations in the *Laender* would be replaced by a uniform regulation for all of Austria and that it anticipates submitting a government bill by summer 2015. At the time of the editorial deadline of this report, the detailed content of the regulation was not yet available.

### 2.1.3 Discrimination due to illness or disability

#### Accessible fishing

The inclusion of persons with disabilities in all areas of life, which is advocated in the UN CRPD, must naturally also apply to sports and recreational activities.

A woman from Upper Austria has been suffering from symptoms of paralysis in her legs and from resulting depression. When a friend persuaded her to accompany him fishing, she was at first sceptical, but then became convinced of the therapeutic effectiveness of fishing. Now the passionate fishing enthusiast would like to share this experience with others who also have a disability. She not only developed a fishing aid that can be attached to a wheelchair, but also established the association “Fishing with a Handicap”.

Fishing exam insurmountable obstacle for persons with disabilities

However, fishing is difficult, as in order to engage in this sport, in addition to having to obtain licences for the *Land* and the fishing area, most *Laender* require passing a fishing exam. This also applies to persons who can never fish alone due to their disability, for example, blind or severely visually impaired persons who cannot recognise if they have caught permitted or protected fish. Furthermore, in most *Laender*, persons who are under legal guardianship are generally excluded from fishing. For many persons with

a disability, this is an insurmountable obstacle to pursuing their hobby. Fishing without passing the necessary exam is possible in most *Laender*, if you obtain a so-called “guest fishing licence”, but only for a short period of time.

In the TV programme *BürgerAnwalt*, the AOB criticised the exclusion of persons with disabilities from the sport of fishing and reminded the viewers of the UN CRPD, which advocates equal rights of participation of persons with disabilities in recreational activities and sports. Scientific studies also emphasise the positive effect of fishing for persons with several physical disabilities, as this is an important contribution to the development of the personality and to social integration.

UN CRPD advocates inclusion in sports and recreation

The AOB suggested that an Austria-wide regulation be established or that the fishing laws in the *Laender* be amended to enable persons with disabilities to fish. The regulation could be based on the provisions that currently apply for children and minors. Persons with disabilities should be able to fish if they are accompanied by a person who has a valid fishing licence.

AOB recommends amendment of law

Reactions from the *Laender* were largely positive. Almost all the *Laender* stated their willingness to make appropriate changes to enable easier access for persons with disabilities. This will hopefully not only raise politicians’ awareness of the problem but also be an additional step towards the inclusion of persons with disabilities in all areas of life.

*Laender* agree with recommendation

## 2.1.4 Gender discrimination

### Fewer complaints from women - AOB begins dialogue

Strikingly fewer women than men appeal to the AOB. The AOB would like to empower women and is therefore beginning a dialogue.

One of the worst violations against gender equality is violence against women. Even though violence against women has long been recognised as a problem in the entire EU, as the EU’s Fundamental Rights Agency (FRA) has stated, there is still a lack of comprehensive data in many member states, particularly from official sources. This demonstrates a lack of willingness on the part of women to report abuse to police, but also a lack of confidence that the authorities will respond appropriately to their needs as victims of criminal action. Political reactions and measures to combat violence against women could profit from evidence of women’s actual experience of violence with regard to cases that are reported to authorities or – equally important – not reported to authorities.

The fact that many women shy away from filing a complaint when their rights are violated is not only reflected in such serious cases as experiencing violence. In other cases of discrimination, for instance concerning the denial of benefits by authorities, women often refrain from contacting complaints offices as well.

A third fewer complaints from women

This is also reflected in the number of complaints received by the AOB. Since 2013, the AOB has been keeping track of the gender distribution of the complaints it receives and sees a striking difference between women and men. In 2013, 17,307 persons wrote to the AOB – 6,115 women and 9,796 men. The remaining 1,396 letters were from groups. Therefore, 3,681 fewer women than men appealed to the AOB – in other words, a third. The figures were similar in 2014: from 15,830 letters to the AOB, only 5,514 came from women, 8,906 came from men and 1,410 from groups.

Efforts to equalise gender distribution in incoming complaints

The AOB would like to encourage women to appeal to bring their concerns to redress mechanisms like the AOB in cases of violence, discrimination and any violation of their rights and to assert their rights. Therefore, the AOB has targeted the outcome that the number of female complainants should match that of male complainants. Therefore, Ombudswoman Gertrude Brinek initiated a dialogue with women on 24 November 2014, the day prior to the International Day for the Elimination of Violence against Women.

Dialogue to make women aware of rights

During these dialogues with women, it shall be discussed with female networkers in how far the AOB can achieve this outcome for actual equality between women and men and how it can do a better job in the future in helping women assert their rights.

More than 80 representatives of NGOs, women's shelters, women's associations, women's counselling centres, the judiciary and politics participated at the first event within the scope of this series of dialogues. Various factors were discussed that prevent women from appealing to authorities, such as work overload due to the double burden of a job outside the home and childcare or the economic imbalance between women and men. Furthermore, in the opinion of many participants, the image of women still does not include exercising the rights they are entitled to with self-confidence.

The AOB hopes that this event, which was only the first of several planned dialogues with women, contributed to a greater awareness of women's rights and encourages women to exercise their rights self-confidently.

## 3. Investigating human rights

### 3.1 Federal Chancellery

#### Typographically correct rendering of surname deemed proper under Federal Constitution

For years, the AOB has been advocating changes to ensure that diacritical marks are displayed and stored by the software and hardware used in public administration so that the correct spelling of names is possible.

Section 8 of the European Convention on Human Rights (ECHR) stipulates the right to private and family life that is guaranteed under the Austrian Federal Constitution. Considering the relevant case law of both the Constitutional Court of Austria and the European Court of Human Rights (ECtHR) (see Collection of decisions of the Austrian Constitutional Court 13.661/1994 and 15.031/1997 as well as the decision of the European Court of Human Rights in the “Burghartz”, case of 22 February 1994, and in the “Stjerna” and “Guillot”, cases of 25 November 1994 and 24 October 1996 respectively), there can be no doubt that the right to respect for one’s private life also comprises a right to respect of one’s own name that is guaranteed under the Austrian Federal Constitution.

Fundamental right to respect of one’s own name

Viewed from a constitutional perspective, one must ask whether the protected area of the right to have one’s own name respected also comprises the right that one’s first and last names must be rendered by the authorities in a way that is typographically correct.

As the AOB already set out in detail in its Annual Report 2007, there are very weighty arguments for answering this question in the affirmative. Therefore, in a meeting of the entire Board in December 2007, the AOB decided that the absence of appropriate measures to correctly store and display diacritical marks in the software and hardware used by the *Bundesrechenzentrum GmbH* (i.e. the IT provider for federal departments in Austria) is to be qualified as maladministration. To eliminate this maladministration, a recommendation was sent to the Federal Chancellor and the Vice Chancellor to change how diacritical marks are stored and displayed by the software and hardware and to ensure in a gradual process that names are spelled correctly.

AOB advocates typographically correct rendering of names

As a reaction to this recommendation, the Federal Chancellery admitted that the entire range of characters that can be displayed in UTF-8 (8 Bit Unicode Transformation Format) currently cannot be displayed in the electronic record system. However, the electronic record system is supposed to be modified in such a way that diacritical marks can be stored, displayed and

Enormous need for action on part of the federal administration

used in transactions in the future. Furthermore, the present problems were discussed multiple times and individual Federal Ministries also presented concrete implementation plans.

Major progress is apparent

The AOB is now pleased to report that substantial progress has been made across all Federal Ministries and that the correct use of diacritical marks is possible in almost all applications. Furthermore, it is apparent that great efforts are being made to be mindful that in the course of current adjustments in the purchase, updating, upgrading and development of software and hardware diacritical marks can be processed.

The recommendation by the AOB from December 2007 can finally be seen as largely implemented after more than seven years. However, it is still not foreseeable when the recommendation of the AOB will be fully implemented.

### 3.2 Family and Youth

#### Caretaking obligations and support of unaccompanied minor refugees

Despite the clear legal situation and the doubtless existing responsibility of youth welfare organisations vis-à-vis unaccompanied minor refugees, in practice, these organisations do not assume their obligations as derived from the law or do so only in part. An *ex-officio* investigative proceeding by the AOB is pending.

Thousands of children and adolescents are refugees

Every year, thousands of children and adolescents flee without their parents from crisis regions in Asia, Africa and Eastern Europe. In 2014, around 2,000 of these unaccompanied minor refugees reached Austria. In February 2015, around 750 young people under 18 had been waiting – in some cases for several months – in various federal support facilities to be assigned to facilities that provide reception conditions under the Basic Provision Agreement in the respective *Land*. What is waiting for them there depends on the individual *Land*; thus far, the Federal Government and the *Laender* have not been able to agree on uniform standards for the care and support of minors.

Neither the Austrian Civil Code nor the Federal Children's and Youth Service Act (*Bundes-Kinder- und Jugendhilfegesetz*) differentiate between Austrian citizens and aliens in matters of caretaking. Fundamentally, the *Laender*, as operators of child and youth welfare facilities, are obligated under the law to undertake the care of minors if they are unaccompanied, picked up in Austria and their welfare is threatened. However, there is neither an awareness of the obligations that result from care nor a consensus between the *Laender* regarding the resources that must be made available for the fulfilment of these responsibilities. Social workers from child and youth welfare authorities

cannot refer to any Austria-wide standardised procedures with regard to care of unaccompanied minor refugees. The draft of the Salzburg Children's and Youth Service Act 2014 (*Salzburger Kinder- und Jugendhilfegesetz*) stipulated that unaccompanied minor refugees should be excluded from the personal scope of application of the law. This shows clearly that there is a need for action.

In an *ex-officio* investigative proceeding, the AOB contacted all the *Laender* and asked how many emergency facilities and special socio-pedagogical residential places in shared accommodations and in foster homes are available. Additionally, the AOB investigated whether all of the services provided by child and youth welfare authorities and organisations, e.g. therapy to process the experiences during their flight, are available to these minors and how many minors the individual *Land* is already caring for.

Comprehensive research regarding the situation

The investigative proceeding clearly revealed that there are major differences among the individual *Laender* with regard to the treatment of unaccompanied minor refugees. This begins directly after the children and adolescents arrive without being accompanied by police. Whether they are brought to a reception centre; when the application for care is made; whether child and youth welfare authorities are responsible for approval and supervision of facilities; whether they are cared for in child and youth welfare facilities, by foster parents or in facilities that provide reception conditions under the Basic Provision Agreement; whether higher per diem rates and additional services are assumed by child and youth welfare authorities when necessary and whether they can continue to be supported after reaching their age of majority within the scope of assistance for young adults: all of this depends essentially on which *Land* is responsible for them. The assignment to facilities that provide reception conditions under the Basic Provision Agreement is made mainly based on available capacities. Concrete care and support requirements of the minors are neither systematically assessed nor sufficiently taken into consideration. The logical consequence is poorer care. There is a deficit of general support structures for children who are victims of human trafficking. This was also criticised by GRETA (Group of Experts on Action against Trafficking in Human Beings), the supervision committee of the Council of Europe to implement the Council of Europe Convention on Action against Trafficking in Human Beings. The commissions of the AOB have visited some of these facilities and in some cases, have found unacceptable conditions (see p. 106 et seq.).

The Supreme Court ruled in 2005 that reception conditions under the Basic Provision Agreement cannot replace care and that an unaccompanied minor refugee must be assigned a party responsible for his or her care. It can be derived from this ruling that the *Laender* must consider the welfare of all children and adolescents a priority. Differentiating between Austrian and alien children represents discrimination of the unaccompanied minor

Reception conditions under the Basic Provision Agreement insufficient

refugees, which is prohibited under the UN Convention on the Rights of the Child (CRC). Under the Austrian Federal Constitution regarding the rights of children, each child is entitled to protection and care as well as the best possible development and growth. All children and adolescents who have been removed permanently or temporarily from their familiar environment are entitled to particular care and assistance.

AOB demands housing  
in adequate facilities

Therefore, the AOB is of the opinion that not only is the exclusion of unaccompanied minor refugees from the services of children and youth welfare authorities a cause for concern under constitutional law, but also their housing in facilities that cannot achieve the care quality of facilities operated by children and youth welfare organisations is troubling. This is due to reduced per diem rates and deficient standards for benefits in kind, for the qualification of personnel, for supervision and for quality control. The housing and care of all unaccompanied minor refugees in facilities that do not correspond to the customary standards of facilities operated by children and youth welfare organisations represents maladministration that must be corrected as soon as possible.

### 3.3 Interior

#### Federal Asylum Office disregards the right to private and family life

For years, the AOB has been objecting to the fact that the Federal Asylum Office (since 1 January 2014 Federal Office for Immigration and Asylum) has been preventing or delaying the entry into Austria of family members (see Annual Report 2013, p.44). By doing so, the authorities are interfering with the right of respect for private and family life that is guaranteed under constitutional law.

Section 8 of ECHR obligates the state to effectively respect family life. The Asylum Act enables family members of persons who are eligible for asylum or beneficiaries of a subsidiary protection to file an application at an Austrian embassy or consulate abroad for entry into Austria. Family members must be given visas for entry, if the Federal Asylum Office - since 2014 the Federal Office for Immigration and Asylum - informs the embassy that family members will probably be given the same protection as the reference person.

Pursuant to the Asylum Act, only the wife or husband, unmarried, minor children and parents of a minor unmarried child fall under the term "family members".



At the Austrian Embassy in Addis Ababa, the son of a recognised convention refugee applied for family reunification in June 2012. The Austrian representation authority suggested that the age of the applicant be verified. It could not be determined beyond any doubt from the expert opinion whether the family member was a minor at the time the application was filed. Therefore, the Federal Asylum Office planned a supplementary assessment in Austria. In the meantime, the Federal Asylum Office received an opinion rendered by an employee of the Embassy who was not an expert. The Federal Asylum Office then sent out a negative predictive decision. The AOB did not find it acceptable, that the Federal Asylum Office did not undertake additional measures to verify the age of the applicant.

No additional verification despite doubts regarding age

In another case, the husband of a Somali woman, who was eligible for asylum, and their eleven children were not permitted to enter Austria. The Federal Asylum Office was of the opinion that it was possible to continue their family life in Ethiopia. The country documentation in the file, however, made it clear that Somali refugees may not officially work in Ethiopia, regardless of whether they are registered or not. The AOB was of the opinion that a joint family life in Ethiopia was unacceptable due to the material hardship of the situation. A refusal to let them enter Austria prevented the restoration of the family unit and represented an inadmissible interference under Section 8 of ECHR.

Family life in a third country unacceptable

The AOB also identified shortcomings to the delays in the proceedings. It found that in the case of several family reunifications the Federal Asylum Office and/or the Federal Office for Immigration and Asylum did not perform any action for more than six months.

#### **Interference with right to private and family life by the police department of Vienna**

It took the police department of Vienna one and a half years to provide a statement in proceedings for obtaining a residence title on humanitarian grounds. Fair proceedings must be carried out within a reasonable period of time. As a result of the delays, the right to private and family life was violated.

Ms N. appealed to the AOB in December 2013 regarding the length of her proceedings for obtaining a residence title. She indicated that she was married to an Austrian citizen since January 2011 and that their child was born in July 2011.

The investigative proceeding revealed that Ms N. had applied for proceedings for obtaining a residence title on humanitarian grounds, enabling her to maintain her family life in Austria. In March 2012, the competent residence

authorities sent the file to the Directorate of Security in Vienna (now police department of Vienna) in order to obtain a duly reasoned opinion on the proper measures taken by the Aliens' Police.

Police department did nothing for one and a half years

Although the authorities had justified doubts regarding the validity of the marriage that had been performed in Serbia, they waited until October 2013 until they provided their opinion. Furthermore, the police department of Vienna did not include the couple's child in considering the serious nature of a termination of residence with regard to their actually existing family life.

Intrusion under Section 8 ECHR

Section 8 of ECHR also protects cohabitation unions that are similar to marriage but that have not been formalised. Even if the authorities could have assumed that a valid marriage did not exist, they should nevertheless have considered the actual cohabitation as a family. In the viewpoint of the AOB, by delaying the provision of an opinion, the police department of Vienna inadmissibly intruded upon the right to private and family life.

### Reception conditions for asylum seekers

In the year under review, the circumstance that the reception centre in Traiskirchen was and is full to capacity due to the sharply increasing number of applications for asylum resulted in headlines in the media. Although the visit of a commission of the AOB in July 2014 did not find any dramatic circumstances, the AOB considers it to be a reasonable step to create several small reception centres, which are all attached to the appropriate Regional Directorate of the Federal Office for Immigration and Asylum.

Partial transference of reception conditions under the Basic Provision Agreement to the *Laender*

Up until 2005, reception conditions under the Basic Provision Agreement were the responsibility of the Federal Government and were organised by the Federal Ministry of the Interior. As a result of the agreement between the Federal Government and the *Laender* in accordance with Section 15a of the Austrian Federal Constitution regarding joint measures for the temporary provision of reception conditions for aliens in Austria who need help and protection [Basic Provision Agreement (*Grundversorgungsvereinbarung*), Section 15a, Federal Law Gazette 2004/80] reception conditions were partially passed on to the *Laender*. The following principle applies: the Federal Government is competent in proceedings for admission; after admission to asylum proceedings, the *Laender* are competent. Currently, the following reception centres exist: Traiskirchen (Lower Austria), Thalham (St. Georgen im Attergau, Upper Austria) and Vienna Airport (Schwechat, Lower Austria).

The purpose of Section 15a of the Basic Provision Agreement is that the individual *Laender* provide temporary reception conditions to aliens who need help and protection proportionately to their population. The *Laender* are obligated to create and maintain the necessary infrastructure and to provide current data as soon as possible regarding the capacity utilisation of their facilities. The federal law that primarily regulates the reception conditions of asylum seekers in the proceedings for admission (Federal Basic Welfare Support Act 2005) determines the obligation of the Federal Government to create appropriate capacities for care for emergencies.

It was and is apparent from reports in the media that for a long time, only two of the nine *Laender* fulfilled or are fulfilling the agreement under Section 15a (i.e. Vienna, Lower Austria). While this was always lamented by the Federal Ministry of the Interior, apparently suitable measures to enforce the agreement were never undertaken.

Not all *Laender* fulfil obligations

The Federal Ministry of the Interior was, however, aware of the problem: In 2009, it tried to establish a third reception centre with a capacity of 300 persons in Burgenland. The project failed due to massive resistance from the population and the Governor, who tried to exhaust all means to prevent this from happening. As at the time applications for asylum were decreasing (2009: 15,821, 2010: 11,012 – a minus of 30.4%), the Federal Ministry of the Interior apparently decided to no longer pursue the project.

Since 2011, the number of refugees has been continually rising with applications for asylum going up as well (2011: 14,416, 2012: 17,413, 2013: 17,503, 2014: 28,027). Previously, however, there had been similarly high numbers of applications for asylum from 2001 to 2003 (2001: 30,127, 2002: 39,354 and 2003: 32,359). During those years, the Federal Government was obviously able to handle the accommodations, for which it was solely responsible at the time. After that, the numbers went down continuously until 2011.

Applications for asylum rose sharply in 2014

In 2014, the Mayor of Traiskirchen and the Governor of Lower Austria pushed for relief for the reception centre in Traiskirchen by generating massive media attention. The occupancy capacity of 1,774 was not exceeded; the maximum occupancy figure of 480 that was circulated in the media was “only” a political agreement between the Federal Minister and the Governor of Lower Austria. Nevertheless, Traiskirchen is definitely the largest facility. There are up to 1,770 asylum seekers compared to 17,634 residents in Traiskirchen.

In an *ex-officio* investigative proceeding of the reception centre in Traiskirchen, a commission of the AOB visited the facility in July 2014; at the time 1,222 persons lived there. The commission found the following conditions: too tight living quarters, no possibility for individual privacy, families housed directly next to single male individuals, limited occupational opportunities, a large number of children and adolescents (unaccompanied minor refugees) from

Commissions visit Traiskirchen in July 2014

crisis regions who had no adequate psychological support and a lack of interpreters for psychological therapy and medical exams.

The Federal Ministry of the Interior plans to redesign the support provided by the Federal Government. From the perspective of the AOB, the following principles are important in case of a restructuring:

**Smaller accommodations** Numerous smaller accommodations are preferable, as such accommodations are not only easier to manage but also more pleasant for asylum seekers. Ethnic conflicts can be prevented more easily and women, families and unaccompanied minor refugees can receive better care. The Federal Ministry of the Interior should look for buildings that belong to the Federal Government, e.g. barracks, in the vicinity of the Regional Directorates of the Federal Office for Immigration and Asylum. Last but not least, in accordance with the Federal Basic Welfare Support Act 2005, the Federal Ministry of the Interior jointly with the Federal Ministry of Defence and Sports can declare barracks as support centres by way of a directive in the case of bottlenecks. These buildings must be modified to adapt them to the refugees' needs, especially the needs of children.

**Good access to infrastructure** The accommodations should be in municipalities that are not too small, as the acceptance in larger cities and municipalities would be greater and the infrastructural requirements would be met more easily. For the asylum seekers, access to communal facilities (event centres, sports facilities) is important. Particular care must be taken to ensure that minor asylum seekers can attend school.

The Federal Ministry of the Interior must massively insist on compliance with the agreement under Section 15a with the *Laender*. Viewed from a political vantage point, political deference to the interests of the *Laender* may be understandable, but it creates – as is currently obvious – more problems than it solves.

**Access to the labour market** All asylum seekers share the uncertainty regarding their own future, regardless of how long their asylum proceedings actually last. It is still the case that asylum seekers may not work as non-self-employed workers, even if their proceedings take longer than six months. Their access to the labour market is blocked by way of a decree of the Federal Ministry of Labour, Social Affairs and Consumer Protection.

**Minimus standards in accommodation** Thus far, refugee reception conditions under the Basic Provision Agreement, the cost of which is borne by the Federal Government (60%) and the *Laender* (40%), are organised differently in each *Land*, whereby the quality of care differs widely. Binding minimum standards that are uniform Austria-wide would be necessary.

### 3.4 Science, research, business and industry

#### Finally barrier-free access to Thesus Temple in Vienna

Exhibitions in the Theseus Temple in the Vienna Volksgarten are finally fully accessible since spring 2014. A ramp was built that enables access for persons with disabilities without help from others.

After years of queries by the AOB, finally the efforts of the Kunsthistorisches Museum (Museum of Art History), the Austrian authority responsible for the efficient management and conservation of historic buildings, the Federal Office for the Care of Monuments and the Austrian Working Group for Rehabilitation have borne fruit. Prior to the beginning of the exhibition season 2014, a ramp was finally built.

#### Discrimination in filling a leading position at the Federal Ministry of Science, Research and Economy

An employee of the former Federal Ministry of Education, Science and Culture was discriminated against due to her gender when a leading position was filled. The Federal Ministry of Science, Research and Economy awarded her compensation after proceedings that lasted more than ten years.

Ms N. complained to the AOB in June 2014 and indicated that as an employee in the (then) Federal Ministry of Education, Science and Culture, she applied for the permanent position of a deputy head of department that had been put out to tender in autumn 2002,. However, a male applicant who was less qualified had been chosen over her (and other female applicants). Therefore, she petitioned for compensation in accordance with the Austrian Federal Equal Opportunities Act. The proceedings had been pending since March 2004.

The AOB's investigative proceeding revealed that in December 2003, in appointment review proceedings, the Federal Equal Treatment Commission found that the complainant had been discriminated against based on gender and that the preferential treatment guarantee for the advancement of women within the meaning of the Federal Equal Opportunities Act had been violated. Section 15 of the version of the Austrian Federal Equal Opportunities Act that is applicable in this case stipulated that the Federal Government is obligated to pay compensation for damages in the amount of the difference in salary for at least three months if the petitioner would have

improved herself professionally due to her better suitability if the selection had been free of discrimination.

Administrative Court  
overturns Ministry  
notice

The Federal Ministry of Education, Science and Culture dismissed the petition for compensation for damages in October 2004 by way of an official notice and denied having discriminated against her. After proceedings lasting more than four years, the Administrative Court ruled that this official notice was unlawful and found serious procedural defects in the proceedings.

Again unlawful official  
notice

After proceedings of more than one year, the (then) Federal Ministry for Science and Research again dismissed the claim for compensation. After proceedings of again more than four years, the Administrative Court overturned the official notice anew and found specifically, but not exclusively, that the authorities “had largely not made any traceable, comparative evaluations of the applicants but had simply made unfounded allegations”.

Compensation  
awarded

Only after the AOB had been involved in the matter and after there was a legally effective and final court ruling in a civil lawsuit that another female applicant had brought, which showed that the complainant had been the most suitable applicant, the Federal Ministry of Science, Research and Economy admitted the alleged discrimination. The complainant accepted the amount of compensation for damages stipulated in the official notice of December 2014.

### III. NATIONAL PREVENTIVE MECHANISM (NPM)

## 1. Overview

### 1.1 Mandate

Since 1 July 2012, based on the OPCAT mandate (Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment) the Austrian NPM has been monitoring and controlling all public and private institutions and facilities where persons are or can be detained. OPCAT

This preventive responsibility of the NPM serves to protect and promote human rights. Under the term “prevention” the NPM understands necessary measures to reduce risk which occur as persons being detained are subject to state interference and intervention to a particularly high degree. The NPM’s monitoring and control activities must be carried out “seamlessly as a matter of routine”, a mandate that the NPM fulfilled in the reporting year.

The Act on the Implementation of OPCAT (*OPCAT-Durchführungsgesetz*) vests the Austrian NPM with a very broad mandate. The NPM is authorised under the Austrian Federal Constitution to monitor and control institutions, facilities and programmes for persons with disabilities and to monitor and concomitantly examine authorities empowered by the State to exercise direct administrative power and compulsion. Broad mandate

These responsibilities also fall under the realm of prevention. In order to prevent any form of exploitation, violence and abuse, Austria must ensure that all institutions, facilities and programmes for persons with disabilities are effectively monitored by independent authorities. The competence of monitoring the exercise of direct administrative power and compulsion has been carried out by a unit of the Federal Ministry of the Interior since 1998 and was taken over by the NPM in 2012.

In practice, these responsibilities are of course linked; this means that the commissions include all responsibilities when they prepare visiting programmes. Therefore, the NPM interprets its responsibilities to protect and promote human rights under this broad mandate that it is obliged to fulfil, even when the underlying legal principles are different.

Work on developing a database of visit reports was completed as at the end of the reporting year. The database will make uniform procedural methods by the commissions easier, enable maintaining an overview of the work done each year and facilitate the evaluation of the observations made. Database successfully implemented

## 1.2 Monitoring and control visits in numbers

In the year under review, the commissions completed a total of 428 visits. As explained in the preface of this report, the Act on the Implementation of OPCAT vests the Austrian NPM with a very broad mandate, which goes beyond the mandate of a regular NPM.

366 unannounced visits In 366 cases, the visits and observations were unannounced, and announced in advance in 62 cases. Thus, the general procedure is to make unannounced visits. The average duration of a visit was three and one half hours.

Form these 428 visits throughout Austria, 280 were made to places where persons are being detained as defined in the OPCAT mandate. These were primarily retirement and nursing homes, institutions and facilities operated by youth welfare authorities, police detention centres and police stations as well as correctional institutions. Another 79 visits were made to institutions and facilities for persons with disabilities (as defined in the CRPD) and 69 visits included observations of the conduct of authorities empowered by the State to exercise direct administrative power and to carry out coercive measures.

As in the past reporting years, the commissions focused on retirement and nursing homes, psychiatric institutions and institutions and facilities operated by youth welfare authorities. As far as numbers are concerned, these institutions and facilities significantly exceed police and judiciary, which is why the seamless fulfilment of the mandate as a matter of routine represents a particular challenge.

Monitoring activities of the commissions		
<i>Land</i>	2014	2013
Vienna	133	164
Lower Austria	75	100
Tyrol	54	66
Styria	53	51
Carinthia	35	27
Upper Austria	25	55
Salzburg	25	28
Burgenland	19	23
Vorarlberg	9	15
<b>TOTAL</b>	<b>428</b>	<b>529</b>



	pol.	ret. + nur.h.	youth	inst. f. disabl.	psych. wards	corr. inst.	bar..	return	pol. op.	oth.
Vienna	20	20	18	20	5	8	0	18	24	0
Burgenl.	3	8	5	1	0	1	0	0	1	0
Lower Austria	13	16	7	24	4	9	0	2	1	0
Upper Austria	6	5	2	1	1	3	2	0	4	1
Salzburg	2	7	2	3	0	3	0	0	5	2
Carinthia	4	7	4	10	1	4	2	0	3	0
Styria	8	12	13	8	2	5	0	0	5	0
Vorarlb.	1	5	0	0	0	2	1	0	0	0
Tyrol	8	9	9	12	10	0	0	2	4	0
<b>TOTAL</b>	<b>65</b>	<b>89</b>	<b>60</b>	<b>79</b>	<b>23</b>	<b>35</b>	<b>5</b>	<b>22</b>	<b>47</b>	<b>3</b>
<i>(unannounced)</i>	<i>(60)</i>	<i>(89)</i>	<i>(58)</i>	<i>(76)</i>	<i>(18)</i>	<i>(31)</i>	<i>(5)</i>	<i>(22)</i>	<i>(16)</i>	<i>(0)</i>

**Legend:**

pol.	= police
ret. + nur.h.	= retirement and nursing homes
youth	= youth welfare
inst. f. disabl.	= institutions and facilities for persons with disabilities
psych. ward	= psychiatric wards in hospitals and medical facilities
corr.inst.	= correctional institutions
bar.	= military barracks
return	= (forced) returns
pol.op.	= police operations
oth.	= others (district authorities, police department of the competent <i>Land</i> )

The activities of the NPM are very much characterised by the fact that it does not (only) document deficiencies, but works very intensively to find solutions. This is the reason why the NPM sometimes does not conclude the investigative proceedings that follow the transmission of the commissions' reports for some time (sometimes not until the following year). The commissions address structural deficiencies and those specific to the institution or facility on the spot and suggest measures to be taken. The reports are then assessed and the competent supervisory authorities or institutions/facilities are confronted with the criticisms. Then solutions are developed. In 272 cases, the NPM objected to the situation for human rights reasons. As the commissions regularly address multiple criticisms during their visits, the NPM has made numerous recommendations; the most important of these recommendations are presented in the following (see pp. 77 et seq.).

	Monitoring statistics 2014		
	criticisms	no criticisms	still pending
Total	272	110	46

### 1.3 Budget

In 2014, a budget of EUR 1,450,000 was available to remunerate the heads and members of the commissions as well as the members of the Human Rights Advisory Council. This also included travel expenses, as well as compensation for preparing for and following up on visits.

On top of this, additional expenses resulting from the OPCAT implementation are covered by this budget, such as cooperation with the SPT, annual reporting, training, participation in evaluation proceedings with respect to the enactment of legislation and the special duty of informing the general public and cooperating with the scientific community and academia. Also a comprehensive database was set up and is constantly maintained with the view of facilitating the sharing of information and knowledge among the commissions and the AOB.

As far as cost accounting is concerned, the NPM is a separate cost unit dedicated exclusively to NPM activities. The use of resources allocated to the work of the NPM is determined by the members of the AOB in consultation with the six commissions. As a consequence, full financial independence and operational autonomy of the NPM is guaranteed by this transparent process.

In its discussions with Parliament, the NPM always advocates the continuation of its intensive monitoring activities despite general budget cuts. The number of visits and concomitant monitoring by the commissions should be ensured in future years, both with regard to quality and quantity.

## 1.4 Human resources

### 1.4.1 Personnel

Additional permanent positions granted

In order to implement the OPCAT mandate, the AOB has received 15 additional permanent positions in order to fulfil these new responsibilities. One permanent position was then eliminated due to budgetary constraints; leaving a total of 14 additional permanent positions. Employees were deployed for the following responsibilities: six jurists, five (originally six) employees in administration, two persons in the OPCAT secretariat and one person for public relations work.

The OPCAT secretariat was set up to exclusively dedicate its work to the preventive mandate of the NPM. It serves as a hub between the AOB and the six commissions and provides logistical and organizational support. It furthermore examines international reports and documents in order to support the NPM with information from similar institutions.

OPCAT secretariat

Additionally a total of 19 legal experts (employees of the AOB) examine the findings and observations made by the commissions during their visits. They have legal expertise in the areas relevant to the work of the NPM, such as the rights of persons with disabilities, children's rights, social rights, police, asylum and correctional institutions. They evaluate the visit reports submitted by the commissions from a legal point of view, confront the competent authorities regarding deficits and human rights violations and prepare concrete recommendations to improve the situation in places of detention. Together with the commissions these legal experts are also in charge of drafting legislative proposals and comments on laws and regulations related to NPM matters.

## 1.4.2 Commissions

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), the NPM must entrust the multidisciplinary commissions it has appointed with the tasks they have to perform. If required, the regional commissions may involve experts from other specialist areas provided that members of other commissions are not available for this purpose. The commissions are organised in accordance with regional criteria. They each consist of seven members and one head of commission.

Six commissions

Commission 1	Commission 2
Tyrol/Vorarlberg	Salzburg/Upper Austria
Chair: Karin TREICHL	Chair: Reinhard KLAUSHOFER
Members	Members
Susanne BAUMGARTNER	Markus FELLINGER
Sepp BRUGGER	Wolfgang FROMHERZ
Elif GÜNDÜZ	Katalin GOMBAR
Max KAPFERER	Esther KIRCHBERGER
Lorenz KERER	Robert KRAMMER
Monika RITTER	Renate STELZIG-SCHÖLER
Hubert STOCKNER	Hanna ZIESEL

<b>Commission 3</b>	<b>Commission 4</b>
Styria/Carinthia	Vienna (districts 3 - 19, 23)
Chair: Angelika VAUTI-SCHEUCHER	Chair: Ernst BERGER
Members	Members
Klaus ELSENSOHN	Andrea BERZLANOVICH
Odo FEENSTRA	Sandra GERÖ
Daniela GRABOVAC	Helfried HAAS
Ilse HARTWIG	Christine PEMMER
Sarah KUMAR	Petra PRANGL
Silke-Andrea MALLMANN	Nora RAMIREZ_CASTILLO
Erwin SCHWENTNER	Walter SUNTINGER
<b>Commission 5</b>	<b>Commission 6</b>
Vienna (districts 1, 2, 20 - 22) Lower Austria (political districts Gänserndorf, Gmünd, Hollabrunn, Horn, Korneuburg, Krems, Mistelbach, Tulln, Waidhofen a.d. Thaya, Zwettl	Burgenland/Lower Austria (political districts Amstetten, Baden, Bruck a.d. Leitha, Lilienfeld, Melk, Mödling, Neunkirchen, Scheibbs, St. Pölten, Waidhofen a.d. Ybbs, Wiener Neustadt, Greater Vienna
Chair: Manfred NOWAK	Chair: Franjo SCHRUIFF
Members	Members
Susan AL JAWAHIRI*	Karin BUSCH-FRANKL
Lisa ALLURI	Süleyman CEVIZ
Harald P. DAVID	Corina HEINREICHBERGER
Marijana GRANDITS	Siroos MIRZAEI
Sabine RUPPERT	Cornelia NEUHAUSER
Maria SCHERNTHANER	Elisabeth REICHEL
Hans Jörg SCHLECHTER	Karin ROWHANI-WIMMER

*\*(as of Feb. 2014: Gregor WOLLENEK)*

### 1.4.3 Human Rights Advisory Council

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

Name	Function	Institution
Mathias VOGL	Member	Federal Ministry of the Interior
Matthias KLAUS	Substitute member	Federal Ministry of the Interior
Roland FABER	Member	Federal Chancellery
Brigitte OHMS	Substitute member	Federal Chancellery
Gerhard AIGNER	Member	Federal Ministry of Health
Irene HAGER-RUHS	Substitute member	Federal Ministry of Health
Christian PILNACEK	Member	Federal Ministry of Justice
Gerhard NOGRATNIG	Substitute member	Federal Ministry of Justice
Billur ESCHLBÖCK	Member	Federal Ministry of Defence and Sports
Karl SATZINGER	Substitute member	Federal Ministry of Defence and Sports
Helmut TICHY	Member	Federal Ministry for Europe, Integration and Foreign Affairs
Ulrike NGUYEN	Substitute member	Federal Ministry for Europe, Integration and Foreign Affairs
Hansjörg HOFER	Member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Alexander BRAUN	Substitute member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Waltraud BAUER, Government of Styria	Member	Representation of the <i>Laender</i>
(since October 2014 Shams ASADI Municipal authority Vienna)		
Shams ASADI, Municipal authority Vienna	Substitute member	Representation of the <i>Laender</i>
(since October 2014 Wolfgang STEINER Government Upper Austria)		

Heinz PATZELT	Member	Amnesty International Austria in collaboration with SOS Children's Villages
Barbara WEBER	Substitute member	Amnesty International Austria in collaboration with SOS Children's Villages
Bernd WACHTER (since 2015 Angela BRANDSTÄTTER)	Member	Caritas Austria in collaboration with <i>VertretungsNetz</i>
Susanne JAQUEMAR	Substitute member	Caritas Austria in collaboration with <i>VertretungsNetz</i>
Martin SCHENK	Member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Erich FENNINGER (since October 2014 Christian SCHÖRKHUBER)	Substitute member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Michael FELTEN	Member	Pro Mente Austria in collaboration with HPE
Angelika KLUG	Substitute member	Pro Mente Austria in collaboration with HPE
Tamara GRUNDSTEIN	Member	Austrian Initiative for Independent Living
Martin LADSTÄTTER	Substitute member	Austrian Initiative for Independent Living
Philipp SONDEREGGER	Member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Nadja LORENZ	Substitute member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Barbara JAUK	Member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Renate HOJAS	Substitute member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Katrin WLADASCH	Member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>
Roland MIKLAU	Substitute member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>

## 1.5 Procedure of visits

The commissions set their agenda for visits on a quarterly basis in coordination with the NPM. In future, results of earlier visits can be immediately downloaded from the new database. The visiting delegations are configured at meetings of the commissions that take place on a regular basis. If the reason for the visit requires it, the commissions can involve external experts as coordinated within the NPM.

The observations and findings of the commissions are recorded in a standardised visit report which is divided into five chapters: basic information about the visited institution, findings regarding the visit, findings regarding the monitoring priority, other comments and concluding meetings.

Commissions prepare reports

Questions regarding the application of security measures or measures restricting a person's liberty, signs of torture or degrading treatment and health care are particularly relevant to the NPM's monitoring activities. Supervision and enforcement plans, procedures for forced returns and releasing those detained, staff situation and complaint management are also subject of control. Furthermore the commissions examine location, building structure and infrastructural fixtures and fittings of the institutions, living and residence conditions of the individuals detained, if they are able to establish contact with the outside, if their right to family and privacy is preserved, available training and employment, as well as access to internal information.

The visiting delegations record the concluding meeting with the heads of the visited institution or facility or the leader of the police operation in a separate document. This includes any initial impressions and observations gained on site, as well as an agreement, if possible, on how to eliminate shortcomings. These visit reports are routinely made available to the visited institutions and facilities.

Concluding meetings

The NPM involves the competent ministries and supervisory authorities in case of systemic questions and/or shortcomings at specific institutions and facilities; sometimes, the institutions and facilities themselves are involved as well. Concurrently, the NPM also works in ministerial working groups or working groups with individual *Laender*.

In this context, the NPM would like to stress that authorities and institutions or facilities have mostly been very cooperative and did not give the impression that they were reluctant to implement the necessary measures and improvements.

## 1.6 Reports of the commissions

The commissions view it as their duty to perform their work for the protection of human rights as efficiently as possible. They aspire to select the right priorities while taking the annual priorities of the NPM into consideration. In order to uncover human rights violations and to prevent others from occurring, they rely on all available information. To this end, an intensive exchange of information with institutions and NGOs is particularly important. The AOB's redesigned website and more dynamic public relations work is intended to support this exchange of information.

The following individual items from the commissions' experience during their visits should be emphasised:

Retirement and nursing homes	Visits to retirement and nursing homes show that there are major differences in the care standards – both quantitative and qualitative. The situation in existing institutions and facilities differs greatly, even in those owned and or run by the same legal entity. In some cases there is a significant need for improvement with regard to the space situation, which sometimes results in encroachment upon privacy. The majority of the employees expends a great deal of effort and tries to act as professionally as possible, although the cost pressure is significant. Generally the staffing ratio and the personnel resources are not sufficiently directed toward the provision of psychosocial care. In many institutions and facilities one gets the impression that people are supposed to adjust to the system's uniform requirements instead of the system being adjusted according to the often different needs of the people. Thus, autonomous decisions (mealtimes, bedtimes, walks in the garden, own room key, etc.) often cannot be made due to the daily routine with early dinner and bedtime. Unfortunately, psychological supervision is rarely taken advantage of. In the long run the mental health of the employees is permanently impaired as a result and consequently that of the residents is as well.
Youth welfare	It was found that many youth welfare facilities still suffer from a deficit of systematic concepts for the prevention of violence and documentation. In this area, psychological supervision has largely been established.
Institutions and facilities for persons with disabilities	The principle of inclusion and deinstitutionalisation formulated in the CRPD requires major changes in the area of care of persons with disabilities. This also of course applies to school enrolment of children with impairments. The commissions find the continued existence of disability-specific large-scale institutions to be highly worthy of censure.
Correctional institutions	In many places, health care in correctional institutions requires significant improvement. This includes the disrespectful attitude of doctors and care personnel that prisoners often complain about and the sometimes unprofessional wording in medical documentation. The trial run of the



model using video interpreters in the medical sector (Josefstadt correctional institution) has proven successful thus far and should be expanded. Numerous times human rights recommendations were made as a result of reduced possibilities to receive visits and the deprivation of liberty resulting from placement in specially secured cells.

While examining admissions to psychiatric hospital wards in accordance with the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) the commissions have found that a surprisingly high percentage of these admissions occur without the confirmation by a public health officer, i.e. in accordance with Section 9 (2) of the Hospitalisation Act (in case of imminent danger – without an examination). This exception provision is probably used even more frequently in rural areas. Therefore, one can assume that the statutory primary method (in accordance with para. 1) is very frequently not complied with. This raises concerns in respect of human rights.

Psychiatry

As the (former) Human Rights Advisory Board of the Federal Ministry of the Interior criticised over the period of many years the inadequate availability of doctors in public medical service in rural areas for examinations to determine if a person's physical conditions allow imprisonment and to perform screenings for admission to psychiatric wards, now, due to Ebola, 24/7 on-call availability of the public health officer outside of regular service operations has been introduced. The commissions expect that this availability will be maintained after the fear of Ebola has receded.

On-call availability for public health officers

The deficits surrounding the clarification of allegations of abuse against police authorities identified some years ago by the (former) Human Rights Advisory Board still exist. The publicly discussed possible reopening of the proceeding in the "Bakary J." torture case shows how important it would be to apply international recommendations. As the (former) Human Rights Advisory Board long demanded, the system of abuse proceedings in Austria needs to be fundamentally reformed so that allegations are investigated quickly and independently.

Allegations of abuse

At the beginning of 2014, Commissions 4 and 5 dealt with a large number of family returns in accordance with the Dublin III Regulation: there were 27 cases during the period from 1 October 2013 to 19 April 2014. Returns were to various European countries that were already well-known to many families due to their experiences with flight and migration. These experiences are often negative and trigger feelings of fear. What children experience in the course of (forced) returns leaves deep psychological wounds, especially when children see violence being used against their parents. Therefore, the commissions repeatedly criticised – referring specifically to the welfare of children – the circumstances surrounding the (forced) returns of families with small children and/or pregnant mothers (see also p. 191 et seq.).

Forced returns

Another problem that became manifest during (forced) returns is the question of responsibility for cross-border health care for chronically ill persons. While provision of medication by the police during transport is guaranteed, seamless further treatment at the destination is not ensured. It should be guaranteed that a drug-addicted patient who was integrated into a substitute drug programme in Austria or a diabetic receives the necessary medication in a European destination country (in the case of returns under Dublin III) immediately after arrival (see also p. 190 et seq.).

**Human trafficking** Regarding the observed inspections of bars and pubs in red light districts, the commissions recognise the efforts made to guarantee a process that is as proper as possible. However, the methods used often disregard the human trafficking aspect, especially as interpreters are not present during questionings. The police officers should be trained in how to deal with potential victims, including dialogue and communication strategies.

## 1.7 Report of the Human Rights Advisory Council

In 2014, the Human Rights Advisory Council continued and expanded its successful work. During 2014, it held a total of five meetings and established numerous working groups that held around 20 meetings, sometimes including external experts.

**Meetings with foreign delegations** In February 2014, several members of the Human Rights Advisory Council spoke with a delegation from the Tunisian Parliament regarding questions relating to the NPM. The head of the Human Rights Advisory Council participated in a programme during the visit of the Macedonian NPM in Vienna in April 2014 and spoke about the activities of the Human Rights Advisory Council and human rights standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In December 2014, a delegation from GRETA (Group of Experts on Action against Trafficking in Human Beings), an expert group of the Council of Europe, met with members of the Human Rights Advisory Council.

**Successful advisory activities** The AOB directed various enquiries (submissions) to the Human Rights Advisory Council that were largely resolved in 2014. These included the following topics:

- Health care and medical care in correctional institutions,
- Use of cage beds versus respect for human dignity,
- Federal Institute for the Blind is consistent with the UN CRPD,
- Limits to the authority of private security services in psychiatric institutions,

- Human rights requirements regarding data and statistics about the living situation of persons with disabilities,
- Specially secured cells in correctional institutions,
- Need for reform in respect of occupational therapy workshops,
- NPM mandate for (forced) returns and turning away refugees by air transportation,
- Psychological supervision among the police,
- Legal protection in the event of age-atypical measures that restrict freedom of children and youths with disabilities (is currently still being worked on),
- Structurally separate toilets in detention facilities at police stations (is currently still being worked on).

The Human Rights Advisory Council initiated the establishment of the following working groups:

- “Uniform human rights standards and monitoring criteria for major police operations” (is currently still being worked on),
- “Work methodology of the Human Rights Advisory Council” (is currently still being worked on).

The statement regarding “Need for reform in respect of occupational therapy workshops” was published in the full text library of BIDOK (Disability Inclusion Documentation), a project of the Institute of Education at the University of Innsbruck.

The publication of the full text of statements by the Human Rights Advisory Council, as suggested by itself and agreed by the NPM, is largely available on the AOB website.

## 1.8 Further activities

### 1.8.1 Seminars, workshops, publications

In order to improve the collaboration with the heads of the NPM commissions, on-site seminars for the respective regional commissions, were carried out in order to improve the specific sharing of experiences. In a two-day workshop based on the fundamental question “What does prevention mean?” (headed by Council of Europe expert Markus Jaeger), significant questions regarding setting priorities and the professionalisation in methodological practice (headed by Barbara Jauk from the NGO *Gewaltschutzzentrum Styria*) and member of the Human Rights Advisory Council) were dealt with and

reinforced. In addition to heads of commissions and commission members, legal experts from the AOB also participated in the annual sharing of experience. In the regular working sessions the heads of the commissions and the members of the AOB with their respective teams, both questions that are currently being dealt with and fundamental determinations have been discussed and resolved. This enabled important coordination for the day-to-day routine of the NPM.

The report database was expanded to improve the basis for the work, both for the AOB's legal experts as well as the members of the commissions that undertake site visits and their heads.

Workshops and working sessions are examples of the good cooperation with authorities; meetings with representatives of the police and with the social services administration are two such examples.

In order to make the work of the NPM accessible to an informed public audience and to enable discussion of new impulses by a wide circle of representatives of civil society, ideas about the development of basic elements of a National Action Plan for Human Rights (NAP Human Rights) were presented and discussed in an NGO forum and experiences and thought-provoking ideas in respect of human rights were set out. The NPM summarised that both the fundamental mandate of "protection and promotion of human rights" and the individual responsibilities and activities derived from this mandate are well embedded in the consciousness of the general public and the NPM is successfully established as the "Human Rights House of the Republic of Austria".

Publications in specialised media have contributed and are contributing to the deeper establishment of the NPM and illustrate the competence of the employees and the participating stakeholders.

## 2. Preventive monitoring

### 2.1 Retirement and nursing homes

#### 2.1.1 Introduction

During the year under review, the AOB visited 89 retirement and nursing facilities. It intentionally monitored and controlled both large homes and very small facilities. The willingness to cooperate with the NPM was generally high. In one case, the competent commission decided to immediately discontinue the visit. An employee at the facility had committed suicide the previous day. The shock resulting from this event was clearly perceptible. The visit was postponed out of deference for this event.

In Austria, there are around 850 larger retirement and nursing homes with more than 75,000 beds. More than 400 of these are public institutions and facilities. Slightly more than 450 retirement and nursing homes are owned or run by private entities, of which 79 are owned or run by religious organisations. Around 25% of these retirement and nursing homes have introduced a quality management system. As at the end of 2014, 32 homes had been awarded the National Quality Certificate for Residential and Nursing Homes in Austria. A statutory basis was created for the National Quality Certificate for Residential and Nursing Homes in Austria in an amendment to the Federal Senior Citizens Act (*Bundes-Seniorengesetz*) that became effective on 1 January 2013. The certificate has a third-party evaluation system that is uniform throughout Austria; it has the goal of making the quality of life in retirement and nursing homes transparent and to develop it further systematically.

Quality management certificate

The individual *Laender* have the regulatory authority for the operation of retirement and nursing homes, together with the institutional structures under which care and other services are provided (care standards, equipment, staffing ratio, trained staff quotas, medical care, duties of care, and rights of the residents). The Viennese Nursing Home Act (*Wiener Pflegeheimgesetz*) contains the most comprehensive catalogue of rights for home residents. Upper Austria is at the bottom of the scale, where the standardisation of such rights is very sparse. There are laws on nursing and care that are completely silent on the right to care and its implementation; others concede such rights only within the scope of services being offered or state that residents must be cared for in accordance with their needs and in compliance with their contractual rights. The right to respectful and professional care that is in accordance with current care standards is set out solely in Vienna.

Regulations differ according to *Laender*

Implementation of insights based on health care science and the application of important assessment instruments – including from the perspective

Significantly increased requirements

of preventive and human rights monitoring (e.g. for risk assessment in connection with fall prevention, pain, hygiene, malnutrition, skin damage) – require a reorientation and professionalisation of care in all the *Laender*. Additionally, most of the residents are already very elderly (over 85) when they enter such institutions and facilities and require a high degree of care due to chronic illnesses and multiple ailments.

The challenge of dementia

Advanced-state dementia is the most frequent reason for moving into care facilities, especially for people who live alone. Limiting factors for continuing to live at home include but are not limited to faecal incontinence, dangers in the home and behavioural disorders associated with dementia. Experts emphasise that persons with dementia whose illness is well controlled with anti-dementia drugs and their environment have an advantage with regard to ease of care and independent living. Unless there is a breakthrough with regard to prevention and therapy, in Austria the number of persons with dementia will rise from 90,500 in 2000 to around 233,000 in 2050. These are all persons with moderate to serious dementia with a high need for help and care. Due to this situation, knowledge about geriatric psychiatric care and palliative nursing and medical care and the best possible ongoing medical care in retirement and nursing homes are becoming increasingly important. The expectations of relatives with regard to what these institutions and facilities as people's last residence are expected to do with regard to long-term care are also rising accordingly. This is not just about basic care ("warm, well-fed, clean"), but also about psychosocial and rehabilitative care of geriatric patients. By providing special arrangements with regard to space, staff and everyday needs, it is possible to support care of persons with dementia in respect of their special needs, such as, increased urge to move around, inversion of day and night rhythm, as well as behavioural abnormalities. This requires resources.

Harmonisation of framework conditions necessary

How much staff is necessary and according to what formula this is calculated or what qualifications staff must have differs from *Land* to *Land*. In order for nursing staff to provide modern, professional care in accordance with the current standards developed by science and research in individual areas, there must be a uniform basis across Austria for how to calculate staff needs and unified structural parameters (staff ratio and qualification formula, home size, equipment and uniform quality assurance). All of this does not exist at the moment. The impressions that the commissions receive during their visits in this type of facilities are correspondingly diverse. The commissions often face complaints from the staff about too few resources, in particular for the care of elderly persons with dementia.

Positive reactions to commission visits

It should be positively highlighted that institutions and facilities perceive and accept the commissions' suggestions as feedback and have provided assurances that improvements will be made. Whether these assurances have been fulfilled is monitored by the NPM during follow-up visits or subsequent

investigative proceedings carried out by the AOB. It has been found that recommendations that can be realised more easily are often acted upon. For example, screens to protect privacy and lower beds to avoid measures to restrict freedom have been purchased and seating has been acquired that is used to transfer persons in wheel chairs to prevent decubitus and to allow them to participate in interaction in the kitchen/dining/communal areas. In some institutions and facilities, information in pictograms was made available for persons with dementia, measures were taken to achieve barrier-free accessibility, animation programmes and leisure time activities were expanded, more specific continuing education programmes were provided, etc. Besides, in several homes measures were taken to improve documentation and complaint management as a reaction to concluding discussions with the commissions. In some cases, increased measures to prevent falls or improve pain assessments were recommended and implemented. It often becomes clear during commission visits that measures which restrict freedom are often not promptly reported to residents' representatives as is required under the Nursing and Residential Homes Residence Act (*Heimaufenthalts-gesetz*). This makes these restrictions per se inadmissible. Therefore, there were corresponding "ex post facto reports" in several cases.

Suggestions regarding very specific care situations where freedom was restricted were also acted upon. For example, a visiting delegation encountered a resident with dementia who had washcloths tied around both hands to prevent her from scratching her body. During the follow-up visit, it was found that, after this was criticised, the woman had received anti-itch medication and was now able to move her hands freely without injuring herself.

Generally, a corporate culture that attentively notices the needs of the residents and a respectful attitude play a decisive role in care. Self-determination and dignity of persons who are increasingly dependent on help and must permit intrusions into their private sphere can be very easily threatened. In several cases, the commissions objected to "assembly line care" and behaviour that departed significantly from normal standards, e.g. when breakfast is served although a woman is still sitting on a commode wheelchair or when all residents have to wear bibs normally used for toddlers while they eat; this is degrading. Very little stays private when personal information has to be provided in communal areas and conversations with doctors and relatives can be heard by others. There also seems to be a lack of respect when requests are made in a command tone ("Lie down!") or it is expected that the elderly "function" in accordance with the care routine.

Respect in care is essential

The commissions often found that the management and nursing staff endeavoured to create a friendly, relaxed and pleasant atmosphere and to use a caring conversational tone. But even in non-verbal communication with the elderly, when carrying out nursing and care, in planning care, in how the

daily schedule is structured, in the care of disoriented or dying persons and in documentation, there can be unintentional negative or thoughtless actions vis-à-vis the persons to be cared for. Sometimes, commissions draw attention during their visits to the fact that grab bars, which have been moved aside, cannot be reached by the elderly, that call systems do not work, that body parts are exposed in front of third parties, that the bathroom door remains open during a shower, that orientation aids are lacking, that new residents are not given a tour of the facility and are not shown where the terraces are, etc.

Research initiated on prevention relevant to human rights

The AOB has suggested a project to process the research literature on the subject of “prevention”. University professor Stefan Titscher has submitted a corresponding application-oriented project as project manager to the *Jubiläumsfonds* of the Austrian National Bank and it has been approved. Prevention to avert human rights violations is the focal point of the study. The study is concentrating primarily on two types of institutions and facilities in Vienna: retirement and nursing homes and hospitals that have psychiatric wards. The key questions are: how can institutions and facilities, where people are being cared for, integrate preventive mechanisms into their work? And if this is increasingly possible, how can they be supported in doing this more effectively and efficiently? In order to answer these questions, the project will try to identify the indicators that (primarily) affect the quality of care. The project is application-oriented, because the results are supposed to provide a scientifically-based aid for the NPM for issues to be examined and monitoring and control methods. The NPM sees such projects as part of its statutory duty to cooperate with the sciences pursuant to Section 7 (3) of the Ombudsman Act (*Volksanwaltschaftsgesetz*).

Central register for restrictions of freedom

Protection of personal freedom while in group homes and other nursing and care institutions and facilities has been regulated by federal law since 2005 (Nursing Home Residence Act). An important pre-condition for the permissibility of a measure that restricts freedom is that there are no milder means available. Therefore, minimising all efforts, frequency, scope and intensity of measures that restrict freedom – i.e. technical, medication-based, communicative and interactive encroachments on freedom (of movement) – are a measure of quality. Care that is based on human dignity and human rights is unthinkable without the active protection of personal freedom. Therefore, this right to respect urges that institutions and facilities rethink the use of measures that restrict freedom and evaluate them self-critically on a regular basis. Sometimes, this does not occur with the necessary attention. However, there are also traditional nursing homes that set this as a concrete goal for themselves and plan their care in detail so as to look for and find individual solutions for problems without intruding upon the autonomy of the affected person. IT-supported care documentation systems (e.g. Vivendi) facilitate the identification of risks and also allow targeted assessment of measures taken to restrict freedom as a basis of ongoing self-evaluation. The



CPT recommends introducing a central register in psychiatric hospitals to record all measures taken to restrict freedom. The NPM and its commissions demand the same for retirement and nursing homes. The Federal Ministry of Health also concurs with this viewpoint and has sent an appropriate informational letter to the *Laender*.

As in the previous year (NPM Report 2013, p. 29), the commissions repeatedly found people under 60 in nursing homes during their visits. The basic problem throughout Austria is that institutions and facilities for persons with disabilities are generally not geared toward care of residents needing more intensive care and rarely have permanently employed professional nursing staff. Therefore, younger people with greater needs for care or medical care are accepted into nursing homes or geriatric centres. Their concept is geared to the very elderly and persons with dementia and they do not offer a suitable environment for considerably younger people.

Improper placement of young people in retirement and nursing homes

It is therefore necessary to develop appropriate concepts and to provide a sufficient number of beds for this group of persons. It is important to create options for younger persons with restricted function due to disabilities who require care and to actively offer such options. This includes concepts and models that make care in their own residence affordable.

In Vienna, the Association for Viennese Social Institutions (*Dachverband der Wiener Sozialeinrichtungen*) created a working group dedicated to this topic. The NPM participated in this group in addition to representatives of various aid organisations as well as self-advocates. Within the scope of this working group, the Vienna Social Fund conducted an assessment in the facilities of the nursing homes and geriatrics centres of the Vienna Association of Medical Institutions. At the time of this visit in spring 2014, there were a total of 308 persons under 60 in the care centres of the Vienna Association of Hospitals, 50 of whom expressed the explicit wish to change their residence.

Figures were also collected in Lower Austria: there are currently 245 persons under 60 in long-term care in 107 homes with more than 9,000 beds. No information has yet been collected as to whether there are improper placements or if residents desire to change their residence.

The NPM welcomes these initiatives, and will continue to observe if concrete improvements will be developed for this group of persons.

## 2.1.2 System-related problem areas

### Medical care

Inadequate medical care The commissions found numerous problem areas in the field of health care. Based on the legislation in most of the *Laender*, operators of homes must ensure that residents can choose their doctors. As the commissions have observed, some in-house doctors are often overwhelmed with the diverse medical conditions of the elderly due to a lack of appropriate continuing education. Problems arise if specialists, for example for geriatrics, psychiatry or neurology, as well as therapists to optimise care, are not consulted in the institutions and facilities. The consequence is, for example, polypharmacy and/or prescription of unsuitable medications, as well as underestimating the effectiveness of non-drug treatments.

It would be necessary to consider the interactions of somatic/cerebro-organic, psychological, biographical and social factors in the care of the elderly simply due to the increasing number of the elderly and persons requiring nursing care. The goal of geriatric impact analysis must be to achieve a great deal of what is still possible and not to lose resources and thus curtail the quality of life even further. Facility staff that notices deficits does not have any possibility to undertake effective intervention if the attending physician is not responsive or the legal guardians are not actively engaged.

Duty to maintain patient confidentiality should not impede best possible care

The commissions sometimes found that the attending physicians refused to provide important health information to the nursing staff, citing their duty to maintain patient confidentiality. There is no statutory basis stating that doctors must keep their records in nursing homes. The Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) and the Healthcare and Nursing Act (*Gesundheits- und Krankenpflegegesetz*), however, assume cooperation of everyone in health-related professions with the nursing homes. The NPM has appealed to the Federal Ministry of Health in this regard, which has stated that another amendment to the Act on the Medical Profession (*Ärztegesetz*) is being considered for 2015 and that it will tackle the question of how to better support this.

The NPM considers such an amendment to be urgently necessary. Likewise, solutions must be found for how to provide persons in nursing homes with adequate medical care by specialists.

- **Free choice of doctor.**
- **Care by specialists and cooperation with facilities should be improved.**

## Supply of medication

The commissions have repeatedly found that there are deficits in nursing homes regarding prescription of medication, informed consent and measures that deprive people of liberty by way of drugs as defined in the Nursing and Residential Homes Residence Act.

Persons with dementia often experience increased restlessness, disorientation or high activity levels in the late afternoon and evening. With the progression of the disease, it often happens that those affected wake up several times during the night and want to get up. Sleep is interrupted for a lengthy period of time by activity resulting from night time disorientation. Those affected become lost as to time and place, believe it is time to get up and want to undertake work that they had been accustomed to in the past. They forget that they were in bed, they no longer know where they are, and want to go home. The lack of sleep at night is compensated by increased phases of sleep during the day.

Currently, residents of nursing homes are frequently in their beds by late afternoon, having been given sedating medication. However, sleep disorders in persons with dementia cannot be treated by way of drugs alone. Rather, medication to improve sleep must be combined with treatment of the dementia (e.g. with anti-dementia drugs), treatment of physical or psychological secondary illnesses and non-drug treatments.

Non-drug treatments  
are important

The too uncritical use of sleeping pills and tranquilisers has serious negative health consequences and significantly restricts the mobility and quality of life of the elderly. The commissions have objected to this many times and recommend a quarterly regular inspection of drug plans in order to make the use of medicinal products safer. The commission saw the lack of psychiatric diagnoses by specialists as the main reason for prescriptions and doses of psychopharmacological medications that did not appear transparent, but also the fact that the general practitioners practicing in nursing homes often refused to consult psychiatrists.

Doctors who treat behavioural changes and the psychological consequences of dementia must be very aware not only of the effects of certain psychopharmacological medications and their particular impact on seniors, but also of any harmful side effects they may produce in the elderly. They must also know how behavioural and mood disorders can be created and changed by social and psychological conditions. This requires concepts that promote structuring the day by creating stimulating living spaces, needs-based mobilisation, communication, participation in the community, etc. This includes scheduling opportunities to access the outdoors during the day.

If unsuitable or too many medications are given concurrently and are perhaps overdosed as well, this can result in serious behavioural problems and ailments. Interactions of psychopharmacological medications are difficult to assess and high doses of some drugs can build up in the body as they are not metabolised and eliminated fast enough by the elderly. The possibilities for treatment with drugs are multi-faceted and include not only the timely use of a suitable drug, but frequently stopping use or gradually reducing the dose of unsuitable or no longer necessary drugs. Regular control of the list of medications with regard to necessity, interactions, side effects, etc. should be a matter of course. Individual needs and the respective situation of so-called “difficult patients” require a great deal of attention and sensitivity.

The commissions have uncovered cases where drugs were prescribed in the case of “restlessness” without a traceable diagnosis. In almost all of the incidents monitored in detail, the documentation in the nursing homes did not contain any indication whatsoever of a medical briefing or explanation or the patient’s consent. In many cases, the staff did not even realise that giving sedatives with the purpose of tranquilising or immobilising the person affected could be a measure depriving them of their liberty, that there were drugs with fewer side effects, etc. Accordingly, there were also no reports made to the residents’ representatives.

Ministry and Austrian  
Medical Association  
take measures

Therefore, the NPM appealed to both the Federal Ministry of Health and the Austrian Medical Chamber in 2014. The Federal Ministry of Health intends to ask the Austrian Medical Chamber to include these topics in continuing education programmes for doctors. Additionally, this should become a focus in continuing education for public health officers.

The Austrian Medical Chamber has made detailed remarks regarding this problem area and promised to re-examine the current continuing education programmes.

The NPM welcomes these measures; however, it sees an even more urgent need for action and research beyond this, in order to ensure state-of-the-art treatment with drugs in nursing homes, but also in the care of the very elderly at home.

- **Deficits in obtaining informed consent and in the prescription of drugs.**
- **Restrictions of freedom by way of drugs are not recognised.**
- **More specific education of doctors with regard to treatment of elderly patients with drugs is necessary.**
- **Research is needed with regard to drug safety for the very elderly both in and outside of stationary long-term care.**

### Lack of staff during night shift

As already found in the 2013 reporting year (NPM Report, p. 29), the commissions repeatedly found inadequate staff resources. During the reporting year, the observations were concentrated increasingly on the night shift.

Commission 5, for example, found that in a home in Lower Austria, there were five living areas where only four employees were present during the night shift. This means that one living area was inevitably intermittently not manned. This is highly problematic for the care and safety of the affected persons. The residents who were questioned stated that there were noticeable negative consequences for them in the form of lengthy wait times, wearing incontinence pads only at night and impatient staff. The operator of the facility stated that considering the current funding arrangements, more staff at night could only be realised at the expense of less staff during the day. This would limit care and activities during the day and represent a disadvantage for the residents.

Inadequate staff resources, especially during night shifts

In another case, there were only two caregivers at night for 78 residents who were distributed across three floors. As a result, some stations inevitably remained unmanned at night and calls by residents who could not use the call system remained unheard. At the time of the commission's visit, there were a total of 23 persons at the care and nursing allowance level 5 and eleven persons at the care and nursing allowance level 6 (care measures that cannot be coordinated as to time and permanent presence of a caregiver, including at night) who needed nursing care.

Two caregivers for three floors

While the supervisory authorities of the *Laender* verify if the operators of the facilities comply with the predefined minimum staff figures, they do not verify whether the staffing at night is sufficient, considering the care necessities and difficulties that can result from structural and spatial components.

The NPM is of the opinion that there must be adequate personnel present at night to guarantee the safety of the residents. Care personnel must be able to undertake unforeseen care in a timely manner, recognise emergencies early on and hear calls for help. Furthermore, there should be – something that the commissions were pleased to find in some facilities – programmes in the evening for residents with dementia who are restless and not sleeping.

- **Insufficient staff resources during the night shift.**
- **Safety of the residents is not always guaranteed.**
- **Evening programmes are necessary.**

### 2.1.3 Intolerable living conditions

During a visit at a small, privately operated facility for seniors in Lower Austria, Commission 5 found such massive problems that it submitted an urgent report to the AOB.

Operator alone around the clock

The operator was present in the facility around the clock and she was the sole caregiver for five women between the ages of 69 and 90, all requiring nursing care. She undertook all care tasks and cooked for the residents. "Meals on Wheels" was only occasionally utilised. Every Wednesday afternoon, she was helped by a care aide from Caritas so that she could go shopping and purchase medication. A cleaning person helped out for five hours twice a week.

No daily activities

There was no communal room for the residents. Each woman ate in her own room and spent a lot of time alone. There were hardly any encounters between the women needing care or any opportunity for communication. There were no excursions, no joint activities, no regular animation programme or occupational activities. The operator stated that she had no resources for such activities. Any potential to improve the quality of life of the women needing nursing care through variety, orientation, movement, games and memory training remained untapped. No measures were taken to maintain autonomy and independence. Last but not least, documentation was completely inadequate.

The commission stated its opinion on the spot that care by a single person of five residents requiring nursing was intolerable from a nursing perspective and was dangerous due to the fact that complications could occur at any time.

Closure of facility in Lower Austria

Confronted with these observations, the competent supervisory authority promptly undertook an on-site inspection that confirmed all the observations. The supervisory authority had the residents requiring nursing care moved to other facilities. Shortly thereafter, the operator decided to close the facility.

Lacking mobilisation and barrier-free access; deficits in hygiene and documentation

Commission 6 encountered a similar problematic situation in a facility in Burgenland, where nine aged women lived with the operator's family in one house. The commission's visit took place at 4 p.m. At this time, eight of the nine residents were already in bed in their rooms on the first floor.

Considering that there were no plans for activities, this created the impression that nothing was undertaken during the major part of the day to mobilise the residents and encourage them to undertake activities. Answering questions, the women indicated that they spent a major part of the day watching TV and practically never left the house. In order to at least spend time together in the dining room on the ground floor, the ladies with limited mobility were carried by the operator up and down the stairs in a wheelchair as there was no barrier-free accessibility. The commissions verified the out-dated condition

of the emergency call system and also found the nursing case histories and care planning inadequate and the hygienic conditions very alarming. The operator, who is not subject to the Working Time Act (*Arbeitszeitgesetz*), had been carrying out all night duty by himself for years; during the day, there was a care aide on site.

Continuing observations by the NPM revealed that the supervisory authority had been aware of many problems for years. Numerous requirements, beginning in 2004, had been officially issued without any action being taken as a result of the partial non-compliance. The fact that the operator had inadequately identified the personal habits, resources and deficits of the residents and insufficiently taken them into consideration in his care planning and had poorly documented the care processes was objected to by the commissions as was the complete lack of barrier-free accessibility. In addition to hygienic deficits and the outdated emergency call system, it was emphasised that, under these conditions, a threat to health could not be excluded.

If there are indications that persons requiring nursing care could be harmed by unprofessional stationary care, supervisory authorities must promptly make use of their authority. The NPM will closely observe the progress of the official proceedings as well as the changes for the residents that were concretely promised during a hearing of the parties.

- **When safe care cannot be guaranteed, the residents must be transferred to another facility.**
- **Supervisory authorities are called upon to act quickly.**

#### 2.1.4 Positive findings

During their visits in all institutions and facilities, the commissions pay increased attention to positive practices, which are later on recorded in the reports.

A facility which had pursued creative solutions for complaint management and had introduced the concept of “wish messengers” was positively highlighted with the “Good Practice” rating. The reason given was that it is much easier for residents who are dependent on care to express wishes rather than complaints. The “wish messengers”, some of whom are qualified psychologists, worked their way through the facility and, within a period of six months, recorded all the concerns which were then implemented to the greatest extent possible in collaboration with management and staff.

Enquiring about residents' wishes shows respect

## 2.2 Hospitals and psychiatric institutions and facilities

### 2.2.1 Introduction

Comprehensive  
mandate clarified

During the reporting year, the commissions visited 23 psychiatric hospitals and other medical facilities, whereby the commissions monitored and controlled mainly psychiatric wards (19). After a visit by Commission 1 in a special medical facility for internal medicine and neurology, the mandate for commission visits was explicitly disputed. The NPM refuted this restriction of its monitoring authority. An informational letter sent in October 2014 to all Governors by the Federal Ministry of Health made it clear that within the meaning of Section 4 (1) of the OPCAT monitoring by the NPM indeed includes all medical facilities and hospitals and their departments and wards, as it cannot be excluded *a priori* that patients in these facilities could not be subject to restrictions of freedom (restraints, coercive measures).

Structural deficits  
impede work

The commissions found that both doctors and other hospital staff are committed and endeavour to ensure treatment and care that is beneficial for the patients' welfare. Compliance with human rights guarantees and with the conditions for coercive treatment defined in legislation and case law as a last resort should furthermore create trust between patients and their professional caregivers in psychiatry and establish a basis for fruitful therapeutic relationships. This challenging work in psychiatric institutions and facilities or wards is often significantly complicated by inadequate resources, time pressures, often out-dated and practically unalterable structural conditions, as well as deficits in the atmosphere of the facility. Patients are overwhelmed by these conditions, as well as by forced inactivity due to restraints, which endanger a positive therapeutic environment or make it impossible. Furthermore, if patients' dignity is not respected causing shame, if they are overpowered by well-meant care measures without being able to articulate their needs, a climate is created that is susceptible to verbal and physical attacks and that can sometimes be reflected in violence against professional caregivers.

De-escalation  
management  
indispensable

The frequency of admissions, restraints and isolation that occur against the patient's will or involuntary administration of medication is – from a human rights perspective – an indicator of quality for stationary psychiatric treatment. Persons who have had experience with psychiatric institutions have been reporting for years that different facilities and different wards dealt with their rights differently. One hears the same from medical and care staff that have worked in different facilities and faced different treatment cultures and attitudes. Despite a uniform legal framework, the point where a failure of treatment is assumed and coercive measures are taken apparently seems to depend on the respective situation and the decisions of the persons involved. Restrictions of movement, however, must always be “subsidiary”, i.e. used only as a last resort. In the tug-of-war between their duty to treat and



protect on one hand and the existing treatment possibilities and available resources on the other, more reflection and open discourse is needed about perspectives and requirements of psychiatric treatments that give as much room as possible to – or even expand – the autonomy and freedom of persons with mental disorders. Solely adequate numbers of well trained and confident staff can if not prevent then at least reduce the development of aggression within a system and deal professionally and competently (while applying techniques to de-escalate tensions) with agitated and aggressive patients and protect themselves at the same time.

Much too little is being invested in Austria in the development, research and use of preventive measures and alternatives to coercive treatment. Operators of hospitals and psychiatric institutions must ensure – as far as personnel, concept and organisation are concerned – that there be as many graduated response possibilities with regard to intervention intensity as possible before coercive measures are used. The guiding criteria for professional action must be the principles of voluntary action, (assisted) self-determination, participative decision-making as well as intensive care and occupational activity – if necessary during acute crises at a ratio of 1:1. This requires resources, patience and personal attention, equal footing between staff and patient, respectful attitude vis-à-vis individual life patterns, as well as ongoing qualification of staff in dealing with crisis situations, violence and aggression. De-escalation can take place at various different levels. It begins with prevention of aggression, in a conversation that seeks to calm an agitated patient and then ranging from conflict resolution without losers to restraints, which must be used with the least invasive impact on the patient while maintaining the patient's dignity. This is what the principle of proportionality under the Federal Constitution requires, according to which sovereign acts by the state in order to achieve an overriding goal in the public interest must be suitable, necessary and reasonable for those impacted by them. Any coercive measure is excessive if a milder directive that is just as suitable is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel.

Multi-dimensional prevention of violence neglected

The fact that criticisms with reference to human rights have up to now not been systematically taken as an opportunity by operators of hospitals and medical facilities to implement a number of relevant recommendations by the CPT, which the NPM has repeatedly pointed out, is cause for concern and must remain on the NPM's radar. In day-to-day psychiatric care in most Austrian clinics, it is, for example, unfortunately not customary that patients be supervised 1:1 "constantly, directly and personally" after they have been restrained as the CPT has been demanding for years. This intensive care must not be understood as a purely supervisory measure because it also offers a high degree of therapeutic potential; video monitoring systems and

CPT recommendations requiring more resources not implemented

frequent rounds are not an equivalent replacement. More human attention and presence is required. The decisive question of why conditions in which the personal integrity of human beings is intruded upon despite possible milder alternatives continue to be tolerated must not only be posed to those acting directly in stationary psychiatric care but also to the operators of such facilities and to those who have the political responsibility.

Based on the observations made by the commissions, it can be assumed that the staff situation – especially with regard to adequate night shift personnel – must be evaluated on an ongoing basis. It is necessary to take the individual requirements in the respective wards into consideration and to react flexibly to the requirements that have to some extent become greater.

PRN medication  
insufficiently  
determined

In the course of examining care records, the commissions have dealt intensively with questions regarding medication. Administering medicines/drugs is fundamentally the job of doctors that can be delegated to qualified nursing staff within the scope of a field of activity for which they are jointly responsible. For this to occur, however, it is necessary that amount, dose and type and time of administration be noted in written form in the patients' charts by the doctors authorised to issue prescriptions.

PRN (“pro re nata”) medication is permitted in exceptional, individual cases if the criteria for the assessment of timing and dose of the medication to be administered is unambiguous, beyond any doubt and verifiable according to the doctor’s instructions without the nursing staff making inadmissible diagnostic or therapeutic decisions that exceed their competence at their own discretion.

However, in the course of reviewing care records in the psychiatric ward of the Wels-Grieskirchen Clinic, Commission 2 found that these requirements are not fulfilled seamlessly. In the case of one patient, the additional prescription said only “as needed”. After the commission’s visit, the hospital’s doctors were strongly advised as to proper procedure to ensure that nursing staff can act with confidence. Additionally, it was ordered that regular reviews of the PRN medication prescribed by a doctor be undertaken by the competent senior physicians in the wards during rounds. Specifically a regular evaluation of this kind is absolutely necessary in order to be able to quickly modify medication that is no longer therapeutically indicated.

Prevention of falls

If one reviews the mere number of measures that restrict freedom using bed rails, it becomes apparent that they are used particularly for the following patients: persons who are very aged or have been diagnosed with dementia and persons who are being treated in geriatric psychiatric wards. Falls represent significant hazard potential, including in hospitals. Neurological ailments have a particularly high risk of falls, as frequently there are several age- or illness-related physiological risk factors. Using measures that restrict freedom instead of providing proper care and implementing evidence-based

fall prophylaxis is reprehensible from both a human rights and an economic perspective. When being admitted to hospital, all patients should be observed and questioned with regard to fall risk factors. Then it should be decided whether they are at risk for falls. Additionally, there should be analyses in each ward with regard to frequent reasons for falls in order to minimise risks inherent in the environment (damp or slippery floors, poor lighting, lack of grab bars, high steps, etc.). Also situational circumstances, such as the staff structure of a department, can affect the risk of falls. In an individual case – best done by a multi-professional team – measures must be planned and developed, information distributed and, if applicable, therapeutic interventions implemented. It has been proven that orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls. Possible consequences of falls, such as hip fractures, traumatic head and brain injuries and immobility, cause suffering.

From the perspective of the NPM, it can be expected that a systematic fall prophylaxis in all hospitals and medical facilities would result in a reduction of measures that restrict freedom. As is the case with most Western countries, Austria is in the midst of a demographic change. The over-80 segment of the population is increasing most significantly. According to estimates, by 2040 there will be a million persons over 80. Hospitals and medical facilities must begin to prepare themselves now.

In the NPM Report 2013 (pp. 38 et seq.), it was set out that the NPM urges that a recommendation by the CPT to set up a central register to record measures that restrict freedom be implemented in all psychiatric medical facilities and wards in order to be able to evaluate their use and frequency without consulting patient records.

Central register to record measures that restrict freedom

The commissions found that despite discussions with experts initiated by *Gesundheit Österreich GmbH* (national research and planning institute for health care, GÖG) and the Federal Ministry of Health, such registers are not yet available in most psychiatric medical facilities. Solely the University Clinic for Psychiatry of the Regional Hospital in Graz had an IT-supported central register that recorded all measures to restrict freedom (as confirmed by Commission 3), which should be positively highlighted. In July 2014, the Tyrolean hospital operating company TILAK (TILAK = *Tiroler Landeskrankenanstalten GmbH*) provided Commission 1 with a concept to set up such a register for the first time. Plans in this direction were held out to Commission 4 by the Baumgartner Höhe Social Medicine Centre and the Otto Wagner Hospital and Care Centre. The NPM will continue to push for a seamless set-up of such registers.

- Structural deficits (too few resources, time pressure for staff and outdated structural environment) impede care significantly.
- De-escalation management and multi-dimensional violence and fall prevention work help to prevent measures that restrict freedom.
- Central register to record measures that restrict freedom must be implemented seamlessly.

## 2.2.2 System-related problem areas

### Evaluation of conditions for restrictions of freedom

**Restraints and isolation** Restraints and isolation are not therapeutic interventions but purely security measures that are used when a therapeutic approach is temporarily impossible. If their use appears to be unavoidable, it is necessary to maintain human dignity and guarantee legal certainty. Interventions must be kept as short and as non-intrusive as possible; psychological or physical trauma must be avoided. How such coercive measures are carried out with regard to safety aspects and the supervision during these measures should be regulated through binding rules and should be the subject of regular training.

The frequency and the environment, in which restraints are used, are important indicators for sensitive treatment of patients and the protection of their fundamental personal rights. As previously set out in the NPM Report 2013 (pp. 35 et seq.), the commissions found serious deficits with regard to this monitoring priority.

**Alternative to measures that restrict freedom**

The frequency of restrictions of freedom varies not only by region but also among various wards of a hospital. This suggests that if sensitisation has changed the basic attitude and the available resources are deployed in a targeted way, the extent of measures that restrict freedom can be reduced to an absolutely necessary level. To this end, however, it would also be necessary to focus attention in and outside of psychiatric wards on the use and acquisition of alternative measures (e.g. low-profile beds, sensor floor mats, etc.). In the opinion of the NPM, there is significant room for improvement in many places. Such auxiliary resources that have proven successful in retirement and nursing homes are used less often in hospitals.

The configuration of the space and the organisational procedures in psychiatric institutions can contribute significantly to the prevention of violence and aggression. Aspects such as communication, information and transparency of action while maintaining privacy and self-determination are highly important, especially vis-à-vis people who are ill. Gender-specific issues and vulnerabilities always require particular attention.

The commissions frequently found that patients were cared for in beds set up in hallways and were sometimes restrained there; this is an absolutely unacceptable violation of their human dignity and their fundamental personal rights. The reasons for this, however, can be found in the fact that individual smaller hospitals are responsible for psychiatric care for a relatively large catchment area and the available capacity is small. In the case of a high number of acute emergency admissions, bottlenecks can occur; regular beds alone do not provide much help in this regard. Furthermore, the commissions often found that restraining straps on beds were constantly visible to patients and no arrangements were made so that the restraints could not be seen by uninvolved third parties. This promotes the feeling of being helpless and at the mercy of the institution, creates a permanent threatening scenario and is perceived by the person affected as humiliating and shameful.

Restraints used under degrading conditions

It must be strongly demanded that these practices cease. The use of alternative measures and the careful planning of a constant expansion of resources within the scope of existing financial possibilities can make a considerable contribution to this.

The operators of hospitals have reacted to reproaches by the commissions insofar as restraints are now covered up and the use of beds in the hallways is being reduced to a minimum. As the example of the Wels-Grieskirchen Clinic shows, moving into a new, modern building may be necessary to fulfil current standards of psychiatric care.

- **Staffing and spatial framework conditions for therapeutic treatment must be created in accordance with current standards.**
- **Restraint of patients must take place out of sight of third parties; use of restraints can only be used with constant and direct supervision in the form of a watch by an attendant.**

#### **Use of net beds in Austria about to end**

Since 1999, the CPT has unambiguously reiterated that “net beds be withdrawn from service as a tool for managing agitated persons in all psychiatric/social welfare institutions and facilities in Austria”. This has not been realised in Vienna and Styria. The NPM, as well as the Human Rights Advisory Council, have repeatedly addressed this problem area in the last two years and have highlighted it publicly with the goal of pushing through the implementation of international human rights standards. This has been effective.

Clear violation of human rights standards

Use of net beds prohibited as at 1 January 2015

In July 2014, taking into consideration the protection of human dignity and the obligations of the Republic of Austria under international law, the Federal Ministry of Health, as mutually agreed with the Federal Ministry of Justice, issued a decree to all Governors that the use of psychiatric intensive beds (net beds) as well as other “cage-type beds” no longer corresponds to European standards and is therefore not permitted. In light of the necessary concomitant measures, the operators of medical facilities and nursing and group homes were given a one-year transition period until 1 July 2015, based on the Hospitalisation of Mentally Ill Persons Act and the Nursing and Residential Homes Residence Act.

Concomitant measures necessary

In this regard the NPM wishes to emphasise that indeed a number of concomitant measures are necessary during the transition period in order to prevent net beds from simply being replaced by an increased use of mechanical restraints. Only one approach that ensures that alternative solutions are found to the greatest extent possible conforms to human rights principles. To this end, it is unavoidable to increase de-escalation measures and to review the current staff headcount. The Vienna Association of Hospitals has set up a multi-disciplinary working group consisting of medical and non-medical experts that is supposed to develop strategies for replacing net beds and drive the implementation of these strategies forward.

As a reaction to this decree, the University Clinic for Psychiatry in Graz ceased the use of net beds. The NPM will now carefully watch whether this decree by the Federal Ministry of Health will be complied with in other facilities in a timely manner.

➤ **When the use of net beds is discontinued, alternatives to measures restricting freedom must be considered and realised.**

### **Private security companies**

In accordance with observations made by the commissions, the NPM Report 2013 (pp. 39 et seq.) critically reflected that private security companies are under contract and are part of the everyday operation of some psychiatric medical facilities and are also used to help with patients. Such findings were also made by the commissions in 2014; the justification for this is frequently the lack of resources and the necessary protection of staff from violence in psychiatric settings. Humane care and treatment of persons suffering from psychiatric ailments is a highly sensitive area due to possible intense intrusion into fundamental human rights. Nevertheless, possibilities and limits of the use of private security companies' services not only in the protection of buildings but also in fields of activity that are normally staffed

by health professionals have been disregarded. However, there are also medical facilities that intentionally abstain from personal security of this kind.

In fact, based on findings by several commissions (particularly Commission 4) and agreements executed with medical facilities, which are available to the NPM, it can be assumed that security companies are deployed in some psychiatric medical facilities not just sporadically or as an exception in special acute situations, but are part of everyday operations in wards and in the care process with regard to the following activities:

Observations made by commissions

- Preventing patients from leaving the ward,
- Returning patients to the ward,
- Searching patients and/or their personal valuables,
- Assisting in more serious restriction measures requiring close body contact,
- Restraint of patients and supervision of patients,
- Supervision during administration of medication and
- Assistance in other care procedures (escorting patients to the toilet, shower, etc.).

Federal legislators have made appropriate provisions that psychiatric patients may only be cared for by persons who have received training for this very demanding work in accordance with statutory requirements. A job description for psychiatric caregivers has been established and strict training requirements have been stipulated. The special training for psychiatric health and nursing care takes one year and comprises 1,600 hours of theoretical and practical training. Apart from the fact that the Health Care and Nursing Act explicitly stipulates that health care professions are not subject to the Austrian Industrial Code (*Gewerbeordnung*), under Section 129 (1) of the Austrian Industrial Code, there is not even approximately equivalent qualification for the private security industry that is regulated by law and that refers to the needs of patients in medical institutions and facilities. Discussions by Commission 2 in a hospital in Upper Austria revealed that the training for security personnel about methods of restraint offered by the hospital itself was extremely inadequate. This was showcased by the example of a security employee, who stated to the commission that he had only received a one-time two-day briefing and considered himself competent to intervene in acute situations only based on his training as a guard in the Austrian Army, which had taken place decades ago.

Care only by staff with training in health care occupations

Recommendation by  
the Human Rights  
Advisory Council

After dealing with the topic in detail, the Human Rights Advisory Council found in April 2014 that, against the backdrop of the occupational law for health care professions and specifically the right of patients to respectful and considerate treatment and care, only staff that has received medical and/or nursing training may be used for nursing and care measures. Therefore, in Austria, the use of private security companies' services within the scope of treatment of patients, specifically, but not exclusively patients in psychiatric wards, has no legal basis whatsoever.

Confirmation by  
Supreme Court

In a fundamental decision in September 2014, the Supreme Court confirmed this opinion and set out that even attaching a four-point restraint serves to make medical or nursing measures possible and therefore, any restraint that precedes these measures is part of psychiatric health and nursing care. Therefore, private security companies are neither entitled nor authorised to participate in attaching restraints, even on the orders of the attending nursing staff. If this occurs nevertheless, the coercive measures are inadmissible and result in consequences for the operators of the medical facilities under liability law, because the operators are responsible for the conduct of the security staff of private companies. In October 2014, the Supreme Court stated in a judgement that activities requiring close proximity to the body, such as holding on to them to prevent them from leaving a ward, may not be carried out by security staff. These decisions confirm misgivings that the NPM already set out in 2013.

Operators of hospitals  
unresponsive

Therefore the NPM strongly advocates that private security companies no longer be utilised for care measures in psychiatric medical facilities. Patient advocates under the Hospitalisation of Mentally Ill Persons Act and representatives of residents under the Nursing and Residential Homes Residence Act will have to increasingly pay attention to this issue.

As the affected hospital operators showed little willingness to undertake structural changes prior to these court decisions, the NPM will again approach the *Laender* in question. It must always be noted that the absence of participation by private security companies in care measures may not result in increased use of measures that restrict freedom. Therefore, organisational arrangements and personnel schedule planning are required, which can optimise and boost resources. Persons working in psychiatric institutions and facilities must find conditions that enable them to carry out their responsibilities in conformance with human rights without risking their own safety.

- Inclusion and participation of private security staff in patient care is inadmissible and may not occur.
- Concomitant arrangements are necessary to maintain patients' personal rights and to enable measures to ensure staff safety.



### Child and adolescent psychiatry in Austria – shortage in the training of specialists

In the report on “Outpatient Psychosocial Care of Children and Adolescents” by the national research and planning institute for health care *Gesundheit Österreich GmbH* reference is made to the result of epidemiological studies on child and adolescent psychiatry, setting forth that an average prevalence rate of children and adolescents needing psychiatric care of 17.5% can be assumed. This means that with 1,713,979 children and adolescents in Austria in 2012 younger than 19, there is a population of 299,946 persons requiring treatment. Of this number, 9.7% of all children and adolescents, i.e. 166,256 children and adolescents are impacted by a psychiatric disorder in a more narrow sense and are thus definitely in need of treatment.

High number of children and adolescents needing treatment

For this relatively large group of children and adolescents in need of psychiatric treatment, however, the treatment availability by specialists for child and adolescent psychiatry is widely lacking. The figures provided by the Austrian Medical Chamber and the Federal Ministry of Health differ slightly, but one can assume that currently only slightly more than half of the approximately 350 specialists who are needed to ensure adequate care are actually available.

Insufficient treatment available

The reason for this serious gap in care lies primarily in the fact that the statutory basis for independent specialist training in the specific field of child and adolescent psychiatry was only created in 2007. The delayed establishment of a corresponding professional profile has had the result that many of the currently registered specialists acquired their title during the transition period between the time when child and adolescent psychiatry was only a supplementary field to when it was established as a special field and only a small number is actually practicing in the core area of child and adolescent psychiatry. The number and age structure of specialists makes it practically impossible to identify the number of psychiatrists in Austria that will be effective as far as care is concerned anytime soon. Additionally, the training capacity for specialist training was at times not utilised accordingly because operators of hospitals set other priorities and permanent positions were reclassified for other specialties.

In the course of efforts by the *Laender* to expand inpatient bed capacity in the area of child and adolescent psychiatry, due to these factors, there are problems in filling the necessary specialist positions, which will inevitably continue to come up in the future (see NPM Report 2013, pp. 41 et seq.).

Visits by the commissions have shown that in hospitals with psychiatric wards for children and adolescents it is often impossible to man night and weekend shifts with specialists for child and adolescent psychiatry. Due to the lack of specialists, the commissions have found that children and adolescents are housed and treated in adult psychiatric wards, which according to the CPT is a violation of preventive human rights and professional standards.

Rule requiring separation of adults and adolescents is violated

In a current fundamental decision in 2014, the Supreme Court emphasised the “separation rule” for adolescents in psychiatric medical facilities. Thus the Supreme Court put the protection of personality rights of minors in psychiatric institutions and facilities into concrete terms for the first time; as a result, spatial separation of adolescents and adult patients is mandatory.

Even though this decision concretely refers to a forensic ward in a psychiatric medical facility, one can derive an interpretation from it that makes a general separation of adolescents and adults in all psychiatric medical facilities mandatory.

Amendment of the  
education and training  
regulations

A 2014 amendment to the Act on the Medical Profession provides the statutory basis for moving further away than was previously possible from earlier training requirements at the level of the Regulation on Education and Training for Medical Practitioners (*Ärzte-Ausbildungsverordnung*) for the inadequately filled child and adolescent psychiatry speciality field. From the perspective of the NPM, it is absolutely essential that the training requirements for the specialist field of child and adolescent psychiatry be loosened, as otherwise there will probably not be enough specialists for children and adolescents who urgently need treatment until decades into the future. Assuming that the child and adolescent psychiatry is recognised as an inadequately filled field, the existing required training ratio of “1:1” should be increased as soon as possible. This, by the way, has occurred in the entire German-speaking world. This would mean that – in the spirit of a true regulation for an inadequately filled specialty field – a specialist could be responsible for at least two resident doctors with regard to training in the future. To illustrate the feasibility of this requirement, reference is made to the newly built University Clinic for Child and Adolescent Psychiatry in Innsbruck as an example. It can only fulfil its responsibilities (including improvement of care in the *Land* Tyrol) if it has additional specialists. In Vienna necessary additional improvements such as six permanent contracts for external medical practices with the Public Regional Health Insurance Office or an expected new specialist ward in the SMZ Nord Hospital must occur.

Agreement on how to proceed was reached at a round table discussion initiated by the NPM with representatives of the Austrian Medical Chamber, the Federal Ministry of Health and the Austrian Society for Child and Adolescent Psychiatry. The participants of the meeting agreed that it is no longer in dispute that training positions must be created not only in the inpatient sector but in the outpatient sector as a supporting measure as well. However, further discussions will doubtlessly be necessary, particularly but not solely with the *Laender*, which would largely have to bear the additional costs for the increase in training positions. A real improvement in the care of children and adolescents with mental disorders in Austria can otherwise not be achieved in the foreseeable future.

- **More training possibilities for specialists in the child and adolescent psychiatry specialty field are urgently needed.**

### **2.2.3 Improper placement of a long-term patient in a psychiatric facility has been ended**

On the occasion of a site visit, Commission 1 found that in the Hall Regional Hospital several persons were being cared for primarily as inpatients because, despite efforts by the hospital, no suitable facilities for external after-care could be found.

Insufficient care facilities

For example, a patient has been under psychiatric care as an inpatient for around 20 years with only a few release periods. His medical condition is characterised by both calm phases and seizure-like impulse outbursts accompanied by dysphoria and aggressive behaviour toward both objects and people. An outpatient facility would only be suitable for his after-care if it is ensured that it has sufficient staff with appropriate qualifications in psychiatric care.

However, the search for such a suitable facility for this patient has been extremely difficult. He was in a residential home for some time but it was unclear whether Tyrol would provide the necessary funds for his care in this facility in order to guarantee adequate care.

In the course of an investigative proceeding, it was possible, however, to find a facility that offered to provide suitable housing and care for this patient outside a psychiatric facility.

Care availability

This case is an example that the existing system of care outside of a psychiatric ward or facility and allocation of patients is overwhelmed, especially in difficult cases.

Structural problems

In the course of the reform of the psychiatric system, a broad-based de-institutionalisation, differentiation and qualification of care of persons with chronic mental impairments has taken place, resulting in a significant improvement of the living conditions of affected persons and of the care they receive. It is necessary, however, to eliminate care deficits with regard to persons who alternate between active phases of their disorder and phases of more or less intact health and who continue to require psychiatric care and rehabilitation.

It would be urgently necessary to provide more support throughout Austria with regard to residential facilities for persons with chronic mental disorders, particularly those diagnosed with schizophrenia with pronounced symptoms, co-morbid disorders or a forensic history and for people with psycho-mental

developmental impairments who frequently display psychiatrically relevant episodes. Overall, it is about creating flexible framework conditions that enable those persons affected to live their lives as independently as possible. This includes work and occupational opportunities that have a positive effect on the disorder as well as on social integration and quality of life.

- **Residential and rehabilitation possibilities for persons with chronic mental disorders must be expanded as this would prevent some effects requiring hospitalisation.**

### 2.2.4 Insufficient psychiatric beds

The Kufstein District Hospital is responsible for acute psychiatric care of a region with around 150,000 residents. Only four beds are available in the closed ward of the hospital.

Patients must be turned away

As a result of this small number of available beds, police bring patients directly to the Hall Regional Hospital without a psychiatric examination. Subsequently, it sometimes occurs that staff in Hall ultimately considers that the patient does not display the requirements for compulsory hospitalisation. Furthermore, especially on weekends and at night there are often very long waiting times for a transfer to the Hall Regional Hospital due to police and emergency services staff shortages. Transfers can be delayed by three to four hours which extends the suffering considerably, especially for seriously psychotic and agitated persons.

Forward-looking and flexible planning necessary

An expansion of the psychiatric ward and of its placement area at the Kufstein District Hospital is planned in the medium term. However, this example shows clearly that coordination of available capacity and the necessary care of patients in psychiatric hospitals must be a priori carefully implemented, taking the local conditions into consideration.

- **Availability of psychiatric care must be planned in a forward-looking way and flexibly adjusted to the regional conditions.**

### 2.2.5 Physical restraint lasting several days

During a visit at the psychiatric ward of the Regional Clinic in Neunkirchen, Commission 6 dealt in depth with the case of a patient who had been physically restrained for several days.

Physical restraint lasting several days violates human rights

After several attempts to commit suicide and a previous stay at the Regional Clinic in Baden, the patient was admitted as an inpatient. From the time directly following his admission on Friday afternoon until his release the following Monday morning, his freedom was constantly restricted by way of multi-point restraints. Physical restraint for such a lengthy period of time is an extreme measure and a particularly massive intrusion into human dignity and fundamental personal rights. For example, the CPT has viewed mechanical restraints persisting over several days as abuse from a human rights perspective that cannot be justified.

The subsequent investigative proceeding conducted by the AOB, however, showed that at restraint persisting over a longer period of time occurs extremely rarely at the Regional Clinic in Neunkirchen. Furthermore, the head of the ward verifiably set out that the present case of restraining a patient was a special case and that the necessity of restraint was documented and monitored on an ongoing basis. There had been no alternative in order to avoid the risk of an escalation of violence due to the aggressive behaviour of the patient.

Reason for special case with particular circumstances

Besides, the necessity and the requirements for restraint persisting over a longer period of time were re-examined in detail in the ward in order to monitor multi-point restraint even more consciously over the course of 24 hours for the protection of the patient, the nursing staff, other patients, as well as the doctors and to document it more precisely. Therefore, an additional form was introduced that will ensure a seamless documentation of sensitive treatment in such special cases. This form is intended to precisely map the constant deliberation process regarding the necessity and the proportionality of the action as well as any possible alternatives. From the perspective of the NPM, this should be positively highlighted.

Clinic improves quality standards

- Restraint persisting over several days is extremely alarming from a human rights perspective and should fundamentally be avoided.
- In special cases, seamless documentation and monitoring must be ensured.

## 2.3 Institutions and facilities operated by child and youth welfare authorities

### 2.3.1 Introduction

**Rapid changes after recommendations** During the year under review, the commissions visited 60 group homes and residential homes, where children and adolescents are cared for and brought up apart from their biological families.

In a number of smaller facilities, there were no complaints; at some of them, the work with children and parents was even considered extraordinary. The commissions mentioned some of the deficits they found during the concluding meeting and they were corrected by the facilities very quickly. For example, in several cases, the privacy of the children and adolescents was improved by installing locks on the doors and making cabinets that could be locked available. In one facility, partition walls were installed between the toilets for the boys and those for the girls. Staff shortages due to long-term illnesses resulted in positions being filled. In another case, two existing places in a group home were filled; this relieved the strained situation. In several cases, upon the commissions' recommendation, the facilities moved to properties that were more suitable for the needs of the minors being cared for. When deficits in the participation by the children and adolescents were found, the commissions recommended the introduction of teams among the children and "house parliaments". This was implemented in numerous cases. Structural deficits, such as balconies needing repairs and windows that would not open, were remedied.

**Full residential care** The commissions emphasised the willingness to cooperate and the great commitment on the part of the pedagogic staff. The quality they achieve cannot, however, disguise the existing structural problems and difficult framework conditions. The goal of this full residential care is to support all children and adolescents in their development to the highest degree possible, to process traumatic experiences and the many ways that social problems manifest themselves, to provide them with a secure environment and, if a return to their families is not possible, to accompany and support them on their path towards independence.

**Major challenges for facilities** Due to the expansion of non-residential youth facilities that are already available and that are explicitly embedded in the Federal Children's and Youth Service Act (*Bundes-Kinder- und Jugendhilfegesetz*), a change in the problem areas in child and youth welfare facilities is noticeable. More and more children and adolescents who need a very high level of care that cannot be provided in daytime or temporary live-in programmes live in these facilities. The fact that early non-residential help has a preventive effect and makes growing up in families more successful should be welcomed without reservation in the spirit of the UN Convention on the Rights of the Child (CRC). The consequence of this is, however, that residential youth

facilities, which are operated by public authorities or private owners, face ever increasing requirements as far as both quality and quantity are concerned. Psychological damage in the first years of life are serious and require differentiated and needs-oriented possibilities and resources.

As had been the case in 2013, in 2014 it was obvious during visits by the commissions that there is a lack of special places for minors with a psychiatric diagnosis or experience of being in a psychiatric institution. Children and adolescents with mental disorders in group homes, where there is neither adequate staff nor a multi-professional team with psychotherapists and psychologists, have and create problems, which can sometimes intensify to a crisis level and be accompanied by significant risk to themselves and others.

Risk factor

The situation is similar when a crisis diagnosis is performed resulting in a decision on whether care should be subsequently considered and what form it should take. When, for example, adolescents, who have committed or are suspected of criminal offences, are released from pre-trial detention and are placed in crisis centres together with children upwards of the age of three, one is permitting conditions that sometimes make socio-pedagogical work impossible.

Especially smaller children have reported to the commissions that they are sometimes very afraid of the extremely aggressive adolescents. This is understandable after impulse outbursts that range from destruction of furniture to physical assaults of minors or staff. Social pedagogues have indicated that in their work with highly aggressive adolescents, some of whom are prone to violence, they themselves cannot ensure adequate protection in acute phases. To get such grave crisis situations under control, they must call for police assistance. Such difficult borderline situations are the exception rather than the rule, but they are a part of reality in social pedagogy that is anything but negligible and are experienced as very stressful.

Crisis situation

Research into aggression and violence and the recognition of cumulative risk factors suggest that prevention of violence should begin not with the undesirable behaviour of minors but with the circumstances as well and this sometimes makes even professional helpers appear helpless. The commissions are active in this direction and the recommendations should be interpreted in this context as well.

Individualised help is necessary

The experiences of the commissions show that some minors with mental disorders and resulting psychosocial impairments have the potential of bringing many facilities to their absolute limits and they often find it difficult to accept the standard services available to them. Repeatedly changing the institution taking care of them hampers the processing of problems, because “more of change” does not necessarily make the conditions of their care better. In order to stabilise them, these minors need specific assistance services that are custom-tailored for them and that they can accept. But even so-

Violence-free upbringing as a human right

called “system busters”, who defy institutional help again and again, need not remain hopeless cases if one knows their needs, interests and traits and does not attach help to rules that are too rigid.

There are no simple solutions

The expectation (which is often created by the media) that negative paths of minors being cared for by child and youth welfare organisations can be averted by “solutions” that range from more rigid measures to restriction of freedom is illusory. The NPM’s critical eye must be maintained when tougher crackdowns and force towards “the most difficult” children and adolescents is being demanded, instead of discussing the risks of societal disintegration processes and the gaps in the available assistance for minors. The fate of former residents of child and youth facilities and their experiences with being brought up in such facilities after 1945, which have been documented by victim protection commissions in all the *Laender*, have shown the lifelong psychological wounds that the consequences of institutional coercion together with abuse of power can leave behind. In order to understand, which form of help can (still) reach adolescents, the professionals must understand what inner voice is driving their behaviour and must adjust the services they are offering accordingly.

There are no simple solutions for the most difficult problem situations in facilities operated by child and youth welfare organisations. Providers involved in this topic need support in planning and coordination. Such projects require scientifically-based work on the fundamentals and resources to encompass assistance processes from different perspectives.

Furthermore, it is problematic that (the most) difficult adolescents have to “shuttle” back and forth between child and adolescent psychiatry and residential child and youth welfare assistance only because the transitions at the interfaces are challenging. It would be especially important to place the focus on the rights and needs of the affected minors and to adjust the assistance provided for their full residential care accordingly. The commissions also observed that time spent in crisis centres or in psychiatric wards for children and adolescents after the actual crisis diagnosis has been completed, is much longer than absolutely necessary because suitable places for after-care for this group are not available.

The findings of the NPM about care deficits at socio-therapeutic residential facilities are substantiated by a study published by the Federal Ministry of Health about the outpatient psycho-social care of children and adolescents. According to this study, 585 socio-therapeutic and 5,701 socio-pedagogical residential spots existed in Austria in 2013. As far as the actually required number of socio-pedagogical residential spots is concerned, approximate quantitative figures only exist for the adult sector thus far. This is a shortcoming. If one transfers the approximate figure of three to five spots per 10,000 residents to children and adolescents, one can see that the situation in most *Laender* is alarming.



The *Laender* are required to put out scientifically-based plans for facilities operated by child and youth welfare organisations that take future needs into consideration regionally in accordance with the responsibility set forth in Sections 13 and 14 of the Federal Children’s and Youth Service Act. Then more socio-therapeutic placement options would have to be created and it would have to be ensured that private operators expand their services in this sector.

Sound children and youth welfare plans

In some cases, it is difficult for the NPM to systematically assess the observations made by the commissions, because social pedagogy lacks a consistent terminology and therefore, Austria-wide comparisons are almost impossible, as just the designations for child and youth welfare facilities show. There are shared accommodations for children; socio-pedagogical, intensive pedagogical, socio-therapeutic and socio-psychiatric group homes; curative educational children’s groups and shared accommodations for children and adolescents. As the Federal Children’s and Youth Assistance Act mentions socio-pedagogic facilities only generally, what structural and quality criteria are included under the individual terms has not been determined. For example, there are currently socio-psychiatric facilities headed by multi-professional teams only in Vienna.

The situation is similar with regard to the profession of social pedagogues, for which there is no occupational law, no occupational protection (eligibility for a pension in the case of invalidity) and therefore no uniform education or training. As a result, the educational level of the trained professionals employed in socio-pedagogical group homes differs widely. The individual training institutions provide various modules both with regard to teaching content and number of class and practice hours. Continuing education is not consistent across Austria either. The Federal Children’s and Youth Assistance Act 2013 is vague and the only standardisation it stipulates is that for the provision of services by child and youth welfare services “trained professionals must be employed who have been trained for the respective field of activity and are personally suitable”. The details of these requirements are left up to the *Laender*, which recognise and develop completely different types of training. Only the Act on Health and Social Care Professions (*Sozialberufegesetz*) in Upper Austria has recently included the profession “Professional Socio-pedagogical Care in Youth Welfare”. The professional applicability of this training is limited to this local area and is not recognised in other *Laender*.

No uniform training Austria-wide for professionals

The NPM has been collaborating with children and youth advocates since 2012. Cooperation has been excellent and has resulted in several joint successes. In numerous cases, the commissions have used reports about suspected problems in facilities as an opportunity to undertake an unannounced visit. The NPM would like to thank the children and youth advocates for the excellent cooperation.

- **Upbringing that is free of violence must be ensured for all minors.**
- **Assistance opportunities must be individualised, including within the framework of full residential care.**
- **Scientifically-based plans to assist children and juveniles by the *Laender* must include care deficits and measures to remedy them.**
- **Laws governing occupations and professions and the training of social pedagogues should be standardised Austria-wide (agreement under Section 15a of the Federal Constitution).**

### 2.3.2 System-related problem areas

#### Prevention of violence – a monitoring priority

Recommendations are being implemented

As was demonstrated by the 2013/2014 monitoring priority on the topic of “Measures to prevent violence”, unfavourable framework conditions in facilities have an impact on the creation and entrenchment of violence dynamics. This is shown in this report based on some individual cases that are portrayed in detail on pp. 109 et seq. The NPM has confronted the representatives of the *Laender* as competent authorities for children and youth welfare and protection with these observations and has recommended increased training and continuing education opportunities on prevention of violence for all social pedagogues. The competent authorities have largely implemented these recommendations or held out the prospect of implementation.

Sexual assault among children

Sexual violence is a special form of violence. A sexual assault among children is defined as sexual actions that are forced by an abusive child on another child or that the abused child tolerates unwillingly or if the abused child participates in an assault on another child against his/her will. Frequently, a power imbalance is exploited, for example, by exerting pressure by making promises or threats or through physical violence. It is possible to find ways out of this “place of powerlessness” and support minors better by using prevention, sex education and professional care. If such incidents are not brought out into the open, there is a danger that behaviour patterns that violate boundaries become entrenched and thus increasingly difficult to resolve. It is necessary to be familiar with the sexual development of children and to know about childhood sexuality in order to be able to assess where the line is between sexual activity and sexual abuse among children.

Therefore, this aspect has been designated as a special monitoring priority for 2015 jointly with the commissions. When sexuality becomes an open topic that one can talk about, new dimensions in thinking, feeling, talking and acting are uncovered and can reveal boundaries. Effective prevention

must teach the different types of boundary violations and encourage children and adolescents to get help, to insist on their right to physical and sexual self-determination and to critically question gender role stereotypes. The responsibility of protecting girls and boys against sexual assault and, if this is not possible, to process such incidents to the greatest extent possible lies exclusively with the professional staff.

- **Prevention of violence, sex education and prevention of sexual assault are indispensable.**

### **Barrier-free accessibility**

Most facilities operated by child and youth welfare organisations are not barrier-free. They are often located in buildings where accessibility is either impossible due to the structural conditions or can be achieved only with unreasonable cost. In some cases, remodelling has occurred as a result of criticism by the NPM. In other cases, the operators have indicated that they will look for another property for the shared accommodation. Even though it is understandable that expensive refurbishing work cannot be funded by the competent authorities for children and youth welfare and protection in the short term, it is at least necessary that when refurbishing does occur or when new buildings are erected, as well as when new leases are signed, to take into consideration that institutions must comply with the provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD).

- **Facilities operated by child and youth welfare organisations must be fully accessible.**

### **Handlind of medication**

The commissions found that in many child and youth welfare facilities, medication is handled negligently. For example, medication was found lying around, medication cabinets were open and accessible to children and adolescents and they also contained expired medication. They also found prescriptions that were up to three years old.

The commissions find it problematic that socio-pedagogical staff, which is not one of the health care professions, must nevertheless undertake medical tasks, such as administration of medication, including preparation thereof and organisation of the dispensary. The right to consent to or to refuse a medical treatment is one of the most personal rights of a human being

Administration  
of medication by  
pedagogic staff

to self-determination. With the coming into force of the Parent and Child Amendment Act (*Kindschaftsrechts-Änderungsgesetz*) 2001, consent to a medical treatment by minors who have reached the age of discretion was regulated by Section 173 of the Austrian Civil Code; in case of doubt, the legislators presume that 14-year-olds have the necessary cognitive faculties and power of judgement. Administration of medication by undertaken by laypersons is permissible with the consent of minors, if specialist medical or nursing knowledge need not be presumed to ensure that this task is properly carried out. The decision of whether the administration of certain medicines, considering their composition and effect, may be carried out by laypersons is up to the prescribing doctors. In the interest of the minors, it is then even more important that instructions by a doctor with regard to time, number of pills, form and dosage of the medication be clear and unambiguous.

**Off-label use** The use of psychotropic drugs, neuroleptics and anti-psychotic drugs, which have not been approved for children, is particularly sensitive. They are prescribed off-label, which doctors may do, if – according to state-of-the-art knowledge – the intended therapeutic success presumably cannot be achieved by another method. When these drugs are being administered, strict psychiatric monitoring and observation of any side-effects are immensely important. Under no circumstances may use of such drugs be increased due to staff shortages and tight staffing resources, as long-term damage and resulting consequences cannot be predicted.

**Prescription for PRN medications** According to the Federal Ministry of Health, the administration of PRN medication by social pedagogues, which was objected to by the commissions, is also not permitted. Social pedagogues do not acquire any basic nursing knowledge during their training. Therefore – as opposed to the social services professions, whose training takes place on the statutory basis of health and nursing care in accordance with Section 3a of the Healthcare and Nursing Act – they are prohibited from access to training modules on basic care and assisting in intake of medication under the supervision of qualified health care and nursing staff. Anyone who undertakes a higher level health care or nursing activity without being authorised to do so under the Healthcare and Nursing Act or another statutory provision is punishable under the law (Section 105 of the Healthcare and Nursing Act).

- **Negligent handling of medication**
- **Particular caution with regard to drugs being used off-label.**
- **PRN medication may not be administered by pedagogic staff.**

### Expansion of assistance for young adults necessary

During their visits to facilities, the commissions are regularly informed about problems that arise when the young adults under care reach their majority. Under the Children's and Youth Service Act 2013 and the implementation laws of the *Laender*, once majority has been reached, there is no legal entitlement to assistance from child and youth welfare organisations. In the consultation process with the *Laender*, clear framework conditions in the Federal Fundamental Act on Youth Welfare (*Bundesgrundsatzgesetz zur öffentlichen Jugendwohlfahrt*) for the extension of assistance for those over 18 fell victim to budget cuts. All that remained was an authorisation to make discretionary decisions that enable assistance until the age of 21.

Entitlement to assistance ends at age of 18

In the individual *Laender* laws, the requirements for granting assistance to young adults differ. Experience and statistical assessments regarding the number of cases where such assistance was applied for and granted or refused are not yet available, especially as the implementation laws have not been in force for long.

During visits by the commissions, the heads of the facilities have repeatedly complained about major problems with the competent authorities regarding obtaining financing for continued care. There are many examples of such cases. The case of a 17-year-old woman from Upper Austria should be particularly highlighted. She had been motivated to attend a three-year school for tourism. With the help of her primary carer, she managed to successfully complete the first two years. Subsequently, the District Authority did not want to continue paying for her housing and care in a group home and argued that due to her good performance in school, no further permanent assistance was needed. It was not recognised for a long time that this development was only possible because she had the support of the facility. It took tough negotiations and the persistent advocacy by her primary carer to achieve that her costs were assumed and she could remain in the facility until she completed the training.

Clear framework conditions a victim of budget cuts

During the visit at a facility, Commission 1 spoke with a young mother who had lived there for several years and had turned 21 in February 2014. Several weeks later, the prospect of a council flat was held out to her. The facility itself funded the additional accommodation to bridge the waiting period, as other assistance would not have begun on time. They felt they were forced to do this in order to not risk the assistance already provided by putting the young woman and her child out on the street.

In Austria, around 70 percent of all 21-year-olds still live at home. Responsible parents do not throw them out on their 18th birthday. However, if young people who are placed in out-of-home care do not have as much support from the pedagogic staff, they lose the opportunity to become adults gradually, complete their education and then be able to stand on their own two feet.

As a result, they end up in the paradoxical situation of needing more time for their development due to multiple problems, but getting less than others of the same age. In other words, the child and youth welfare organisations endanger the success that they themselves worked so hard and persistently for together with the minors.

- **The legal entitlement to assistance by young adults should be embedded in legislation and case management should be improved.**

### **Problems at the interface between institutions operated by child and youth welfare authorities and care for persons with disabilities**

#### Problems at the interface

The commissions are also often confronted with problems occurring at the interface between child and youth welfare organisations on one hand and care facilities for persons with disabilities on the other. These problems become manifest when minors, who are initially cared for in child and youth welfare facilities, require a place that corresponds better to their needs in institutions and facilities operated under the Equal Opportunities Act (*Chancengleichheitsgesetz*) or the Act on Persons with Disabilities (*Behindertengesetz*). Besides the difficulty of finding a place, in many cases approval of funding is problematic and time-consuming. As a result, these minors often remain in child and youth welfare facilities, where the situation as far as care is concerned is no longer appropriate to their needs. This creates extreme stress for these minors and the other residents, which can result in unacceptable conditions in the facility.

On the other hand, there are difficulties at the interface between being under care and ageing out of care when young adults reach the age of 21 but have not yet completed their education/training. When a child and youth welfare facility does not also have a permit under the Equal Opportunities Act or the Act on Persons with Disabilities, it is not possible to retain the young adults in this facility. The NPM is also aware of individual cases in which a non-bureaucratic solution could be found. However, this is not a satisfactory situation. A possibility for continued care beyond the age of 21 in exceptional cases should be enshrined in the law. This could prevent young adults from dropping out of their training because they just cannot make it without intensive support.

- **Minors have to wait much too long for a place in a facility for persons with disabilities.**
- **Continued care beyond the age of 21 in exceptional cases.**

### Facilities for unaccompanied minor refugees and asylum seekers

When unaccompanied minors become refugees, they are in an especially difficult situation. This is why the relevant EU Reception Conditions Directive stipulates special regulations for unaccompanied minor refugees and asylum seekers. In accordance with these provisions, the member states are obligated to guarantee special support for all unaccompanied minor refugees and asylum seekers.

Minors require special support

When the provisions are applied, the welfare of the children and adolescents must have priority. Whenever possible, minors should be placed with relatives or foster families. If this is not possible, they must be cared for in special facilities for minors.

Placement with foster families has priority

The commissions have visited several such facilities and have been able to identify problem areas. Finding foster families is very difficult in many cases, which is why many unaccompanied minor refugees and asylum seekers are cared for in facilities. The NPM was not able to determine whether adequate steps are being taken by the *Laender* to find foster families. An improvement of the situation, however, would be desirable and necessary.

Another challenge involves siblings. Siblings are often separated and placed in different facilities, especially when older siblings have attained their majority. Older siblings are placed in facilities for adults, while the younger ones must remain in facilities for minors, at least as long as the older siblings have not received custody. Against the backdrop of fleeing their home together, this is very stressful for everyone involved.

Siblings should not be separated

Commission 2 documented that minors in two facilities in Salzburg were supposed to purchase and prepare their food themselves to promote their independence. They received a budget of EUR 45.50 per week from funds provided under the basic provisions to spend at their discretion. The commission found that the cooking appliances were in very poor condition and there were not enough utensils, such as cutlery, glasses and cups. As a result, many minors ate almost exclusively cheap food that could be cooked easily by someone with no cooking experience.

The commission's criticism did not refer to the approach of getting the minors used to handling their own money. However, the commission called for ensuring that they eat healthy and balanced meals and that they receive guidance and supervision to ensure that they go grocery shopping and cook together and get to know and try out a diverse range of foods. A possible variant would be to introduce various types of partial board, where they at least prepare lunch or dinner according to the principles of healthy nutrition. Furthermore, the NPM doubts that balanced nutrition for children and adolescents who are still growing is possible on a budget of EUR 6.50 per day. Therefore, such per diem rates should be evaluated and raised. The Salzburg

Funds provided under the reception conditions inadequate

regional government emphasised vis-à-vis the NPM that they planned to take this criticism as an opportunity to develop standards for the individual areas (residential issues, board, cleaning, day-care, psychological support and deployment of qualified professionals, expansion of psychotherapy), which would then become a component of performance agreements.

Too few occupational possibilities; too little psychological support

The occupational possibilities were also shown to be inadequate. The commissions observed that while, for example, German classes were offered in facilities, four class hours per week is inadequate. Some of the adolescents played in football clubs. There were no other occupational or recreational opportunities. This problem was amplified by the fact that there were no adequate possibilities for psychological support for these minors, who are often traumatised. An expansion of such offerings and learning aids should be given high priority.

Unacceptable conditions

In a facility in Styria for 40 unaccompanied male adolescents, Commission 3 found unacceptable hygienic conditions (stoves full of soot, dirty refrigerators, broken kitchen cabinets, filthy, sometimes damaged toilets and bathrooms). This suggests that the facility operator is not taking care of basic cleaning and repairs and that monitoring of these facilities is being carried out inadequately.

Per diem rates under reception conditions are discriminatory

In this context, the NPM would like to emphasise that the possibilities available to these facilities are limited by the budget resources paid out by the Federal Government from funds provided under the reception conditions. Due to the significantly poorer funding, staff, staff training, continuing education, psychological supervision and pedagogical concepts do not meet the standards of other child and youth welfare facilities. This results in de facto discrimination of children and adolescents solely due to their origin, although the *Laender* – as providers of assistance to children and adolescents – are responsible for unaccompanied minors. Cost reimbursements from funds provided under the reception conditions by the Federal Government are far below the per diem rates of child and youth welfare organisations; as a result, an unequal level of care is the logical consequence. This is clearly evident from the fact that pedagogical concepts are largely lacking. Despite the repeated recommendations made by the NPM, there are no Austria-wide, uniform minimum standards for this type of facility, because the Federal Government and the *Laender* have not been able to agree on this. In the NPM's point of view, a differentiation between children and adolescents under full residential care both under and outside of reception conditions, which results in poorer care and/or treatment, clearly contradicts the UN Convention on the Rights of the Child (CRC) and must therefore be rejected. The NPM will increase its efforts in 2015 to effect a change and therefore recommended that the AOB initiates an *ex-officio* investigative proceeding in this matter.



- Unaccompanied minor refugees and asylum seekers need special care and support.
- Occupational and recreational opportunities must be expanded.
- More budget resources from funds provided under the reception conditions are needed.
- Austria-wide, uniform standards are needed.

### Placement of children in other *Laender*

Upon recommendation by the commissions, the AOB dealt with the placement of children and adolescents in facilities that are far from their previous residence and the residence of their parents, in an *ex-officio* investigative proceeding. An assessment of the findings shows that a large number of transfers are necessary only because there are no suitable offerings in the *Land* of origin.

Placement in another *Land* due to a lack of places

This is problematic because alienation from close and important others can occur quickly and friendships can break down. Major distances cause loss of close ties and promote breakdown of relationships which can make the minors' return to their families impossible. Many parents simply cannot utilise their right to personal contact for financial or logistical reasons when the facilities are too far away. Besides, the psychological work with the family that is necessary for a return to take place becomes much more difficult.

The figures provided by the *Laender* with the exception of Vorarlberg show that some competent authorities for children and youth welfare and protection have had their eye on this aspect, while for others, this does not seem to be the case. Lower Austria has placed only about 4% of the minors under full residential care in a facility beyond its borders; however, it is in close proximity to the residence of the parents. Carinthia and Tyrol are at 10% and Upper Austria and Vienna are between 10% and 15%. In comparison, half of the children and adolescents from Styria live in another *Land*. At 30% in Burgenland and at 20% in Salzburg, the percentage is quite high here as well.

The *Laender* in question should prepare the scientifically-based plans mentioned in the introduction for facilities operated by child and youth welfare organisations as quickly as possible and create places in accordance with the needs. In any case, it is peculiar that the *Laender*, who are responsible for the technical supervision of these facilities, do not allocate minors in their "own" facilities in the same *Land*. In Burgenland, only two facilities even accept children from Burgenland – presumably for cost reasons – as they can demand a surcharge of 10% for children from other *Laender*.

Implementation of scientifically-based planning

Praise is due to Upper Austria, which has reacted to this situation and has limited the number of children and adolescents from other *Laender* or from other countries in socio-pedagogical facilities at 15% of all children and adolescents under care. Other *Laender* should follow this example.

- ***Laender* must fulfil their care responsibilities themselves.**
- **Placement of minors should be in close proximity to the parents' residence unless this is inadvisable for pedagogical reasons.**
- **Limitation of the total number of children and juveniles under care in another *Land* than their *Land* of origin.**

### 2.3.3 Structures in homes hamper pedagogical work

**Serious deficits** Commission 5 carried out two unannounced visits in 2013 to a regional youth home in Lower Austria with five fully residential shared accommodations and one partially residential shared accommodation. The staff was observed to be committed and making an effort, but also completely overwhelmed. A review of the documentation both in the home and at the local police station showed that an above average number of violent acts against minors and staff was occurring here. Police intervention was frequently necessary. While “New Authority”, the pedagogical concept on the prevention of violence by Haim Omer had been installed, the de-escalation strategy that is part of this concept had not yet been implemented. Due to current crises, there had been neither time nor resources to undertake targeted pedagogical interventions and to respond to the children and adolescents in a supportive and stabilising way. Commission 5 put this down to the size of the facility on one hand and on the other, to inadequate staff presence and training deficits. Furthermore, the commission criticised that a “house parliament” had not been established.

During the investigative proceeding, the regional government of Lower Austria confirmed that the regional youth home had been in a crisis at the time of the commission's visits and that this had been a known fact. Previous reports by persons carrying out technical supervision and the criticism of the NPM were taken as an opportunity by the AOB to carry out an investigation and to include all competent persons and participants. The technical supervision report of August 2014 shows that improvements have been made, but that structural difficulties also exist. It will result in structural measures that will extend beyond 2015.

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The Lower Austrian regional government recognised that the structures in homes per se hamper work in accordance with the insights that social pedagogy provides. When children and adolescents whose social behaviour is abnormal are supposed to acquire social and conflict competence in an environment with many other minors with asocial personality disorders, strong group pressure is created to participate in rule-breaking, self-dramatisation and demonstrations of power. Children and adolescents who – depending on their age and the intensity of aggressive acts against them – see themselves as subjected to either a kind of more or less uninhibited tyranny or a lack of personal space, react with aggression or become victims of marginalisation. The effect of negative group dynamics can be much stronger than that of pedagogical and therapeutic social and conflict training or additional mechanisms that are supposed to support development of the personality, behavioural changes, as well as school and occupational integration. If physical fear and overwhelm and/or sick days increase on the part of staff, while at the same time “bosses” among the adolescents secretly rule and manage entire groups or the facility itself, escalation is on the agenda.

Risk factors for structural violence dynamics

The first measure was to freeze acceptance of new residents, which decreased the number of minors under care. By overhauling all duty rosters and group compositions, resources were optimised and work conditions improved. Sick leave decreased (comparison to 2013: 1,056 sick days, 1–7/2014: 214 sick days), thus increasing the staff presence. The continuing education offerings (violence prevention according to PART, “New Authority”, various forms of coaching) utilised by all staff members have proven successful. This has an overall stabilising effect, because any impending escalations are countered earlier and more as a united front so that generally police intervention is no longer necessary when there are physical clashes. In the course of 2014, teams were formed among the children and a youth café was installed; since September 2014, there has been a house parliament. Holiday and recreational activities were expanded in coordination with the children and adolescents. House rules are also considered together with the children and juveniles and are jointly formulated.

Measures were taken

The majority of the interviewed social pedagogues unambiguously stated to technical supervision that they wanted the facility to be divided up into smaller socio-pedagogical or socio-therapeutic living units. The reason indicated for this wish was that it is possible to address the needs of the minors more individually in smaller units, thus enabling better prospects for the lives of the minors and improving chances of a return to their families of origin (quote by an affected minor: “We no longer want to live in a facility that looks like a Tax Office from the 19th century”.) At the same time, the necessity for an expansion of the currently sparse opportunities for continuing education in the area of trauma pedagogy was emphasised, because it is

Best possible support remains a priority

necessary to support children and adolescents, a high percentage of whom suffer from traumatic disorders.

„Hiving off“ has begun

The regional government has reported that decentralisation of the youth home has begun and the first external shared accommodations have been created in surrounding cities. The NPM welcomes these changes.

In Lower Austria, there are currently nine regional youth homes and 47 private contract facilities for children and adolescents. Additionally, there are 50 temporary places in six centres for crisis intervention, where minors can stay until a crisis diagnosis has been completed. Around 1,200 children and juveniles are under full residential care in institutions and facilities.

Care provided by child and youth welfare organisations

In March 2014, Lower Austria became the first *Land* to prepare a concept under scientific scrutiny for comprehensive and revolving planning of all measures for child and youth welfare and assistance. Social structures and special stressors for young people that lead to use of care provided by child and youth welfare organisations are mapped based on data and compared to existing services being offered. This will develop the (short-, medium- and long-term) requirements of a needs-based regional package of differentiated services.

By now, it is undisputed in Lower Austria that large homes must be replaced by smaller regional “family-style” care facilities. Other *Laender* should follow this example.

➤ *Smaller regional “family-style” care facilities should replace large homes.*

### 2.3.4 Sexual self-determination requires protection

After a visit in a group home, Commission 6 criticised that an adolescent who had been convicted of sexual abuse was permitted to occasionally spend the night in the same room with minors living there. In the opinion of the commissions, there were no safeguards.

In the course of the thereupon initiated investigative proceeding, the Lower Austrian regional government reported that sexual workshops for children and adolescents were set up in the group home and staff also participated in them as part of continuing education. Upon the NPM’s request, the head of the facility was reminded that other children and adolescents must be prevented from spending the night in the room of the adolescent in question. Thereupon the facility made assurances that staff would in future handle this topic, which was also the subject of a separate retreat, more carefully and ensure that the residents spend the night in their own rooms.

As defined by the UN Convention on the Rights of the Child (CRC), it is the responsibility of child and youth welfare facilities to support all adolescents – including delinquents, of course – in experiencing their sexuality without violation of boundaries. Criminal law protects the sexual self-determination of children and adolescents by way of protected areas in a system that is graduated according to age and therefore prohibits sexual acts – even when they are desired or provoked – with adolescents under the age of 14. Even someone who has sex with an immature adolescent younger than 16 by exploiting “his/her age-related superiority and his/her immaturity”, is punishable under the law. This is another reason why staff in child and youth welfare facilities are obligated to not only help young people in their sexual development but also to protect potential victims.

Experiencing sexuality without violation of boundaries

➤ *Recommended preventive measures to prevent sexual assaults have been implemented.*

### 2.3.5 Positive findings

#### One-year project to process and implement recommendations completed

During two visits to a youth home in late 2012, Commission 2 criticised conditions in the pedagogical work that violated human rights due to structural deficits (increased staff fluctuation and concurrent difficulties in recruitment, permanent staff shortages, long-term sick leave) and associated overload of existing staff. In September 2013, upon the recommendation of the NPM, an interdisciplinary project financed by the Upper Austrian regional government was initiated in order to improve the situation for children and adolescents and for staff and to develop preventive standards that would apply to all three Upper Austrian regional homes.

Structural deficits

The project team was comprised of employees of the Upper Austrian regional government, the head of the home, a legal expert from the AOB, a member of Commission 2 and the child and youth advocate of Upper Austria. The final report for the project with brief descriptions of 47 agreed upon implementation measures, the key items of which had been jointly developed, has been available since October 2014. The following immediate measures were put into effect permanently:

Development of preventive standards

- Reduction of the maximum group size in group homes from eleven to nine,
- Obligatory ongoing full utilisation of the staff employment plan,
- No acceptance of adolescents as long as the staff employment plan has not been fully utilised or the maximum group size has not been exceeded,

- Maximum admission quota of 15% of minors from other *Laender*,
- Introduction or actual permission of part time work for pedagogues,
- Psychological supervision according to NEW professional standards,
- Participation of youth/child care workers in the admission process,
- Full meeting of the juveniles,
- Revision of all house and group rules in a participatory process with the minors.

From an organisational perspective, important decisions were made at the level of the Upper Austrian regional government by determining the pedagogical overall responsibility for all three regional facilities and seamless leadership and responsibility chains. For the first time, pedagogical guidelines as guidance will be developed and implemented for these three facilities.

In the facility itself, a new leadership and staffing culture must be developed among other measures. It is essential that the measures to be implemented do not peter out once the project has been completed. That is why ongoing implementation monitoring is planned, as well as an evaluation of the entire implementation process after about three years.

Care provided by child  
and youth welfare  
organisations

The project results offer the opportunity to tackle comprehensive improvements. Whether and how the implementation will be successful will be observed during continued visits by the commissions.

➤ *Project offers an opportunity for fundamental changes in Upper Austria.*

## 2.4 Institutions and facilities for persons with disabilities

### 2.4.1 Introduction

In 2014, the commissions carried out 78 monitoring and control visits in institutions and facilities created especially for persons with disabilities. As was the case in the previous year, public and private operators were monitored and controlled, whereby the range of institutions included homes, shared accommodations, day care centres, sheltered workshops and nursing wards. These types of institutions and facilities are encompassed both by the OPCAT mandate and by the mandate set out in Section 16 (3) of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The monitoring activities turned out to be very complex due to differing levels of need, the broad range of offerings and the diversity of the institutions and organisational forms. At the same time, the commissions also found qualitative and quantitative deficits with regard to care, especially for people with double and multiple diagnoses (learning disability and mental disorder or psychiatric impairment). Persons with intellectual impairment, who additionally are experiencing a psychosocial crisis or a mental illness, sometimes show extremely aggressive behaviour toward themselves or others; this creates a great deal of stress for themselves, the care staff and their families. Mentally disabled persons exhibit mental health issues and classic psychiatric disorders three to four times more frequently than the average population. This statement by the World Health Organisation (WHO), is based on the higher degree of vulnerability of this group of persons. At the same time, mental illness creates a particular challenge to caretakers, as the capability of these persons to comprehend and verbalise their disorder is frequently impaired. Therefore, persons employed in social institutions and facilities must address these psychiatric conditions, learn to understand them and find individual responses to behaviours to which they had previously not had a connection. As a result, situations arise during their day-to-day work that often overwhelm them.

Broad range of offerings but deficits in care nevertheless

Emphasising their mandate to prevent violence, the commissions have found that deficits in care result in crises that sometimes lead to very dramatic physical assaults on other residents and staff. It is by no means rare that these persons, who require intensive care, are passed on from facility to facility and in the process lose their support systems again and again, producing and exacerbating hospitalisation effects. This is the consequence of the lack of an environment with person-centred care and therapeutic support by qualified staff. If institutions and facilities are not successful in finding adequate resources and preventing these escalations, this can have fatal consequences, which must then be borne by the persons with disabilities who are thus cheated of opportunities for development and happiness. For example, Commission 1 encountered a 15-year-old in the forensic ward at

Violence as a consequence of unsuitable conditions

the Hall Regional Hospital (Tyrol), who was being detained as a mentally ill prisoner after a physical assault on a caregiver. He had already spent half his life in institutions where impulse outbursts were practically a daily occurrence. His conviction under criminal law had been preceded by court proceedings under the Nursing and Residential Homes Residence Act, during which the representative of the residents repeatedly called for person-centred 1:1 support and suspension of measures restricting freedom. Despite the foreseeable risks, intensive, individualised support was not provided.

Different quality requirements in the *Laender*

In the course of its monitoring activities, the NPM found that Land-specific requirements and the funding formulas derived from them with regard to quality of infrastructure diverge substantially and this is being approached differently in fundamental issues. For example, the required staffing ratio for institutions and facilities for persons with disabilities across Austria differs significantly. While this ratio in Styria is as high as 100%, other *Laender*, for example Salzburg, consider a 50% employment of qualified staff is sufficient to meet the minimum standards. When basic framework conditions diverge so substantially Austria-wide, it is inevitable that there are differences in treatment and care of persons with disabilities depending on the place of residence or the facility to which they are assigned. In the light of the fulfilment of human rights guarantees provided in international treaties, this is unacceptable.

Research study on empowerment and prevention of violence

After the official country review of Austria within the scope of the UN Convention on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities recommended that Austria should undertake additional measures to “protect women, men, girls and boys with disabilities against exploitation, violence and abuse”. The NPM therefore welcomes the fact that in November 2014 the National Council adopted parliamentary resolution 94/A(E) and tasked the Federal Ministry of Labour, Social Affairs and Consumer Protection to have a research study done on “Measures against violence and sexual abuse of persons with disabilities in institutions and facilities” . The NPM will be glad to participate in this study and contribute the experience from its monitoring activity. Up to now, there have not been any scientific research studies in Austria that address the specific risk factors of institutional settings in institutions and facilities for persons with disabilities. The study is supposed to be completed by 2016.

It has been repeatedly emphasised in international research papers that dismantling large-scale institutions and a consistent reorientation toward aid in the form of personal assistance and offerings within the socio-spatial sphere as the core piece of disability policies that conform to human rights principles per se also prevent violence. In order to get this process going in Austria as well, declarations of intent in government programmes are not the only thing that is needed. What would be necessary is the uncompromising



determination of politicians and transparent plans and concepts with concrete time horizons directed toward this result.

In 2013, the competent UN expert committee criticised the “inappropriate fragmentation” of Austrian policies on persons with disabilities and demanded a joint political management, which is committed to the goals of the UN CRPD, of all measures in order to implement the obligations as defined in the convention. Austria-wide there are an estimated 21,000 people with disabilities participating in special types of work in sheltered workshops. This is where the jungle of subsidies on the cusp between Federal Government and *Laender* opens up, which has already been criticised by the Austrian Court of Auditors which neither helps improve the permeability between first and third job markets nor enables a needs-based coordination, planning and management of offerings and assistance.

End the fragmentation of the areas of competence

In other words, there is still significant need for improvement and a substantial amount of catching up to do.

The NPM would like to explicitly emphasise here that the good cooperation and communication with representatives of residents of institutions and facilities and self-advocates, as well as a dialogue with owner/operator organisations and public authorities, which can be very constructive, are important for its work. The NPM would like to express its gratitude for this, including on behalf of the commissions.

Cooperation with stakeholders essential

## 2.4.2 System-related problem areas

### Age-atypical restrictions of freedom of mentally disabled or mentally ill minors

Life-size cribs that are locked from the outside, in which they also spend rest periods during the day, doors with gates, sitting in chairs, which they cannot leave independently, restraints using straps in wheelchairs that are not suitable for their age and weight: these are just a few examples of measures restricting a person’s freedom used in the care of mentally and physically impaired children and adolescents that Commission 6 objected to as violations of human rights.

Massive measures restricting freedom used on minors

Children and adolescents with disabilities requiring nursing care are particularly vulnerable and run a greater risk of becoming victims of violence. When restrictions of freedom are not used in pursuit of pedagogical goals that are appropriate for the situation and the age of the child or adolescent, but are used allegedly as protection against risks to themselves and others, particular care and a review of the alternatives is always necessary. More complex conditions and multiple disabilities often require specially optimised care. This must not be a question of resources. The development of the personality in children and adolescents with major mental or physical

disabilities depends in large part on whether and how they are supported in perceiving their environment, grasping it in the truest sense of the word and exploring it themselves. When minors with disabilities are limited by structural inadequacies and a lack of comprehensive accessibility, inadequate staffing during day or night shifts, poorly adjusted aids or insufficient advancement of mental or practical capabilities, the social development of these minors is hampered in an inadmissible way.

Legal protection for minors and adults

The use of measures that restrict freedom of mentally disabled or mentally ill adults would also be inadmissible per se without a prior review of alternatives and prompt reporting to the representatives of the residents. This is regulated in the Nursing and Residential Homes Residence Act, which also enables a review by a court. For children and adolescents this does not apply without exception. An exemption was created for them in the Nursing and Residential Homes Residence Act. As the Supreme Court has recently stated, the Nursing and Residential Homes Residence Act is apparently not applicable to institutions and facilities under the supervision of the competent authority for children and youth welfare and protection. Ultimately, however, this means that they currently do not enjoy the same legal protection as adults in comparable situations.

Legal protection can depend on coincidences

But minors among themselves are also treated differently. Because the area to which the Nursing and Residential Homes Residence Act applies is defined as referring to the institution or facility, the kind of legal protection a child enjoys in the event of the use of age-atypical measures restricting freedom can depend on coincidences or purely internal organisational allocations. In institutions and facilities supervised by the competent authority for children and youth welfare and protection the legal protection proceedings of the Nursing and Residential Homes Residence Act do not apply. Children in other facilities that are subject to the supervision of the operator of facilities for persons with disabilities can indeed take advantage of this legal protection.

Age-atypical restrictions of freedom represent interference with the right to personal freedom. This right enjoys particular protection in Austria and is constitutionally guaranteed. For a long time, there had been a legal grey zone in the area of institutions and facilities for persons with disabilities with regard to measures that restrict freedom and the protection of personal freedom. It was therefore the goal of the Nursing and Residential Homes Residence Act to eliminate this grey zone.

Differences in legal protection not in conformity with human rights principles

For the NPM, this legal situation is not comprehensible, specifically, but not exclusively from the human rights perspective and is also objectively unjustified. From a human rights perspective, the protection of persons with disabilities may not vary, depending on the facility in which the persons are being cared for. In the opinion of the NPM, such a differentiation contradicts the norms of the UN Convention on the Rights of the Child and of the UN

Convention on the Rights of Persons with Disabilities, which is why the Human Rights Advisory Council addressed this problem.

Therefore, from the perspective of the NPM, an amendment to the Nursing and Residential Homes Residence Act is urgently needed. There is a need for action on the legislative level, as, for example, in a boarding facility attached to a school in Lower Austria, it was only possible to remove all the 1.80-meter-high nursing cribs that could be locked from the outside with the cooperation of the representatives of the residents. The Nursing and Residential Homes Residence Act should be applicable to all institutions and facilities where children and adolescents are being cared for. It should also be discussed in the course of resolving an amendment whether the legal protection of the Nursing and Residential Homes Residence Act should not be extended to children and adolescents with the most serious physical disabilities.

Amendment to the Nursing and Residential Homes Residence Act necessary

- *Mentally disabled or mentally ill minors in institutions and facilities may not be subjected to any unjustified measures that restrict freedom.*
- *Legal protection must be available to everyone equally.*
- *Minors should enjoy the same protection as adults.*
- *Amendment to the Nursing and Residential Homes Residence Act is necessary.*

### Deinstitutionalisation

No later than at the time of the ratification of the UN CRPD, Austria committed itself to the deinstitutionalisation of persons with disabilities.

Commitment to deinstitutionalisation

Section 19 of the UN CRPD guarantees the right to live independently and be integrated into the community. All persons with disabilities – this includes all types of mental, psycho-social and somatic disabilities – have the right to make the same choices as others and to live within the community. States are therefore obligated to take measures to enable people to fully enjoy this right and to guarantee full integration and participation in the community. Persons with disabilities must have the free choice of where and with whom they want to live and what way of living they choose.

The right to live in freely chosen relationships is a fundamental need that is just as important as the right to live as autonomously as possible despite a need for assistance and support. A prerequisite for this is the creation of community-based support services, including personal assistance and community-based facilities.

The commissions visited numerous institutions, where their size alone gives rise to doubt that the right to make choices and community-based support are ensured and that concepts of deinstitutionalisation are being implemented.

Deinstitutionalisation has not been realised

The impression is reinforced due to the fact that residents are often placed far away from their home towns. Even though a centralisation of homes provides certain selective advantages in the overall management of care, in any case “normality” for clients is lost as a result. Placement in rooms with multiple beds, a lack of privacy, pocket money that is “managed”, care and outdoor walks that are scheduled are just some of the restrictions that must be accepted in large-scale facilities. But also personal contacts and supportive relationships that might have been possible in the vicinity are – at the very least – made more difficult when residents are transferred to homes that are further away. As a result of the size of the facilities, the way that individual needs and wishes are addressed becomes inferior. It is an intrinsic quality of large-scale institutions that the basic attitude vis-à-vis persons with disabilities is primarily protective rather than an attitude that is based on resources and strengths. In many conversations with the commissions, care staff reported that some clients could have moved to training apartments, etc. long ago if there had been vacant places.

Individual needs are not addressed

Often sexual needs in homes are viewed as disruptive. This is particularly the case when there are no private rooms or pedagogical concepts relating to sexuality. For example, a commission observed that at least one resident of a large-scale institution was administered psychotropic drugs to reduce his sexual urge to masturbate. The commission viewed this as a violation of his privacy. This resident was not able to practice his sexuality with sufficient self-determination. A female resident told another commission that she wanted to have a child; upon enquiry by the delegation, the staff stated that this wish was not considered possible in the facility.

UN expert committee demands increased efforts

In its final document on the country review of Austria, the UN Committee on the Rights of Persons with Disabilities articulated its concern regarding reports that the number of persons with disabilities in institutions and facilities has risen in the past 20 years and demanded increased efforts to drive deinstitutionalisation forward. Therefore, the Committee explicitly recommends deinstitutionalisation to the regional governments as well.

Overall concepts are lacking

Although there still are numerous facilities of significant size, during the year under review, some of these facilities were closed or concrete plans developed to create smaller, decentralised living units. Nevertheless, the NPM found that there is a particular lack of comprehensive overall concepts for deinstitutionalisation and that personal assistance for persons with disabilities as an alternative to institutional care has not been expanded. In the pursuit of the goals of the National Action Plan on Disabilities, the concept for personal assistance must be developed in cooperation between the Federal Government and the *Laender*. Increased deinstitutionalisation

would finally be part of a paradigm shift that is particularly important to increase awareness of equality and a positive perception towards persons with disabilities. At the same time, this should include concrete steps toward increased inclusion.

However, the prerequisite to develop such overall concepts is a comprehensive understanding of the concept of deinstitutionalisation and the requirements associated with it. The fundamental principle is that persons with disabilities can choose a way of living that is suitable for them individually and that they receive the necessary support and services they need to do so. There is no differentiation here between “serious” or “slight” disabilities. People who require a great deal of assistance also have the right to a self-determined life in their own residence.

Decentralisation is not the same thing as deinstitutionalisation

Implementing this principle requires taking the wishes of those affected as a measure and recognising that they are the experts of their own lives. In order to enable them to have a choice, it is necessary to make diverse ways of living available and to enable people to have a personal budget. Decentralisation of facilities, which has already taken place in some cases, is an important step in this direction, but it is insufficient.

Wishes of the persons affected are decisive

Rather, people must be enabled to plan their everyday life according to their own personal preferences and needs and to participate in society at every level. The concept of social space and community issues should be used.

However, taking the wishes of those affected into consideration also means placing them in a situation where – after spending years in large-scale institutions in some cases – they can figure out their individual needs, where their insecurities are eliminated through information and where they can take advantage of the possibility of other ways of living.

- ***Obligation to deinstitutionalisation in accordance with UN CRPD must be complied with.***
- ***Comprehensive overall concepts are lacking and must be developed.***

### No care home agreements for persons with disabilities

Residents under care without care home agreements

Commissions have reported several cases where residents live in institutions and facilities for persons with disabilities without the operator of the facility having executed written care home agreements with them.

Care home agreement in written form obligatory

This contradicts the provisions of the Consumers Protection Act (*Konsumentenschutzgesetz*). For agreements with an indefinite term, Sections 27 et seq. of the Consumer Protection Act stipulate that they must be executed or issued in written form between the operator of the home and the resident no later than within three months after the beginning of a stay in a care home. In the event of agreements that are limited as to term, this must occur prior to the beginning of the stay in a care home.

The purpose of written form is specifically, but not exclusively, to preserve evidence and transparency of the service obligations on the part of the operator of the care home. These agreements must stipulate what has been agreed concerning accommodations and care and must be worded “simply and comprehensibly”. The capabilities, needs and expectations of a rational resident of such care home are the measure for the wording of the agreement.

Individual operator organisations, however, took the point of view that in those cases, in which clients had been promised a benefit, e.g. financing of housing, by way of an official notice, the transaction has a background that is governed by public law. Therefore, the Consumer Protection Act is not applicable and a care home agreement does not need to be executed.

Consumer Association of Austria files legal action against operator organisation

After interventions by the NPM, the Federal Ministry of Labour, Social Affairs and Consumer Protection confirmed that assumption of costs by a public entity alone does not exclude applicability of the Consumer Protection Act. The Federal Minister therefore tasked the Austrian Association for Consumer Information (*Verein für Konsumenteninformation*) with requiring institutions and facilities for persons with disabilities to hand over care home agreements in accordance with Section 28 (3) of the Consumer Protection Act.

As an operator organisation refused to comply with this request, the Consumers Association of Austria filed a legal action against said organisation.

The NPM furthermore stated to the Federal Ministry of Labour, Social Affairs and Consumer Protection that care home agreements should be executed in “easy reading” versions. As the protection of the care home residents is clearly a priority in the provisions of Sections 27 et seq. of the Consumer Protection Act, such a procedure is necessary.

The Federal Ministry of Labour, Social Affairs and Consumer Protection took the recommendation of the NPM as an opportunity to word a sample agreement accessibly from a technical standpoint and it was made available on the Internet. At the same time, the Ministry stated that due to the

complexity of the material an “easy reading” version was not possible. The NPM does not share the misgivings expressed by the Ministry and continues to hold the opinion that agreements must be worded in such a way that the persons involved can understand and follow the content.

- *Care home agreements in written form for persons with disabilities are obligatory.*
- *Agreements must be simply and comprehensibly worded.*
- *The persons involved must be able to understand and follow the content.*

### Occupational therapy workshops

The commissions completed numerous visits to day-care centres and workshops for persons with disabilities. Persons whose performance capability under Austrian social insurance law ranges between very low to just under 50% of the performance capability of a non-disabled person work in these facilities. Regardless of the scope of the work performed by the individual persons, such occupations are not deemed to be employment relationships. Under current case law, the activity is primarily in the interest of those employed to work and serves as “education and upbringing” and “treatment”.

Activity in the workshops is not employment under social insurance law

Therefore, these individuals are not covered by social insurance based on their activity. They do not acquire any independent pension entitlement. They receive other insurance benefits from entitlement under the minimum benefit system, from orphan pensions, etc. They do not receive any wages under social insurance law for their work, but receive only pocket money amounting to an average EUR 65 per month. The criteria for the calculation of the amount of the pocket money are often not transparent and, in any case, are not uniform.

„Wages” are only small amount of pocket money

The NPM presumes that employment in the current form does not conform to the provisions of the CRPD. Under Section 27 of the UN CRPD, persons with disabilities have the same right to work and employment as everyone else. The UN Committee on the Rights of Persons with Disabilities has also criticised the employment of around 19,000 persons in Austria outside of the regulated labour market. Remarks by the Human Rights Advisory Council about this problem area were published on the AOB website.

From the perspective of the NPM, a reform of the current legal situation and practice is urgently necessary. The goal must be to ensure the means of earning a living beyond current social welfare or the set-up of the minimum benefit system (i.e. without taking assets into consideration and

Reform of legal situation necessary

without recourse regulations). Persons with disabilities working in (sheltered) workshops should be entitled to regular wages and acquire entitlement under statutory social insurance. Transition solutions here will probably be unavoidable, but the elimination of public transfer payments must not be a financial disadvantage for the persons affected.

The reports by the commissions make problems inherent in the current legal situation clear. In at least one *Land*, persons with disabilities are repeatedly urged to sue their parents for maintenance. It was also reported to the NPM that at least individual workshops that take on external jobs generate surpluses while the workers do not profit directly from this. In such cases, a “wage” in the form of pocket money runs the risk of being equal to exploitation of the individual workers.

Too little promotion for integration into normal jobs

At the same time, integration into normal jobs must be driven forward. The prerequisite for this would be, for example, an expansion of personal assistance services, specifically, but not exclusively, for persons with learning disabilities. However, at this time, an attempt to undertake integration is associated with significant risks. Public transfer payments previously received do not go dormant, but underlying entitlements expire. The essential prerequisite – beside targeted promotion – is therefore the possibility that entitlements to public transfer payments are revived.

The commissions have repeatedly criticised that in some facilities the offerings barely go beyond “occupational therapy”. Integration into “normal jobs” does not occur, because the care staff views such jobs as practically unattainable. From the perspective of the UN CRPD, the greatest possible self-determination for persons with disabilities is a main focal point, which is why at a minimum inclusion goals should be defined and pursued to the greatest degree possible.

In contrast, in the requirements for the operator organisations in one *Land*, the promotion of integration into “normal jobs” is not mandatory. While it is defined as a possibility, clear, unambiguous goals are lacking.

- *Payment of regular wages in occupational therapy workshops should be pursued.*
- *Acquisition of entitlements under social insurance law should be pursued.*
- *Integration into normal jobs should be adequately promoted.*
- *The right to work in accordance with the CRPD must be ensured.*



### Efficient representation of interests requires resources

Self-representation and communal co-determination within the everyday institutional routine strengthens persons with disabilities. As a result, rules for living together can be experienced as comprehensible and changeable through own or communal initiatives. This refers to both the area of housing and occupational therapy as well as day-care. However, structural prerequisites and framework conditions are needed in order to effectively implement self-representation and participation.

The commissions repeatedly found a lack of comprehensively participative decision-making structures and coordination processes that could have opened up options for action vis-à-vis decisions made by management.

Self-representation is a logical consequence of the practical implementation of the principle of self-determination within the meaning of UN CRPD. However, supporting measures are a prerequisite for this. Effectively communicating and implementing – if necessary through representatives – such issues as organising themselves, demanding information in a comprehensible form, sharing ideas about concepts and alternatives, networking with external parties, coordinating demands and community concerns, requires processes that must be learned and experienced.

Self-representation  
needs supportive  
conditions

While access to informational events, seminars and continuing education to increase the efficiency of action in and for advocacy groups are open to persons without disabilities, for persons with disabilities in institutions and facilities, this is not a matter of course.

As a result of dependent relationships, in the context of everyday routine, there is always the risk that interests and needs of the residents retreat behind those of the operators of facilities, the care organisation and the staff. Therefore, establishing and ensuring opportunities for self-representation is primarily about dismantling a structural relationship of power and subordination that persons with disabilities are subject to in all areas of their lives.

As the care of persons with disabilities falls in the legislative authority of the *Laender*, the specifications for framework conditions vary Austria-wide and are largely deficient. The Upper Austrian Equal Opportunities Act stipulates the inclusion of persons with disabilities in decision-making processes and the creation of “suitable forms of representation” for the area of housing, for measures regarding sheltered work programmes, etc. Even the obligation on the part of operators of facilities to support creation of such advocacy groups was standardised (Sections 35, 37 of the Upper Austrian Equal Opportunities Act).

Deficient legislation on  
part of the *Laender*

In contrast, relevant regulations in other *Laender* – to the extent that such regulations exist – leave such processes up to self-organisation and voluntary arrangements by the institutions. For example, in accordance with Section

15 of the Lower Austrian Housing and Day-care Regulation (*Wohn- und Tagesbetreuungsverordnung*), advocacy groups “can” be created. However, a more precise statutory definition regarding the requirements, modalities and special support for such activities does not exist. Section 6 (3) of the Carinthian Nursing Homes Act (*Kärntner Heimgesetz*) only states that operators of homes may not presume a legally effective waiver of the right to “jointly with the other residents elect an advocate or a resident delegation to represent the interests of the residents”.

It is clear that, with the exception of Upper Austria, the majority of the *Laender* laws do not regulate the statutory establishment of elections of workshop representatives and the necessary prerequisites and conditions. The fact that the commissions were sometimes told during their visits to workshops that workshop speakers “have too little to say” could have something to do with this.

Standardisation  
of democratic  
participatory structures

The AOB presumes that once the democratic participatory structures are in place, the development of all informational, decision-making and innovation processes could be more successful. A study published in 2010 by the Institute for Educational Sciences at the University of Vienna on the topic of “Workshops and the Sheltered Employment Market in Austria” clearly shows that there is a substantial amount of catching up to do with regard to participation and that Upper Austria has a pioneering role.

As a result of absent or inadequate minimum statutory requirements or quality standards across all the *Laender* that are oriented along the lines of the UN CRPD, it is up to the institutions and/or their operators to establish self-representation and co-determination structures for residents and users. Various concepts have been developed in this regard and have also been turned over to the commissions during their visits. This alone is not sufficient to be able to orient practical action around these activities and to not keep holding on to well-trodden paths with regard to care mandates and internal organisational procedures. Access to peer-to-peer sharing between self-advocates, including beyond institutional borders, and persons with disabilities who live independently, could open up new perspectives.

A welcome development is the opening of the Viennese Centre for Self-Representation (*Wiener Selbstvertretung-Zentrum*) in late 2014, which is intended to promote a sharing of content, independence vis-à-vis operator organisations, networking and joint political action by persons with learning disabilities.

- *Self-advocacy must be ensured regardless of the kind of disability.*
- *Suitable support measures are necessary.*
- *Legislation must be adopted or amended in the individual Laender; apart from a few exceptions, suitable framework conditions do not exist.*
- *Peer-to-peer sharing of information should be promoted.*

### 2.4.3 Isolation of a resident

Commission 1 found that in a group home for persons with disabilities there were difficulties in dealing with a certain resident. As a result of intensive outbursts of aggression, there was an increased risk for other residents; this was also determined by the attending physician. As a consequence, a special gate was installed in front of this resident's room that prevented him from independently leaving it. In the workshop, where the residents of the group home worked during the day, this resident was also isolated from the others by way of this kind of gate.

Resident isolated from other residents

According to information by the clients and the staff, transports between the group home and the workshop location also presented a problem. This resident felt cramped and was highly stressed by the presence of others. The situation escalated. At the same time, other persons being transported did not feel safe during transport and reported their fears to the commission. Under these circumstances, the daily trips to and from the workshop were very difficult for all participants.

Heightened risk potential

Directly after the commission's visit, individual transports from the group home to the workshop were organised for the resident in question, which made him feel significantly more comfortable. Additionally, he was given another room in the group home that had direct access to a garden, where he can spend time whenever he wishes. More accompanied walks and more frequent nature outings to enable him to satisfy the urge to move made it possible to get rid of the gate in the group home.

Improvements after visit by commission

In the workshop, the gate was kept in place upon the request of the person in question, but adapted so that he could open and close it independently. When he seeks out the retreat room voluntarily and as determined by him, this is a signal to the others that he wishes to remain alone and needs quiet.

The commission checked the workshop again during a follow-up visit and was able to make sure that improvements had been made.

- *It is preferable to use care measures as opposed to isolation and restrictions of freedom.*

#### 2.4.4 Use of „time-out rooms“

Time-out rooms may never be used as punishment

The CPT has developed standards for involuntary detention in “time-out rooms”, which apply to psychiatric institutions and facilities. The CPT is very worried about several issues, including increasing use of this measure and states that placing persons in time-out rooms without accompanying measures is not necessarily a milder measure than restriction of freedom by way of medication or mechanical means or other restrictions and may never be used as punishment.

Numerous inadmissible restrictions of freedom

In one facility, Commission 2 found numerous inadmissible restrictions of freedom that had been legally established by a court decision. They referred to the use of two time-out rooms for two residents who were extremely aggressive against third parties and, apart from this case, to the use of restrictions of freedom by mechanical means and by way of medication.

By reviewing all court judgements, the NPM found that the court of first instance spoke out against the routine use of time-out rooms because the previous use of milder measures had not been documented. In specialist literature, the use of time-out rooms as a therapeutic measure in curative educational settings is furthermore highly disputed. This is viewed as helpful only under very narrow framework conditions and may only be used for a very brief period of time, if at all.

The subsequent investigative proceedings showed that the facility had undertaken a number of effective measures in order to implement the judgements issued in accordance with the Nursing and Residential Homes Residence Act. One of the two time-out rooms was closed completely. As far as the other room was concerned, within one year, they were successful in minimising forced placement in this room by 75%.

The capability to consciously manage feelings and inner tension is important, particularly in socially challenging situations: interpersonal closeness, conflicts, disappointments and rejections as well as when expressing and implementing wishes and expectations. Such everyday situations and frustrations place excessive demands on some people to such a degree that they react with uncontrolled rage, moodiness, reproaches, impulse outbursts, aggression, but also emotional numbness, loss of self-esteem, or emotional withdrawal. Time-out rooms can, however, be easily misunderstood by intellectually impaired persons with personality disorders as a personal rejection and this can provoke new escalations.

Based on the findings of the NPM, human rights standards for the use of time-out rooms can be summarised as follows:

The use of time-out rooms in institutions and facilities for persons with disabilities:

Human rights standards for the use of time-out rooms

- may not be the result of inadequate individualised care, insufficient medical or psychiatric care or unsuitable settings;
- presumes a crisis intervention plan and de-escalation training for the staff;
- is solely for the temporary protection of the person in question or other persons in the event of acute aggression against third parties and is not a permissible measure to discipline or sanction other abnormal behaviour;
- should be as brief as possible, with constant observation and the opportunity for calming conversations;
- must occur in an environment that is free of fear, stimulus-free and with no risk of injury;
- must be documented and reported to the representative(s) of the residents as a measure to restrict freedom;
- must be accompanied by observations and analyses of interaction that can show the interaction between the behaviour of the persons involved and actions/reactions of staff or other residents.

➤ *Placement in time-out rooms is not necessarily a milder measure.*

➤ *Careful use is necessary.*

## 2.5 Correctional institutions

### 2.5.1 Introduction

The commissions conducted 30 visits to prisons and facilities for the detention of mentally ill offenders during the reporting period. As in the previous year, systemic weaknesses were evident. These problem areas were monitored with the aim of detecting systemic deficits that spanned the various facilities and making proposals for improvement.

A number of individual cases relate to deficits with respect to the detention of mentally ill offenders, which is why the commissions focused on this area again this year. Despite the many deficits found, it should not be forgotten that the visit reports continue to contain positive findings as well. Each of these observations is sent to the Federal Ministry of Justice with the request to pass this feedback on to the individual institutions and facilities. For an example, please see the final case in this part of the report.

### 2.5.2 System-related problem areas

#### **Personnel shortages and their consequences – long hours held in inmate cells and sparse employment opportunities**

Night time lock-up  
before noon

Based on the observations of the previous year when personnel shortages were often encountered, the NPM has carried out system-wide examinations of when inmates are held in cells in Austria's correctional institutions in order to explain lengthy lock-up times. The results showed that, of the 28 correctional institutions (not including the field offices, which are favoured in this respect), inmates are locked up already at 11.15 a.m. on weekends and holidays in three prisons (Eisenstadt, Hirtenberg and Vienna-Mittersteig). In the Krems, Ried, Stein and Wr. Neustadt facilities, inmates are locked up at 11.45 a.m. on these days. In Klagenfurt, Suben, St. Pölten and Vienna-Simmering they are locked up at noon.

The NPM considers such long periods of time to be dramatic. Such lengthy lock-up times are accompanied by unstructured daily routines and lead, in particular, to the overcrowding of inmate cells, which is frequently observed. The danger of assaults is particularly high during these periods of time.

Dreary daily routine  
fuels aggression

Sparse employment opportunities exacerbate the situation. In the absence of work and a reasonable daily structure, even more time is spent in the sections and rooms where inmates are confined. Thus, when Commission 2 visited the Linz correctional institution, it noted long lock-up times for inmates had no employment (22.5 hours a day) as well as the sparse opportunities for employment in general. On the day of the commission's visit, slightly more than a quarter of the 225 inmates (i.e. 65 inmates) had work.

The prison warden had attempted to decrease the lock-up times by increasing the time spent outdoors from one hour to one and a half hours. He also pointed out the recreational areas in the departments and the opportunities to engage in sports. However, due to the structural situation and the high occupancy, it is not possible at the Linz correctional institution to maintain departments in which inmate cells are open throughout the day.

Little opportunity to move about

The commissions' observations at the Sonnberg, Vienna-Josefstadt and St. Pölten correctional institutions showed that personnel shortages can have an adverse impact on inmates and that rights may not be fully protected.

Duty roster adversely affects inmates

In Sonnberg, the commission criticised the structure of the duty roster, which moved up the start of the lock-up times on Wednesday from 7 p.m. to 5 p.m. so that the task force can have sufficient time for training.

The Federal Ministry of Justice pointed out that the staffing level at the Sonnberg correctional institution was low in comparison to the number of inmates. Nevertheless, efforts were being made to keep lock-up times comparatively short. The task force had to be trained with the prescribed frequency, and such training could currently only be provided on this day of the week.

The NPM replies as follows: If the training plan results in an increase in lock-up times on one day, this should be compensated for on another day. The prison warden can order this.

Disadvantage should be compensated for

In turn, at the Vienna-Josefstadt correctional institution, the commission again found that inmates were not permitted to spend time outdoors even though the weather on this day did not preclude this. Many inmates complained that they were denied outdoor exercise much too frequently.

Outdoor exercise not provided

A personnel shortage, which was cited by the management of the facility at the concluding meeting, is not acceptable and prevents satisfaction of the rights required by the Penitentiary System Act (*Strafvollzugsgesetz*). The NPM strongly demands that the inmate's right to time outdoors is fully granted.

Rights must be protected

At St. Pölten, the personnel shortage and the shift system (after 3 p.m., there are only four guards available) sharply curtail recreational activities. Thus the gym cannot be used in the afternoon. As a result of the extended night shift, all activities are crowded into the shortened daily routine, which means that inmates must decide whether they wish to work or spend time outdoors.

Savings measures have adverse impact

There is a right to outdoor exercise. This right must be waived if the incarcerated person does not wish to accept financial losses due to being unemployed – since the compensation paid to unemployed inmates is much lower than the wages they could earn. In the view of the NPM, it is unacceptable that the exercise of his rights should place an inmate in a worse financial position.

Wrong signal being given

- *Task force trainings may not cause longer lock-up times.*
- *Time spent outdoors makes inmates healthier. They should be permitted to have at least one hour of outdoor time per day (depending on the weather).*
- *Incarcerated persons should not have to choose between work and the rights to which they are entitled, such as outdoor exercise.*
- *The exercise of a right should not cause any inmate to suffer a financial loss.*

Acute shortage of specialised personnel

At the Graz-Karlau correctional institution, the job opportunities can be said to be very good since 90% of the prisoners and persons being held there are employed. Thus, for example, there are 40 apprentices being trained in nine different occupational areas. However, this situation is impaired by the acute shortage of specialised personnel, which results in workshops being closed for hours or days.

Employee representatives reject hiring of skilled external personnel

This situation can only be improved by hiring appropriately skilled personnel (craftsmen). The head of the correctional institution has already solicited such personnel. Paradoxically, the employee representatives have been vehemently opposed to this and thus have prevented any improvement of the situation. The employee representatives insist that staff only be hired from among the prison guards.

Structured daily routine

In response, the commission pointed out that any closing of the workshops (even for only a few hours) impairs the ergo therapy programme and is not conducive to a reasonable structuring of the day. In addition, the workshop's skilled personnel are particularly important confidants for inmates and other persons being held. The important "relationship effect" suffers from any reduction of an existing employment opportunity.

Goal of less psychological stress during lock-up times

The importance of maintaining and expanding work and employment opportunities is demonstrated by the fact that inmates, who are not housed in shared accommodations, are confined at 3 p.m. There is still the opportunity to visit and utilise recreational facilities, such as sports facilities, handicrafts, music and art groups, etc., until 5 p.m. However, this does not change the lock-up times.

The Federal Ministry of Justice agreed with the NPM that expansion of work and employment opportunities in correctional institutions is very important.

Pilot project ordered

Consultations were conducted with the representatives of the central committee for employees of the executive services, but the parties failed to reach a mutual agreement. Therefore, in accordance with Section 10 (7) of the Federal Employee Representation Act, the Federal Minister of Justice finally made a decision to start a pilot project to employ craftsmen at the Gerasdorf,



Graz-Karlau, Stein and Vienna-Simmering correctional institutions on 1 October 2014 with a total of 19 craftsmen. The pilot project will be evaluated in December 2014. Therefore, until the additional (100 in all) executive service positions are filled, the hiring of craftsmen (by the recruitment agency for justice supporting staff) for a period of one year will serve the purpose of increasing the employment rate, reducing the days on which operations are shut down, and providing relief to the correctional institution.

There are currently (as at 4 November 2014) four additional civilian employees working at Graz-Karlau: a painter, a plumber, a cook and a locksmith. Three additionally skilled personnel (a cook, a baker and a bricklayer) will start providing services in the near future. The experience in Graz-Karlau has been extremely positive thus far. Moreover, the employee representatives have demonstrated a willingness to cooperate.

Positive feedback

The NPM regrets that an amicable solution could not be found with the employee representatives. However, it welcomes the steps taken by the Federal Ministry of Justice. They not only serve to implement the recommendations of the CPT, frequently expressed by them (e.g. CPT/Inf[94]15, etc.), but also honour Item 26.2 et seq. of Recommendation REC (2006) 2 (“European Prison Rules”), to which Austria subscribed in May 2007.

International requirements met

- *Efforts to find an amicable solution with respect to personnel matters may not be so protracted that there is an adverse impact on the interests of inmates.*
- *If necessary, the Federal Ministry of Justice must again make use of the decision-making authority granted to it by statute.*

### **Destressing incident triggers special audit and reform of detention of mentally ill offenders**

In May 2014, the media reported an appalling case involving toleration of the neglect of an inmate who had been held in detention for mentally ill offenders at the Stein correctional institution for many years. The NPM used these reports as a reason to monitor the facility in question. The purpose of this was not to answer questions that are the responsibility of the law enforcement authorities. Rather, the NPM was interested in determining how a person who was under the care of the state could end up in such a condition.

NPM reacts promptly

The inmate was a 74-year-old prisoner, who, after serving a prison sentence in Switzerland, had been in the detention for mentally ill offenders at the Stein correctional institution since 2008. His legs were cankerous, his skin was encrusted with ulcers, and his toe nails were centimetres long and curled

Shocking photos

up. Despite the smell of putrefaction, which permeated the area, no one supposedly noticed that the prisoner was rotting away for months.

Physical decay as a sign of emotional neglect

The man had been bandaged at the Stein medical facility some time earlier, but the bandages had never been changed. Some of the totally filthy bandages had adhered to the skin. In addition, the man was wearing a pair of trousers, which he did not remove when washing. He apparently had not felt that his feet belonged to his body for some time and had abandoned them to decay. The man had consistently refused care for quite some time and had become more and more withdrawn. The prison administration did not respond until the smell of rot emanating from the single cell became unbearable.

After the incident became known, the Federal Minister of Justice was deeply moved and announced reform of the detention of mentally ill offenders.

Enhancement of care of long-time inmates

Personal hygiene is a problem for older prisoners with lengthy prison terms. The NPM needs to clarify how a minimum standard of hygiene can be guaranteed for persons who are unable to look after themselves (which should include oral hygiene as well as personal hygiene). Signs of deterioration in inmates must be prevented from reaching the stage of illness.

Threat of hospitalisation and deprivation

The NPM sees an urgent need to expand nursing care and medical examinations for groups of persons who are at particular risk. Inmates must be strongly encouraged to maintain a minimum standard of personal hygiene, and adequate support is to be provided, if necessary. In addition, inmates who belong to an at-risk group should be screened at regular intervals by a general practitioner and a psychiatrist, since a physical decline can be accompanied by a process of mental deterioration and/or emotional neglect.

Screenings

The Federal Ministry of Justice acted on the NPM's suggestions to establish minimum standards of hygiene and intensify the use of medical examinations. At the present time, the medical superintendent at the prison administration conducts screenings of inmates over the age of 65 in all correctional institutions and of persons being held in detention for mentally ill offenders in order to determine which steps should be taken to establish minimum standards of hygiene and what standards should be implemented for medical (specialist) examinations at regular intervals.

Minimum standards in the area of hygiene

Minimum standards in the hygiene area are to be established by the spring of 2015. Qualitatively, they should conform to the 2014 Hygiene Regulation and the Organisation and Strategy for Hospital Hygiene issued by the Federal Ministry of Health. Preliminary discussions have been initiated on the requisite training measures for staff in the hygiene area. There will be a hygiene manager in every correctional institution.

Possibility to report rejection of medical exams

The NPM was also able to push through its request for a control or warning system for inmates who repeatedly reject medical treatment. Any such repeated rejection of a medical examination will be recorded in the integrated

prison administration's MED Module (Medical Data) in the future and this will automatically trigger a report to the medical superintendent. Until the aforementioned expansion of the integrated prison administration's MED Module is implemented, the Office of the Medical Superintendent will control the entries in MED Module on a monthly basis.

In the specific case, the question for the NPM is how it was possible for the prison guards to (allegedly) notice the massive hygienic neglect of the inmate's legs only at such a late date. Despite the required periodic visits, the fact that a person in detention was refusing to have his legs cared for remained unnoticed for months. Due to this failure, the health of the person in detention was jeopardised and impaired.

Responsibility in the specific case

The Federal Ministry of Justice stresses that the inmate deliberately brought about his own condition, intentionally concealed it, and refused the care that was offered to him so that it was not possible to provide physiological and psychotherapeutic treatment due to a lack of cooperation on the part of the inmate.

The Public Prosecutor's Office in Vienna is currently conducting investigations of the staff of the Stein correctional institution for the offence of torturing or neglecting a prisoner under Section 312 (2) of the Penal Code. Disciplinary proceedings are also underway.

Ongoing investigation

The NPM points out that one task of a correctional institution is to ensure that a minimum standard of physical hygiene is maintained. The Council of Europe also recommends in Item 47.2 of the new version of the Standard Minimum Rules for the Treatment of Prisoners (*REC [2006]2*) that "the medical service of the penal institution shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment".

NPM requirements catalogue

The NPM demands that the care and nursing of inmates, who need more care due to their age or their mental condition, is guaranteed in Austrian correctional institutions to the same extent as for patients in hospitals and nursing facilities.

Apart from the caseload which is reflected in an increased need for personal attention by judicial officers and caregivers it should be asked in each individual case whether it is appropriate to place such persons in solitary detention when the frequent consequence of this is a lack of socialisation with other inmates.

The NPM points out the great importance that regular outdoor exercise has for maintaining and promoting the physical and mental health of inmates. Inmates who have a special need for care due to advanced age or physical or mental illness must be enabled to spend time outdoors. If necessary, they should even be required to exercise outdoors.

It may be necessary to change conditions so that even fragile or sick inmates can spend time outdoors (e.g. the need for toilet facilities nearby for incontinent inmates, barrier-free access to the yard, etc.).

- *Psychiatric and psychological care is part of health care and, as such, must be ensured by the institutions.*
- *Regular visits, in particular, should help prevent the physical and emotional neglect of long-time inmates.*
- *Inmates have the same right to care and nursing as persons who are at liberty.*
- *Older, fragile or sick persons must be enabled to spend time in the fresh air at regular intervals to maintain their health or promote healing.*

**Working group set up** A few weeks after the case became known, the Federal Minister of Justice addressed the question of what arrangements are needed to make the detention of mentally ill offenders more humane and treatment-oriented. He deployed a working group to answer this question. The group was tasked with surveying the current state of detention of mentally ill offenders defining specific problem areas and making proposals for improvement from an organisational and legislative perspective.

**All disciplines represented** The working group on reform includes high-ranking representatives of the Federal Ministry of Justice, the Federal Ministry of Health and the prison administration as well as experts and scientists with various specialisations. The Chairwoman of the Monitoring Committee for the Implementation of the Convention on the Rights of Persons with Disabilities and a representative of the NPM were also invited.

After discussions of principles at the plenary session, the working group divided into four sub-working groups. They developed reform proposals on the topics “Policy and Boundary Issues”, “Assessment” and “Correctional Practice”, which were then discussed at the plenary session.

**Comprehensive evaluation** The NPM representative primarily participated in the sub-working group on Correctional Practice, which was, in turn, divided into seven sub-groups, which concerned themselves with the following topics: “Development and expansion of legal protection for patient’s rights“, “Quality assurance and monitoring as well as system-related scientific research“, “Avoidance of unconditional instructions“, “Control of the system for the detention of mentally ill offenders“, “Placement, treatment and care practices in correctional institutions and psychiatric hospitals“, “Improvements in the area of conditional release” and “Transition management and after-care”.

The NPM's ongoing collaboration with the working group on Correctional Practice and its collaboration with the working group on Policy and Boundary Issues provided it with the opportunity to contribute a series of legislative proposals, which had been submitted by the commissions, and bring them up for discussion. These included the question of whether patient representatives had to be informed if a person was placed in restraint under Section 21 (1) of the Austrian Criminal Code as is the case under the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*). It was suggested that persons being held in detention are entitled to an effective defence in release proceedings. Apart from a series of considerations relating to raising the quality of psychiatric expert opinions, it was also suggested that persons being held in detention should receive a hearing in a much shorter time span than is currently the practice.

NPM's suggestions included

The leader of the sub-working group on Correctional Practice also organised two workshops, which included the staff of all institutions concerned with the detention of mentally ill offenders. A multi-day symposium (Forensic Science Days held in Stodertal), at which representatives of the NPM spoke on the relevant observations made by the commissions also provided ample opportunity to discuss proposed improvements.

Inclusion of all affected institutions

The sub-working group on Correctional Practice submitted a 19-page requirements catalogue to the plenary session which covered almost all of the items relating to the detention of mentally ill offenders, starting with the predicate offence and proceedings to quality criteria for after-care facilities and possible improvements.

Numerous proposals for improvement

This catalogue of requirements, together with the results from the other sub-working groups, is now being summarized into an overall report, which will be submitted to the Federal Minister of Justice after it has been finalised at the plenary session in early February.

- *The NPM welcomes the extensive efforts to reform the detention of mentally ill offenders. It awaits swift legislative implementation of the project report.*
- *It is desirable to combine provisions, which are currently scattered throughout various laws, into a single law.*
- *Such terms as "mentally disturbed offenders" and "mental abnormality" should be eliminated and replaced with contemporary, non-discriminatory terms.*

### Healthcare and medical care in prison

Importance of quality assurance	Inadequate healthcare can result in situations of inhuman and degrading treatment. Therefore, in 2014 the NPM again addressed the question of how to guarantee that medical care for inmates is at the same level as for persons at liberty. There is a need for professional oversight of the physicians at penal institutions and institutions for the detention of mentally ill offenders for quality assurance purposes. The NPM has long requested the establishment of an office of a medical superintendent, equipped with wide-reaching authority.
Medical superintendent only provisional arrangement	The Federal Ministry of Justice has only partially complied with this request. The position of “medical superintendent in the prison administration” was advertised in January 2014. However, the procedure had still not been completed in early November 2014. For this reason, the office of a medical superintendent has only been established on a provisional basis for the present and its authority is governed by decree. A medical superintendent is available to correctional institutions for 20 hours per week.  As an employee of the Care Department, the medical superintendent has access to the Federal Electronic File Management Project. Work orders are assigned by the department head.
Centralised control	The medical superintendent primarily assumes the healthcare tasks to be performed by the highest prison authority (Section 66 et seq. of the Penitentiary System Act). This includes developing guidelines for the medical treatment of inmates, standards for equipping practising rooms, for medication and for the practice of prescribing medicines that require approval.
Advising	Another area of responsibility is providing (operational and strategic) advice to the Federal Ministry of Justice and the prison administration on medical care matters. The medical superintendent is the contact person for the physicians working in correctional institutions and is responsible for approving the prescription of specific medicines, rehabilitation measures and prosthetics. To ensure efficient use, audits of the consumption of medicines and the billing of medical services are conducted on an ongoing basis.
Management	Under a centralised country-wide hospital bed management system, the medical superintendent makes authorisations and decides whether a particular inmate should be placed into a public medical facility, into the locked sections of the Krems or Vienna Barmherzige Brüder medical facilities or into the special medical facilities at the Stein and Vienna-Josefstadt correctional institutions. It also supervises and controls the recovery progress of prisoners (duration of stay/external costs).
Technical opinions	The tasks to be performed by the medical superintendent also include drafting and approving the statements regarding the medical care of inmates made by correctional institution medical services to courts, authorities, the NPM

and diplomatic representatives. The development of a controlling system and collaboration on refinements to the Electronic Patient Record Module are additional areas of responsibility.

The medical superintendent also provides his/her opinion and an assessment of the professional qualifications when the recruitment agency for justice supporting staff hires physicians and contracts are signed with medical consultants.

In addition to primary, incident-related professional supervision, the medical superintendent audits and monitors the medical services in the correctional institutions through the use of controlling measures. The medical superintendent has begun to visit the correctional institutions once a year. At the same time, random samples of the entries and medical histories in the Electronic Patient Record Module are verified at regular intervals.

Controlling

The NPM has also addressed the problem of the handling of medicines. After their visits, the commissions have repeatedly criticised the fact that medicines kept in stock (which are generally not prescription medicines) are dispensed by non-medical personnel in the correctional institutions.

Handling of medicines

In this regard, the Federal Ministry of Justice has stated that the handling of medicines is the responsibility of the head of the medical service. Under medical orders, dispensing and administering medicines to inmates can only be delegated to senior medical and nursing care employees – including in the absence of the head of the medical service. There are currently no uniform standards in connection with the dispensing of PRN medications by persons outside of the medical service in correctional institutions that have no permanent medical service head on site. This is because still there is no definitive (statutory) provision from the Federal Ministry of Health. The prison administration is intensively collaborating on such a provision.

With regard to the language problems experienced by prisoners from non-German-speaking countries during medical consultations, the Federal Ministry of Justice was confronted with the observation of Commission 2 (Wels correctional institution in December 2013) that the use of court-certified interpreters could not be verified.

Medical consultations only with court-certified interpreter

According to a statement from the Federal Ministry of Justice, the staff of the Wels correctional institution has again been verifiably informed that it must deploy court-certified interpreters to clarify medical questions or findings, if there are language barriers.

- *Statutory implementation of the Office of the Medical Superintendent is necessary to provide legal certainty.*
- *A provision on who can dispense and administer what medicines to inmates and when must be quickly developed.*

### **Incarceration of juvenile offenders in correctional institutions – deficits remain despite improvements**

Raped with a broom handle	A particularly tragic incident occurred early last summer at the Vienna-Josefstadt correctional institution. Before the eyes of other prisoners, a (then) 16-year-old raped a detainee awaiting trial who was two years younger and seriously abused him. The public was shocked. The Federal Ministry of Justice established a task force to improve the conditions for incarceration of juvenile offenders.
Smouldering potential for aggression	Months before this crime, the NPM had warned the prison administration of the potential risks that could materialise when youth are confined at close quarters with no employment. As a result of this tragic incident, the NPM has put a special monitoring focus on this matter and increased its visits to the Josefstadt correctional institution.
Emergency measures	In a follow-up visit in the autumn of 2013, the NPM could see an improvement in many aspects of the conditions found in April. The conditions of detention have significantly improved, which the inmates confirmed.
Additional improvement required	As before, the long lock-up times and the lack of a programme of activities are criticised. Therefore, the NPM proposes additional improvements. In particular, the content of training programmes must be established and compliance and implementation must be monitored.  In this regard, the Federal Ministry of Justice stated that the youth sections are run as shared accommodations with open inmate cells from 7 a.m. to 6 p.m., Monday to Friday. They offer a wide-ranging and varied recreational programme.
Further attention	Efforts are currently being made to establish a “pool” or group of employees with a special interest in juvenile offenders. A targeted training programme entitled the “Detention of Juvenile Offenders as a Field of Work” is being developed to quantitatively improve the care of juveniles.
Improved training	Since the spring of 2014, basic training for the employees interested in the “Detention of Juvenile Offenders Pool” has included a specific, four-part course at the penitentiary system academy. A mandatory three-day conference is to be held each year for senior staff of the juvenile department. In addition, specialised seminars are offered of which at least one must be attended.
Regular meetings	All occupational groups in the juvenile department must attend weekly department team meetings (multi-professional team). In addition, there is a regular monthly meeting, and semi-annual team and interim examinations are planned. In addition, all employees will be free to avail themselves of external supervision or peer consulting (“professionals meeting



professionals”), visits from juvenile departments in other correctional institutions and expanded team-building activities.

The next visit was made in the evening. The NPM again determined that there is only one night shift position in the juvenile department.

The commission found that the night shift officer needs from 20 minutes to an hour to make his rounds. During this period of time, the observation platform is unmanned. The NPM criticises that incidents in the inmate cells cannot be observed by the prison guard on duty during these periods.

Observations platform  
unmanned

The request that the night shift in the juvenile department only be manned by officers from that same department was not completely fulfilled.

Officers from different  
departments

The NPM questions whether an officer is actually on site during the time that rounds are being made in order to quickly react and intervene in the event of a crisis. Therefore, the NPM continues to believe that at least two night shift officers must be assigned to the juvenile department.

Need for second officer

The night shift should only be staffed with officers from the juvenile department employees. The NPM also recommends that a personnel pool be set up as soon as possible for juvenile department employees with a special interest in the detention of juvenile offenders and employees who have completed the training programme on “Detention of Juvenile Offenders as a Field of Work”.

- *The night shift in the juvenile department should only be staffed with juvenile department employees.*
- *The judiciary administration should make a targeted search for suitable employees for the detention of juvenile offenders.*
- *Such employees should be offered attractive working conditions after completing the relevant training.*

### Women in prison – gross discrimination evident

Based on the observations of the commissions and frequent individual complaints regarding discrimination against women in prison, the NPM started its examination with the aim of monitoring the situation of female inmates in correctional institutions.

Austria-wide survey

For example, there were frequent complaints about monotonous work and too few opportunities to engage in reasonable recreational activities. While male inmates can engage in sports in almost all institutions and have gyms available to them, the leisure time activities of females are often limited to stereotypical work, such as crocheting or doing handicrafts. With respect

Visits

to employment, women would only receive about half as much work (and pay). In addition, the work assigned is often cleaning and polishing, which is perceived to be discriminatory.

Few leisure time activities

The NPM's observations showed that there are in fact large differences, primarily in leisure time activities. Thus, in almost all institutions male inmates can choose among several types of sports activities, while females are generally only offered participation in handicraft or cooking courses.

Lower employment rate

The data on the individual fields of activity and the work operations are not yet available. However, the figures already reported and the commissions' visits show significant discrimination against females. In Klagfurt, only about 20% of imprisoned women have work, which is considered high (!) for a regional prison.

The Federal Ministry of Justice rejects the allegation that the prison administration does not take the specific needs of menstruating or menopausal women adequately into account. An adequate supply of hygienic articles is allegedly provided. The department showers can also be used several times a day.

Lack of specially trained personnel

Unfortunately, there are no special qualifications for prison guards, who serve in female prisons or in the mother and child departments. Therefore, the NPM has made the Federal Ministry of Justice aware of the Bangkok Rules (Principle 29 – 35), which state that personnel must receive special training for the special needs of female prisons and especially for children in prison. The Ministry noted that the Bangkok Rules were not binding, but announced it would consider the development of a female-specific training module.

No preventive gynaecological exams

On the other hand, preventive gynaecological exams requested by the NPM were again rejected – with reference to the lack of a statutory right to such examinations.

The current investigation is not yet completed. The NPM will also pay more attention to the situation of women in prison in the coming year.

- *The expansion of employment opportunities for females must be accelerated.*
- *In particular, females should not be financially disadvantaged by the lack of employment opportunities.*
- *Females should have equal access to leisure time activities.*
- *Preventive examinations are part of standard medical care.*

### Upgrading of correctional institutions to accommodate persons with disabilities

As the NPM demonstrated in its previous year's report (pp. 61 et seq.), only 16 of the 40 correctional institutions and field offices are currently equipped with one or more inmate cells for persons with disabilities. It is primarily the southern *Laender* that have a need to catch up. Thus only one of the four institutions in Graz provides access for persons with disabilities.

Obvious deficits

Therefore – with reference to Art. 14 (2) of the UN Convention on the Rights of Persons with Disabilities – the NPM urges that persons with disabilities, who have been deprived of their liberty through some proceedings, have the same living and lodging conditions as the other inmates. In view of this, the existing structures must be adapted as soon as possible. Remodelling of buildings and additional constructions are to be made as soon as possible.

State's warranty obligation

The Federal Ministry of Justice has announced that the expansion of the Asten Centre for Forensic Science and the construction of the Salzburg correctional institution in Puch/Urstein will be completed by mid-2015.

Schedule for new installations

The renovation of the cell block and the special medical facility at the Stein correctional institution will commence at the end of 2014. The work should be completed by mid-2016.

The aforementioned building projects were initiated after consulting with a representative of an organisation for persons with disabilities in accordance with the "National Action Plan on Disabilities 2012 – 2020".

The NPM has informed itself regarding the progress of the construction in Puch/Urstein by making an on-site visit to the installation, which was still a shell in mid-December 2014. It made certain that all areas were adapted for barrier-free access. The spacious layout, warm colours in the outer wall design, and the bright inmate cells flooded with light were particularly pleasing. It is all the more regrettable that the entire installation, which is designed for 227 inmates, only has two lifts in the locked area and four washrooms equipped for persons with disabilities. This appears to be too little in light of the increasing age of the inmate population.

Too few inmate cells to accommodate persons with disabilities

This deficit cannot be remedied at the current stage of progress in construction. However, it can be ensured that Nirosta steel toilet facilities in the specially secured cells are adapted to the floor level. They obviously neglected to set the line of toilets lower in these areas so that one has to step up to a 20 cm high platform to use the toilet. The NPM requested that this glaring example of bad planning be corrected and that safe and barrier-free use of the toilet facilities be ensured. The management of the facility assured the NPM that this criticism would be promptly passed on to the construction manager.

Glaring example of bad planning of new building

Ongoing adaptation work Unlike the procedure for new construction, a representative of an organisation for persons with disabilities was not consulted for the adaptation work since the obligation in this regard, imposed by the “National Action Plan on Disabilities 2012 – 2020”, in some cases did not arise until after the planning had been completed and construction had begun (Eisenstadt correctional institution) or arose during the planning work (Graz-Karlau correctional institution) or the scope of the project did not require it (Vienna-Simmering correctional institution).

The Federal Ministry of Justice stressed that the compliance with relevant norms is reviewed by the general planners and the project managers of *Bundesimmobiliengesellschaft* (the Federal Real Estate and Property Corporation) in close consultation with the representatives of the users.

Further reviews The NPM will monitor fulfilment of these promises in the coming year and wishes to reiterate that the primary need for barrier-free areas is in the southern *Laender*. Any relocation of an inmate solely for this reason tears him away from his social environment. Such measures run counter to the goal of re-socialisation.

➤ ***Structural adaptations so that correctional institutions are equipped to accommodate persons with disabilities should take priority. There is a great need to catch up in this regard, particularly in the southern part of the country.***

### **New approaches to the control of addictive drugs – saliva tests to replace urine samples**

Saliva samples instead of urine samples The control of addictive drugs is indispensable to the maintenance of order and security in correctional institutions. The imposition of controls against the abuse of addictive drugs and the manner in which they are carried out are particularly sensitive in terms of human rights. Inmates repeatedly complain that they are being subjected to arbitrary controls. There can be massive invasions of privacy, since prison guards – directly or indirectly (by mirror) – observe test subjects while they are urinating. To alleviate this problem, the Federal Ministry of Justice ordered a saliva test pilot project to be initiated in the correctional institutions of Vienna-Simmering, Hirtenberg and Vienna-Favoriten. This is to survey the general usefulness of saliva tests and their usefulness in prisons.

Saliva test pilot project So far, 20,042 analyses have been made based on 2,616 samples. Confirming analyses using liquid chromatography/mass spectrometry (LC-MS/MS) were ordered for 40 samples. In 34 cases, i.e. about 85% of the cases, the original result was confirmed.

By comparison, in 2014 a total of 853 urine samples were subjected to a confirming analysis. Of these, 162 samples, i.e. 19%, showed a creatinine value that was too low – e.g. resulting from dilution – and therefore could no longer be definitively interpreted.

Based on these analyses, saliva tests – unlike urine tests – have different detection periods for certain substances. For example, the time period during which lipophilic substances, such as cannabis and benzodiazepine, are detectable is 6 to 30 days with urine but only 1 to 3 days with saliva. This – chemical – effect for the first time allows the tester to distinguish between recent consumption of these substances and consumption at a time farther in the past.

Analysis

Whereas giving a urine sample while under observation results in a potential invasion of privacy *per se*, basic rights are not affected by saliva testing. Not only can the samples be taken with a simple pad, but they can be taken by any prison employee regardless of the gender of the person to be tested and there is no waiting time between drinking a liquid and urinating which had to be included in the calculation.

Practicability

In the opinion of the Federal Ministry of Justice, there are disadvantages as well as advantages in this regard: saliva testing, which costs about EUR 35 per test, is significantly more expensive than urine testing at about EUR 3.80 per test (for each parameter to be tested). Analysis results would often be electronically transmitted to the correctional institutions on the day the sample was given, but no later than the following day (pick-up of the test strips was agreed upon individually by the laboratory and the correctional institution). Unlike urine tests, the results of saliva tests are not determined immediately afterwards.

Costs and validity

However, it must be conceded that the usual urine tests have only been “quick tests” so far, which can weaken or strengthen a suspicion or provide the basis for a suspicion. Only GC/MS analysis (gas chromatographic mass spectrometry) of the urine medium can provide proof of the consumption of narcotics.

Urine tests provide no proof

According to the Federal Ministry of Justice, the high cost and the fact that the testing results are not immediately available caused the Vienna-Favoriten correctional institution to leave the pilot project, especially since this correctional institution, as a therapy facility, has a high frequency of testing. Nevertheless, the prison administration continues to have a positive attitude toward the introduction of saliva tests Austria-wide based on the results of the pilot project.

Ministry only wishes  
to supplement not  
replace

However, the introduction of saliva tests will not result in the complete discontinuance of urine tests, especially since the immediate availability of results will continue to be indispensable to the everyday management of the prison – e.g. for random testing after inmates return from an excursion or a day release. Therefore, there is a need for a balanced concept, which, on one hand, determines when saliva tests and urine tests should be used, and, on the other hand, determines which parameters of a saliva sample should be subjected to analysis. The order volume will generally depend on this concept. If there is nationwide implementation, there will have to be an invitation to tender under the Federal Public Procurement Act (*Bundesvergabegesetz*) – even if costs are estimated conservatively. The nationwide invitation to tender should also result in a price reduction.

NPM includes outside  
opinions in assessment

In the view of the NPM, saliva testing has more advantages than disadvantages despite the shortcomings identified to date (higher costs and lack of immediate availability of the test results). This was also made clear at a symposium on the topic of “Narcotic Substances Act (*Suchtmittelgesetz*) in Practice”, in which the NPM participated, held at Technical University Vienna in December 2014.

As scientists and practitioners stated on that occasion, certain substances (e.g. cocaine, amphetamines) can be detected better and for a longer time in saliva. Other substances can be detected sooner in saliva than in urine, e.g. cannabis. Another advantage of the saliva test is that the test results cannot be “diluted” and therefore falsified by drinking a lot of water in advance.

Another problem is that the results of the urine strip test currently in use depend on the subjective observations of the person who evaluates the strip. The lighting conditions at the time also play a role in this. Moreover, quick test urine strips lack sufficient forensic validity. The latter can only be achieved by a special gas chromatographic investigation (GC/MS analysis) by a laboratory. Only this procedure yields a clear result.

In summary, the NPM cannot accept the argument based on the immediate availability of results when urine strip quick tests are used due to the short analysis time in the chemical laboratories and the option of electronic transmission of the results.

With respect to costs, it should be noted that costs are naturally higher if the test results are analysed by a chemical laboratory. However, if a forensically valid analysis (by a laboratory) is obtained, urine tests and saliva tests are almost equally cost-intensive.

- *Saliva tests should replace urine tests because they are less intrusive by nature.*
- *All institutions should make saliva tests available as soon as possible.*

### Catalogue of criteria for administrative penalties – NPM reiterates its demand

In last year's report (pp. 59 et seq.), the NPM noted major inequalities in punishments for administrative offences. This disparity is due to the fact that there are no guidelines for the imposition of sanctions.

No uniform practice of sanctions

According to the Federal Ministry of Justice, the diversity of possible administrative offences, and hence possible sanctions, speaks against such a catalogue. Moreover, in each individual case there is an option to complain taking legal remedy.

The opinion of the Federal Ministry of Justice was neither adequate nor convincing, especially in view of the preventive character of the catalogue of penalties being sought by the NPM. In the meantime, there has been a change in the law and, since 1 January 2014, regular courts hear appeals in administrative penalty proceedings instead of administrative authorities. Therefore, the NPM suggested that the established ruling practices of the relevant enforcement courts and judicial senates from the start of 2014 be analysed as a first step.

NPM suggests evaluation

What administrative penalty can be expected for what misconduct should be published and periodically updated in a form that is available to prisoners at all times. This makes the standards by which appeals will be decided transparent.

The Federal Ministry of Justice has now replied and stated that it considers the description of offences codified in Section 107 of the Penitentiary System Act as providing sufficient information. The Federal Ministry of Justice will still not take a closer look at the NPM's unaltered proposal for the provision of *ex-officio* services with respect to evaluation of the legal precedent of the enforcement senates in administrative penalty matters.

Ministry sees no need for information

To further develop this topic: in November 2013 a statement by Amnesty International entitled "Human rights considerations with respect to the sanctioning of administrative offences in correctional institutions" reached the NPM. In the section entitled "Determination of administrative penalties", Amnesty International strongly argues that it is not enough to clearly indicate what forms of conduct are deemed to be administrative offence. The nature and duration of the measures to be taken in response must also be established. Therefore, the NPM wishes to "keep the issue in sharp focus throughout Austria", as the paper ultimately advises.

Amnesty International also calls for action

At its last meeting of 2013, the Human Rights Advisory Council decided to establish a working group on this issue. The results of its deliberations are awaited. The NPM will then recommend further approaches to the Federal Ministry of Justice.

Human Rights Advisory Council establishes working group

- *The NPM persists in its demand that the prison administration illustrates the consequences of administrative offences.*
- *Providing this data to inmates is preventive in nature.*
- *This data should provide decision-makers with a background for establishing a uniform rulings practice.*

**Complaint management and information regarding the options for obtaining legal protection**

Complaint management required

In last year’s report (p. 60), the NPM demanded the systematic recording and assessment of complaints so that the prison administration can quickly identify enforcement deficits and promptly respond to them by taking suitable measures.

There is presently no technical means of obtaining meaningful data because complaints are not recorded in a systematic, comprehensive and structured manner. However, the Federal Ministry of Justice has since accepted the importance of complaint management as a source of information regarding deficits and options for improvement. The Federal Ministry of Justice, together with the prison administration, announced that they will seek “development options”.

Chronological sequence

According to the Federal Ministry of Justice, the completion of a nationwide integrated prison administration Module for administrative penalty proceedings is the prerequisite for a technical application in the form of a “complaint register”. A test run was scheduled for the autumn of 2014. The Module for administrative penalty proceedings should be placed in operation nationwide by mid-2015. By 2016, an electronic “complaint register” should be maintained in all institutions.

No information on new stage of appeal

During a visit to the Graz-Jakomini correctional institution, Commission 3 found that many inmates were unaware of the changes in the appeal options for administrative penalty proceedings and that recourse to the enforcement court has been available since 1 January 2014. Therefore, the commission informed the Federal Ministry of Justice of this matter.

According to the response letter, the inmate cell notice board was revised and updated at the start of 2014. However, this updated version was not sent to the institutions until September 2014. Until then, the inmates have been made aware of the prevailing legal situation verbally or in writing in the instruction about legal remedies.



The NPM cannot understand why the inmate cell notice boards were not updated until nine months after the change in the law took effect since the change was announced in the *Federal Law Gazette* in early September 2013. Until they were replaced, the remedies posted were likely to give inmates false information about the law.

Outdated inmate cells notice boards

- *The establishment of a complaint register must be vigorously pursued.*
- *Information notices must be revised as soon as possible if there is a change in the law.*

### Access to the Internet as an important part of re-socialisation

The NPM addressed the question of the inmate access to the Internet in greater depth in the reporting period.

If the Federal Ministry of Justice was reluctant last year (see the statements on p. 67 of the NPM Report 2013), it has now come to the conclusion that an expansion of the electronic infrastructure is desirable. Of course, any expansion can only occur within the bounds of the limited financial resources available.

Limited resources

The NPM agrees with the Federal Ministry of Justice that seclusion is the essence of the penal system and an extensive loss of freedom is part of incarceration. A necessary consequence of incarceration is the restriction of social intercourse with persons outside the correctional institution.

Weighing of interests is required

It is self-evident that uncontrolled transmission of electronic messages cannot be permitted due to the accompanying risk to the security and order of the correctional institution. The same applies to unrestricted use of the Internet.

Limited access

It is undisputed that the ability to use information and communication technologies is necessary for reintegration into society. This ability should not be lost during the period of imprisonment. Knowledge of the current state of technology should be acquired and enhanced.

Means of reintegration

The question of Internet access for inmates is not a problem limited to Austria alone.

In Germany, prisoners in eight prisons operate the servers of the Open University in Hagen for purposes of advanced training (at times only under supervision).

Different approaches throughout Europe

In Belgium project "PrisonCloud" provides inmates with limited but secure access to the Internet on a platform for work/employment and recreational activities. In view of the high financial expense associated with the establishment of inmate-cell-based Internet use in existing prison facilities,

the Austrian prison administration has decided not to pursue a “PrisonCloud” solution any further.

Only in Norway detention facilities have had limited Internet access since 2010. Only Internet pages in the categories of “education” and “news” can be retrieved. However, the system requires a great deal of maintenance. Such (additional) loads cannot be handled in the foreseeable future due to the very sparse resources of the Austrian prison administration.

Since both the European Prison Rules (Item 28.1) and the CPT Standards (CPT/Inf [2001] 16 Items 32, 33, 67 and CPT/Inf [99] 12 Item 3) consider offers of training and education to be a core task of the penal system, the use of computers and the Internet for learning purposes should also be permitted in Austrian penal institutions and facilities for the detention of mentally ill offenders. Therefore, the NPM welcomes the fact that the Austrian prison administration has operated a learning platform in cooperation with German penal institutions since 2012.

This learning platform is currently offered for educational purposes in twelve correctional institutions and has 160 learning programmes. Internet access is provided at certain times for training purposes as part of low security incarceration and in a project in one of the field offices of the Stein correctional institution in Oberfucha.

The NPM proposes that both projects be evaluated within a reasonable period of time and then adapted, if necessary, and that supervised Internet use be offered in additional correctional institutions.

- *The current practice of a learning platform, as offered in twelve correctional institutions, should be evaluated in the near future.*
- *Permanent steps must be taken to provide abuse-proof access to the Internet for continuing education purposes.*

### **2.5.3 Special medical facility at the Stein correctional institution – serious charges have been made**

Manifold criticism In May 2014, Commission 5 visited the Stein correctional institution. In particular, it addressed the healthcare provided at the special medical facility and to mentally ill offenders. The commission found that there was inadequate medical care, a shortage of medical personnel and a questionable understanding of nursing on the part of the nursing staff with respect to the inmates.

<p>Individual observations led to the conclusion that inmates in need of nursing care do not receive adequate instructions or active support from the nursing staff for their everyday care needs.</p>	Geriatric department
<p>The NPM considers it extremely disturbing that a detainee who suffered from faecal incontinence and had had an artificial outlet for the bowels for a long time received no instructions and no help with stoma care from the nursing staff. Rather the inmate relied on the support from fellow inmates.</p>	Inmates wasting away
<p>Another prisoner in a wheelchair was encountered. According to him, he had had a permanent catheter for five months. The urination did not function. According to the commission's visit report, a suprapubic catheter "had not yet been considered". Although he himself did not receive any help to mobilise, he attempted to help fellow prisoners, e.g. in changing incontinence pads.</p>	
<p>A third inmate showed clear signs of severe Alzheimer's dementia with tremors. He was also spatially and temporally disoriented.</p>	
<p>Overall, the visit to the special medical facility raised doubts as to whether the nursing care was conscientious and caring. Statements heard and entries in the medical records – such as "needs nappies" or "pesters the doctors and nurses all night" – suggest a contemptuous attitude of the staff toward the inmates and a dubious understanding of nursing care.</p>	Lack of empathy
<p>As the institution's physician admitted, he hardly visits the inmate cells due to lack of time. Due to the organisational overload, there is also too little time to speak with individual patients.</p>	Lack of time
<p>With respect to the need for additional nursing staff, the Federal Ministry of Justice stated that it was making an intensive effort to ensure comprehensive care to all inmates even when there are absences due to holidays or illnesses.</p>	
<p>The Federal Ministry of Justice rejected the criticism of nursing and medical care. It said that each of the inmates housed in the special medical facility received appropriate care because the nursing staff was on duty 24 hours a day. With respect to the individual findings mentioned, it was said that the appropriate treatment had been given and directives had been issued.</p>	
<p>How the healthcare and nursing care is ensured to inmates not housed in the special medical facility but who nevertheless have a great need for nursing care remains an open question.</p>	
<p>The statements of the Federal Ministry of Justice are difficult to reconcile with the observations made by the commission. Even though the NPM cannot yet make a definitive assessment on the basis of the information available: the fact that inmates with an acute need for nursing services for their daily physical tasks must rely on assistance from fellow inmates – due to a lack of capacity or support from the nursing staff – is completely unacceptable.</p>	Preliminary review

At the present time it does not appear that healthcare that is in conformity with basic rights is being provided by the special medical facility at the Stein correctional institution. If the special medical facility at the Stein correctional institution is continued, it needs permanent improvements in structure, personnel, nursing care and medical care in order to meet the minimum requirements of the basic right to health.

- *The NPM demands that nursing care be provided in a conscientious, caring and humane manner.*
- *It is recommended that the Federal Ministry of Justice quickly decides whether the special medical facility can be continued in this form.*

#### 2.5.4 Structural defects in the forensic department of the Rankweil regional hospital

Close quarters cause stress	<p>During a visit to the forensic station of Rankweil Regional Hospital, the commission observed a series of deficits. For example, the spatial situation was extremely precarious: a cell with up to four beds permitted no privacy; the individual daybeds were not even separated by visual cover.</p> <p>The corridor is the only common area and is merely about 8 m<sup>2</sup> in size. In addition, it is the only area where the patients can smoke. There is no outside or free area they can use.</p>
High potential for aggression	<p>The commission noted that this station sometimes housed persons under severe mental stress who had no certainty regarding further criminal proceedings or the duration of their stay in the hospital. The potential for aggression often manifested at a forensic station can be additionally intensified by the crowded spatial situation.</p>
Unnecessary safety hazards	<p>At the time of the visit, an ergo therapy room, which the personnel had to cross, contained items with which patients could endanger themselves or others.</p>
No green area	<p>There was no outdoor area or inner courtyard that would enable the persons being held there to be outside in the fresh air. This open space would prevent much aggression at the station and would be a significant improvement for the patients.</p>
Ministry denies responsibility	<p>Confronted with these deficits, the Federal Ministry of Justice pointed out the annual payments it made, but did not consider itself responsible for the specific conditions of detention and the facilities at the station. Moreover, all of the medical facilities used by the Federal Ministry of Justice are visited once a year by employees of the relevant department of the prison administration. However, neither the Federal Ministry of Justice nor the prison administration</p>

do function in a supervisory capacity in the narrower sense. Therefore, they could not respond to the specific questions raised.

The NPM does not accept this view. Under the Penitentiary System Act, mentally ill offenders must be housed in institutions or field offices specifically intended for this purpose. Alternatively, they can be assigned to a public psychiatric facility.

Assignment does not change attribution

Under Section 158 of the Penitentiary System Act, this must be a suitable facility. In this case, it is not merely a matter of correcting a dangerous situation discovered by the commission. Rather, whether the facility is (still) generally suitable and the contract with the prison system can be fulfilled has been called into question.

In the matter at hand, agreement was reached in the course of a contact meeting with the Federal Ministry of Justice that infrastructure-related matters at public psychiatric facilities are the responsibility of the Federal Ministry of Justice.

Responsibility finally accepted

- *If the Federal Ministry of Justice assigns a person in detention to a public psychiatric facility, the deficits in said infrastructure are attributable to the Ministry.*
- *If the Federal Ministry of Justice cannot ensure that these deficits are remedied, the inmate must be housed in a facility run by the Federal Ministry of Justice itself.*

### **2.5.5 Fixtures and fittings in the patients' rooms – forensic psychiatry station of the Sigmund Freud Regional Neurological and Psychiatric Hospital**

In late autumn 2013, the commission visited the forensic psychiatry station of the Sigmund Freud Regional Neurological and Psychiatric Hospital. The commission's final human rights assessment contains very encouraging remarks:

The therapeutic work and care were regarded as "highly professional". There has been no violence in recent years. As far as the commission could ascertain, the experienced interdisciplinary team performs "outstanding work". The employees treat each other well and with respect and are friendly with the patients. There is a relaxed atmosphere. The medical documentation and the maintenance of the documentation are described as "exemplary". Release management is rated "very good and comprehensive".

Treatment and care exemplary

- Need for more space** The fact that patients will still be housed in two six-bed rooms until the station is expanded is problematic from a human rights perspective. The team regrets this situation. All sides agree that improving the situation as quickly as possible is desirable. As a first step, partitions were set up between the beds to protect the privacy of the patients.
- Bed must be kept free** With respect to the demand to reduce occupancy, the Sigmund Freud Regional Neurological and Psychiatric Hospital stated that the number of patients in a room could be reduced, which would mean the loss of at least four nursing positions. Until the completion of the structural expansion, they are attempting to compensate for the deficit by keeping two beds in the six-bed rooms free for patients whose placement is interrupted. However, there is an obligation to offer these patients a bed again, if necessary. Since the goal is to provide the patients with “their own” bed again, the number of beds actually set up cannot be reduced at the present time.
- CPT also recommends single-patient rooms** The Federal Ministry of Justice regards this compromise with the standard of the CPT to be acceptable considering the renovation concept that is already in existence. It is true that the CPT did not comment on the living conditions at the Sigmund Freud Hospital during its last visit in February 2009. However, the CPT has repeatedly recommended the creation of a therapeutic environment with single rooms and small placement units (most recently after reviewing a forensic psychiatry station at a Lisbon hospital in July 2012, CPT/Inf [2013] 4).

In light of this, the NPM welcomes the efforts of the Federal Ministry of Justice to encourage the competent legal entity to quickly expand the forensic station at the Sigmund Freud Regional Neurological and Psychiatric Hospital.

➤ *If six-person rooms cannot be separated structurally, setting up mobile partitions can increase privacy.*

### **2.5.6 Deficits with respect to restraints – forensic department of the Hall Regional Hospital**

- Tied down and left alone** In the course of a visit to the forensic department of the Hall Regional Hospital, the commission found that a female patient had been restrained for over 14 hours. Thereupon, the commission inspected the nursing documentation. It was their conclusion that the documentation did not show that the nursing staff was continuously present during the restraint of the patient. This conclusion was supported by the fact that the patient had wet the bed repeatedly during the period of restraint and, according to her own statement, had to lie in the urine-soaked bed for about 30 minutes. The delegation also found that no mitigating measures had been documented.

In addition, there was no documentation of a debriefing session with the patient.

The delegation then visited the isolation room with the restraint bed. According to some commission members, this room had a “frightening character” and triggered associations with photos of “death row cells” in America.

Isolation room is reminiscent of „death row cells“

The commission proposed to the medical director of the facility and his deputy that the walls of the room be painted in a calming colour. In addition, it suggested placing a cover with a pleasing colour over the bed, which hides the straps and can be easily removed, if necessary.

The proposal was accepted and the walls of the room were painted green – to remind the patient of nature, have a calming effect and give a sense of safety. The bedspread that covers the straps is also green.

The commission was promised that the check list for authorising restraints and isolation will be revised in the near future and those points that the CPT considered mandatory will be added. Under the CPT standards (Item 43 et seq.), this includes the continuous presence of a trained employee during the period of restraint to provide therapeutic assistance. The technical video monitoring, which is provided, should also be mentioned on the check list. This should contain standards on how to watch the video monitor. Rules should be added with respect to the duration of the restraint and when the restraint order must be renewed by the physician. The check list should be supplemented to include provisions on employee training, the policy for filing complaints and the debriefing session. Moreover, the patient should be provided an opportunity to add his or her own comments. Finally, it should be guaranteed that a copy of this form sheet is provided to the patient.

Process organisation must be changed

The NPM points out that, under the case law of the European Court of Human Rights, any strapping of an inmate to a hospital bed may only last as long as absolutely necessary under the circumstances (ECHR 27 October 2003, Hénaf/France, Appl 65.436/01 No. 52).

Strict case law

The NPM recommended that a form be prepared with respect to “restrictions on the freedom of movement”. The form should instruct the ordering physician to describe the milder measures available in the individual case in detail and to list which milder measures had been tried without success in order to avoid this additional restriction of freedom. Here too, reference is made to the CPT standards, under which patients may only be restrained as a “last resort”.

Restraint as last resort

The form should also require documentation of any injuries to patients or staff so that they will be verifiable.

Alternatives must be documented

Form is being revised In this regard, the medical facilities authority stated that the Intranet form entitled “Restrictions on freedom of movement” is currently being revised by the Tyrolean hospital operating company TILAK with respect to the electronic medical history. This form will, of course, also be used at Station A6. The form is supposed to mention milder measures.

- *Strapping a patient to a hospital bed is only permitted when it is absolutely necessary due to the progression of the disease.*
- *The external conditions accompanying the restraint may not be frightening to the patient.*
- *During the period of restraint, this type of detention must be continually questioned.*
- *The form on “Restrictions on the freedom of movement”, recommended by the NPM, must be created.*

**2.5.7 Correct medication? - Garsten correctional institution**

Medication questioned In the summer of 2013, the commission found that 38 of the 64 inmates in detention for mentally ill offenders at Garsten correctional institution received 50 mg of Praxiten on the day of its visit. It was as difficult to understand this prescription as it was to understand why the anti-psychotic drug Zypadhera was being dispensed. Both were discussed with the institution’s psychiatrist.

Medical super-intendent visits institution At the recommendation of the NPM, the relevant department head at the prison administration and the medical superintendent made an inspection. The medical superintendent and the psychiatrist who worked at the institution discussed the prescriptions of psychiatric drugs criticised by the commission separately. As the Austrian Court of Auditors also concluded (Report 2014/15 Item 15.3), medication prescriptions can be verified in the future with the aid of the monthly controlling reports of *Bundesrechenzentrum GmbH* (the IT-provider for Federal Departments in Austria).

On-site enquiries In this case, the medical superintendent was able to verify that the psychiatric drugs were prescribed on the basis of the specifically diagnosed psychiatric syndromes in accordance with ICD 10. Obligatory follow-up visits will review whether the patients respond to the medications. If necessary, the therapy will be changed.

Final meeting with psychiatrist According to the medical superintendent, the administration of psychiatric drugs by the psychiatric service at Garsten correctional institution conforms to the principles of evidence-based medicine and has been discussed with the relevant professional bodies. In the opinion of the office of the medical superintendent, there were no identifiable irregularities. Nevertheless, the



NPM is of the opinion that the meeting with the physician contributed to sensitising her and making her aware of the problem.

- *Anomalies in the prescription of psychiatric drugs can be quickly detected with the aid of the “Medication Management” controlling module.*
- *The monthly reports are to be screened for prescription practices.*
- *If necessary, the office of the medical superintendent must ask the institution’s physician for clarification.*

### 2.5.8 Lack of ergo therapy for mentally ill offenders – Garsten correctional institution

In Garsten, the commission not only addressed the medication issue but also examine the care being offered. The commission found that an expansion of the therapy programme, particularly the introduction of ergo therapy, would be constructive.

Inadequate offering

In this regard, the management of the facility stated that there was no therapy operation until this year. Moreover, there is no financing for the costs of an ergo therapist. No additional personnel could be hired and, in particular, the budget would not be increased, e.g. for the additional hours for the psychiatric personnel proposed by the commission.

Lack of resources

The Federal Ministry of Justice stated that the “more than desirable” offering of ergo therapy as a key element of the treatment of mentally ill offenders is not possible due to current budget restrictions. Moreover, the additional care personnel needed could not be hired through the recruitment agency for justice supporting staff. In part, this range of services can be covered by the occupational therapy operation established at the start of the year, which occupies some inmates with handicrafts work.

Currently only a handicrafts group

The NPM states that this is only a temporary measure, which can cushion the existing deficit but not compensate for it. In particular, it must be ensured that possible therapies are not omitted because they go beyond the institution’s standardised offering in terms of costs and effort. Otherwise, the requirement of individualisation expressed in the Federal Constitutional Court’s decision as at 4 May 2011 (EuGRZ 2011, 297 et seq.) will not be met.

Activities do not meet needs

- *The state’s duty of care includes offering the best possible individualised care to the inmate with the aim of reducing their specific risk as quickly as possible.*
- *Ergo therapies may not be omitted.*

### 2.5.9 The furnishings of three-person inmate cells – Linz correctional institution

Two bunk beds in three-person cells During a visit to the Linz correctional institution in late summer 2013, the commission noted that three-person inmate cells were consistently furnished with two bunk beds, which – in combination with the arrangement of the windows, which did not permit inmates to look outside – intensified the impression of constriction.

Remodelling causes consolidation According to the Federal Ministry of Justice, the Linz correctional institution lost space for 35 male inmates due to the establishment of a department for female inmates. For this reason, two bunk beds were set up in each of the eight three-person inmate cells in Department 1 and eight three-person inmate cells in Department 2 (previously each of these inmate cells had a bunk bed and a single bed). The single beds were temporarily converted into bunk beds using a push-fit system. Each of these inmate cells has a total area of 19.5 m<sup>2</sup>, or 57.4 m<sup>3</sup>. Under the factual situation (occupancy), the prison administration is endeavouring to restore the original condition in the three-person inmate cells, i.e. one bunk bed and one single bed.

In the view of the NPM, the loss of inmate cells cannot justify setting up two bunk beds in three-person inmate cells of this size. Even if the room size permits, there must be sufficient natural light and fresh air supply in addition to the available space; see also the (CPT) Report on Austria from 15 to 25 February 2009, GZ 311363/2009, CPT/Inf(2015)5. Inmates must have the opportunity to spend a reasonable part of the day outside of the cell. The approach may be temporary, but having four persons occupy these inmate cells is not an appropriate placement at the Linz correctional institution due to the spatial constriction.

➤ *Furnishing a three-person inmate cell with two bunk beds should be avoided due to the possible overcrowding of the cell.*

### 2.5.10 Specially secured cells in questionable condition – Feldkirch correctional institution, Dornbirn field office

Abandoned inmate cell In the Dornbirn field office of the Feldkirch correctional institution the members of the commission noted two isolation cells in the basement, which, according to the commanding officer, were currently no longer in use. One isolation cell was being used to store cleaning agents.

Safety hazard The commission considered the condition of the two specially secured cells questionable. There were many corners and edges. If these inmate cells were occupied, the risk of injury would be great.

The Federal Ministry of Justice added that there were only inmates with relaxed sentences at the field office. There was no likelihood that they would be placed in a specially secured cell. In addition, the Penitentiary System Act imposes no obligation for every institution to have a specially secured cell.

When presented with the question, the Human Rights Advisory Council agreed with the opinion of the Federal Ministry of Justice. If there is, nevertheless, an incident, the inmate can be transferred to the main institution or a nearby hospital, if necessary, without undue delay.

Human Rights Advisory Council shares opinion of Ministry

In light of this, the NPM recommends that, when specially secured cells are no longer being used as such and no need for such cells is foreseen, these rooms should be rendered unfit for the placement of inmates (e.g. by removing the locks from the doors). They should also be removed from the cell layout plan.

Necessary precautions

- *Specially secured cells, which are not in use due to their accoutrements, should be rendered unusable.*
- *Finally, the room should be removed from the cell layout plan.*

### 2.5.11 Lack of lockable lockers and tables that are too big – Sonnberg correctional institution

At the Sonnberg correctional institution, the commission criticised the high number of cells with multiple beds (up to five beds), some of which were fully occupied. There are no lockable lockers in these inmate cells. The inmates have no ability to withdraw and no ability to secure their private items. This favours encroachments on other people's property.

Cells for multiple occupancy

The Federal Ministry of Justice conceded that there are inmate cells in the old building (the historical part of the castle) that are occupied by up to five persons. The inmates housed in this area are inmates with relaxed sentences. In these residential groups the cell doors are unlocked. The criticised lack of an ability to withdraw is countered by the greater freedom of movement permitted to the inmates.

Open detention does not compensate for all disadvantages

It may be true that inmates generally do not possess valuable items. Any such items would be held in deposit. This fact is as little relevant as the fact that there were seldom theft reports or similar charges in the past.

The interest in not having to be concerned for the whereabouts of private items is understandable, particularly units housing inmates with relaxed sentences. The argument that it is "not feasible" to make lockable boxes available for budgetary reasons, as well as for reasons of safety and order, is not convincing.

Concern for private property

The NPM recommends the purchase of lockable lockers, which can be opened by the prison guards with a master key. Such lockable boxes should, in particular, be provided where private property is at special risk due to a high turnover. This would also meet a demand that has repeatedly been made by the CPT (e.g. CPT/Inf (2010) 33: “Lockable space for their personal belongings”).

Visitor table too big In addition, the commission criticised the fact that the table used for “table visits” is much too large and creates a distance almost as striking as when inmates and the visitors are separated by a pane of glass. The Federal Ministry of Justice indicated that a new visitor centre will be constructed.

In this regard, the NPM cannot understand why the existing deficit cannot be quickly remedied by a simple improvement, such as replacing the table, which is too large.

- *The disadvantage of being assigned to a cell for multiple inmates can be mitigated by reducing the lock-up times.*
- *In these cases, it is all the more important that inmates be provided with lockable boxes.*
- *Tables that are too large prevent touching during visits. They should be replaced.*

### 2.5.12 Potentially suicidal inmate placed in single cell – Leoben correctional institution

In single detention despite the risk At Leoben correctional institution, the commission encountered a detainee awaiting trial who was placed in a single cell with real time video monitoring after threatening suicide.

The man suffers from a mental disorder that prevents placement with other inmates. When the inmate expressed an intention to commit suicide, he was moved to a single cell with real time video monitoring for almost two months.

Procedure when there is risk of suicide With the exception of Göllersdorf, there is currently a cell assignment programme in use at all institutions (VISCI – Viennese Instrument for Suicidality in Correctional Institutions). The programme identifies whether the particular person is suicidal (red), somewhat suicidal (orange) or stable (green). If the signal is “red”, interventions are made immediately. In this case, single detention is prohibited.

Another possibility is placement in a so-called “listener cell”. This means that a trustworthy and properly trained inmate is housed in the same cell with the possibly suicidal prisoner. If suicidal acts have already been attempted or

if the inmate is in an acute psychotic state and is a danger to himself and/or others, a temporary move to a video monitored security cell can be ordered in accordance with Section 103 (2) No. 4 of the Penitentiary System Act. Within 24 hours, the person at risk must be seen by a psychiatric physician, who will make a recommendation as to the inmate's further detention.

In the specific case, the inmate was examined by a psychiatric physician at 14-day intervals and treated with drugs. However, the risk of suicide could not be eliminated. Not until the inmate expressed reservations against his detention was he assigned to another single cell without video monitoring.

The NPM criticises the nature and duration of the detention in a single cell. In the opinion of the physician, the risk of suicide was a continuing one in this case. The VISCI assessment was in the "red" zone. Therefore, detention in a single cell, even one that is video monitored, is not a suitable type of placement to ensure that the potentially suicidal inmate is continuously observed over many weeks.

Continuous observation  
not guaranteed

If the special duty of care in these situations cannot be met in-house, the inmate must be immediately moved to a psychiatric institution.

- *A potentially suicidal inmate may not be housed in a single cell.*
- *Video monitoring does not rule out suicide by the person at risk during an unobserved moment.*

### 2.5.13 Mental health care after exposure to suicides and suicide attempts – Göllersdorf correctional institution

The commission visited Göllersdorf correctional institution due to the death of a person being held there and addressed the question of how persons being held and employees can be offered support in crisis situations. The commission reiterated its suggestion that employees who find a suicide victim not only receive short-term support after such a particularly stressful situation, but be required to receive ongoing supervision. Many people believe that it is a sign of failure if they need professional support. Deaths are often repressed and dismissed with cursory advice.

Fears are often  
repressed

The Federal Ministry of Justice took this criticism seriously and made reference to a directive from 2001. According to this directive, after events with lethal consequences, the affected employee is to be offered an initial counselling session within 24 hours and a second counselling session within 48 hours. The employees qualified to offer such counselling services (so called CISM counsellors) are required to actively bring these offerings to the affected person. It is also the agreed standard that the target persons have

Emergency assistance

no obligation to accept such offers of counselling. Participation is solely on a voluntary basis. Additional care, at the exclusive initiative of the affected employee, can be provided for up to six weeks after the incident.

**Individualised care** This approach, which is oriented toward the employee's individual needs, is more appropriate than a blanket obligation to participate in supervision. Experience shows that individual processing of stressful events differs greatly from person to person and a mandatory or dictated standardised form of processing stressful events is less meaningful and tailored to individual needs than the current approach.

A trained CISM counsellor is available at the Göllersdorf correctional institution. However, at the time of the incident, he was on holiday. As an alternative, follow-up care for an affected employee of Göllersdorf correctional institution was provided by a CISM counsellor from the Vienna-Josefstadt correctional institution after a slight delay.

**Education should help reduce prejudices** The Federal Ministry of Justice gave its assurance that any employee's reservations with respect to counselling would be countered through appropriate educational measures. For this purpose, suicide prevention in general was recently the topic of a relevant directive in 2012. Two seminars on suicide prevention were held in March 2013.

**Follow-up care for all affected persons** The NPM recommended a follow-up event this year, which was agreed upon. The subject matter of the event was follow-up care for employees and affected inmates. In the future, follow-up care will be provided to inmates and patients in any event.

- *Confrontations with suicide often lead to stress disorders long afterwards, which should be minimised through measures taken by the employer.*
- *The judiciary administration must make every effort to ensure that seeking psychotherapeutic care is not viewed as a weakness.*

#### 2.5.14 Harsh atmosphere – Vienna-Josefstadt correctional institution

**Insults and ridicule** During its visit to the Vienna-Josefstadt correctional institution in July 2014, the commission found that there was a harsh atmosphere in Department C 2. Inmates complained that prison guards acted in an unfriendly manner toward them. The inmates said that they had been repeatedly insulted by a cell block officer, who degraded them by imitating animal sounds.

The NPM recommended that the management of the facility immediately give appropriate instructions to this officer (these officers), which it did.

Under Section 22 of the Penitentiary System Act, prisoners are to be treated calmly, seriously and with respect for their sense of honour and human dignity. Hurtful or condescending treatment and statements are prohibited and are strongly condemned by the NPM.

Proper treatment is a statutory requirement

The professionalism of prison personnel requires that they be able to treat prisoners in a decent and humane manner and still deal with matters of security and order. In this regard, the management of the facility should encourage personnel to have a reasonable measure of trust and an expectation that prisoners will be willing to act properly. [Excerpt from the 11th annual report [CPT/Inf (2001) 16].

- *A condescending and insulting tone is an affront to human dignity.*
- *Proper methods of dealing with inmates are not only required by law, they should be a matter of course.*

### 2.5.15 Pictures of naked females in the charge office – Stein correctional institution

During a visit to the Stein correctional institution in May 2014, the commission noticed photos of naked females in a charge office. The NPM demanded the immediate removal of these pictures, since female prison guards could feel sexually harassed by such degrading or disrespectful portrayals.

Objectionable photos in charge office

The compromising pictures in the charge office were promptly removed and the prison warden was instructed to ensure that such pictures are not hung anywhere in the entire institution.

The dignity of men and women must be protected in the workplace. Conduct that affronts or impairs human dignity or intends to do so, particularly derogatory or harmful statements and provocative representations (posters, calendars, screen savers etc.), must be halted. The offence of sexual harassment refers not only to the protection of bodily integrity from unwanted sexual acts, but also to mental vulnerability. Consequently, posting pictures of naked females in the charge office can constitute sexual harassment.

Sexual harassment

- *Sexual harassment is an affront to human dignity. Derogatory or hurtful statements and depictions are also unacceptable and therefore must be avoided.*
- *The employer must ensure that the sexual autonomy, sexual integrity and privacy of employees are not endangered.*
- *Therefore, the employer must ensure that no pictures of naked females are hung in charge offices.*

### 2.5.16 Positive findings

#### Exemplary conduct by a prison guard – Stein correctional institution, Oberfucha field office

**Good atmosphere despite shabby premises** Eight prison guards and 29 male inmates. This is the occupancy of the Oberfucha field office near Krems. The inmate cells are sparse, shabby and cramped. However, inmates are able to individualise them and there are temporary room partitions. The crowded quarters are compensated for by great freedom of movement during the day.

**Respectful treatment** The tone taken with inmates and the consideration of personal circumstances appear to be exemplary. The tone is supportive and the inmates are treated with respect. The commission gained this impression during its visit to the correctional institution in August 2014.

**Best practice** Oberfucha provides evidence of how open detention can work. One particular case showed how well prison guards and inmates living together can function despite the different roles. The day before the commission's visit, an inmate complained about a painful toothache. Since the dentist was on holiday, the officer on duty drove the prisoner to a dentist in Herzogenburg the next day. All that was needed was a referral from the main institution, then the trip was made. He himself would "not want" to spend the weekend with a toothache. Therefore, he knew he should drive the inmate to the dentist.

**Example with important effect** For the NPM, this is an example of "best practice". The Federal Ministry of Justice was asked to pass this positive feedback on to the relevant prison guard.

This prison guard's attitude was also cited as being exemplary in talks given by the representatives of the NPM.

- *Personal commitment and respectful treatment of inmates are an indispensable part of humane incarceration.*
- *The prison administration should honour exemplary conduct.*



## 2.6 Police stations, police detention centres and barracks

### 2.6.1 Introduction

In the year under review, the commissions conducted 65 visits to police institutions. Of these, 24 visits were to police detention centres, including detention centres, 39 were to police stations and two visits were to other stations and departments. Whereas some deficits noted related solely to individual facilities, similar findings and observations by the commissions also brought systemic weaknesses in the conditions of police detention to light.

65 visits to police institutions

In many cases, facility management was able to eliminate less serious deficits immediately after the concluding meetings with the commissions. The readiness of the Federal Ministry of the Interior to cooperate with the NPM in developing solutions for structural problems was also positive. However – as in the previous year – some of the NPM's proposals were not implemented due to shortages of funds and personnel on the part of the relevant authorities.

The commissions conducted five visits to military barracks.

5 visits to barracks

### 2.6.2 System-related problem areas - police detention centres

#### Working group obtains first results

In its reports 2012 (pp. 25 et seq.) and 2013 (pp. 72 et seq.), the NPM reported on the structural deficits in the living conditions in police detention centres. In the course of investigative proceedings regarding the conditions of detention in police detention centres initiated in 2012, the NPM provided the Federal Ministry of the Interior with numerous proposals to improve the situation.

Thus, for example, the Federal Ministry of the Interior – following a suggestion from the NPM – reviewed the information sheets provided to inmates to determine whether they were readily understandable and revised their contents. After a lively written exchange between the NPM and the Federal Ministry of the Interior, the latter proposed to deploy a working group. Since March 2014, representatives of the Federal Ministry of the Interior and the NPM have been discussing selected problems for which there had been no satisfactory solution in the past.

Police detention centres generally serve as places of detention for persons in detention pending forced return and for police detainees and prisoners serving an administrative penalty. At the beginning, when the working group was being established, the Federal Ministry of the Interior reported on the introduction of a new concept for detention pending forced return. According to this, since the beginning of 2014 there are three categories of

Overall concept of detention pending forced return

police detention centres. In Category 1 police detention centres, there is no longer any detention pending forced return. In Category 2 police detention centres, detention pending forced return is only permitted for up to seven days. This includes the Eisenstadt, Klagenfurt, Linz, Graz, Innsbruck and Bludenz police detention centres. Category 3 police detention centres are devoted to longer term detention pending forced return (more than seven days). These include the Vienna and Salzburg police detention centres and the new Vordernberg detention centre. The latter is used solely for detention pending forced return (see also pp. 179 et seq. of this report). The former Leoben and Schwechat police detention centres are currently only being used as places for short-term detention. By reducing the number of places for detention pending forced return, the Federal Ministry of the Interior hopes to bring about a general improvement in the conditions of detention.

Standards for single cells

The working group examined single detention in detail, to the extent that this special security measure is ordered. The working group established uniform standards for detention in single cells. This includes all specially secured inmate cells under the Code of Conduct for Detention, i.e. tiled security cells, padded or rubberised security cells and other single cells. In the future, every police detention centre will have all three types of single cells in addition to communal cells. Persons may be confined in these cells (instead of normal detention in communal cells) only in exceptional cases and for as short a time as possible, taking the principle of proportionality into consideration.

The working group formulated specific standards for these single cells based on the following criteria: use, lighting, ventilation, calling capability, furnishings, technical and in-person monitoring of the cells and documentation. The Federal Ministry of the Interior dispelled the NPM's concerns with respect to the video monitoring of toilet areas in security cells (see NPM Report 2013, p. 82) by stating that images from these cell areas had been rendered unrecognisable by technical or mechanical means. Thus both the interest in maintaining security and the inmate's interest in protecting his or her privacy are adequately taken into account. Over the long term, the video monitoring of security cells in all police detention centres will be done independently of any light source by means of infra-red cameras with indistinct (pixelated) transmission of the toilets areas.

Open detention pending forced return

In the opinion of the NPM, there was a breakthrough with respect to the practice of detention pending forced return. The working group agreed that the general standard for detention pending forced return should be open detention. Under this system – after undergoing a medical examination and any necessary interrogation by the relevant authorities – persons being detained pending forced return shall be placed in open detention no later than 48 hours after admission to a police detention centre or detention centre. The working group formulated the goal of simplifying and extending the daily open hours in all open detention stations from 8 a.m. to 9 p.m.

The working group also agreed on future criteria for excluding persons in detention pending forced return from open detention stations. These criteria include the person constituting a danger to himself/herself or others, inability to get along in groups, presenting a health risk to others or hygienic reasons. The working group stressed that the possible exclusion of a person in detention pending forced return from open detention because he/she is on a hunger strike should not be a disciplinary measure, but should be for the purpose of providing more intensive therapeutic and medical care to the hunger striker. The working group also outlined the necessary criteria for relocating a person in detention pending forced return who is on a hunger strike as well as the further course of action and care. The working group deemed it important to create a relationship of trust between the hunger striker and external physicians – i.e. physicians not employed by the Ministry of the Interior.

The NPM considered the lack of technical training of the employees in police detention centres as a serious structural deficiency. It is therefore gratifying to hear that the Federal Ministry of the Interior has now promised to implement a basic training course, which all executive employees working in police detention centres must pass in the future. This basic training course should provide employees working in police detention centres with the technical, personal and social skills needed to provide high quality service in the area of police detention. It is anticipated that the basic training course will consist of a theoretical part lasting three weeks and a practical part lasting one week. The working group shall discuss the organisation and content of the training sessions further. The NPM has suggested including the topics of suicide prevention and treatment of persons with mental disorders in the basic training.

Training of personnel

As of the editorial deadline for this report, no definitive solution could be found for other matters discussed by the working group, such as the improvement of work and activity opportunities for inmates, the creation of alternative visiting modalities (more table visits) and the general extension of visiting hours at police detention centres.

In the opinion of the NPM, the joint development of solutions for complex and, at times, long-standing problems has been working well. Therefore, the working group will continue its activities in 2015. The Federal Ministry of the Interior could not set a specific date for full implementation of the standards developed by the working group at this time, since implementation of the new standards must be preceded by amendments to the detention regulations as well as structural and organisational changes.

Continuation of the working group

### Placing prisoners into security cells with insufficient substantiation

Repeated criticism  
of insufficient  
substantiation

During visits to the Linz and Steyr police detention centres in the reporting period, the commission noted many serious deficits in the documentation and substantiation for placing prisoners into specially secured cells (security cells). In many cases, the documentation contained insufficient or no substantiation of whether the prerequisites for placement into a specially secured cell under the Code of Conduct for Detention had been met. The commission also criticised serious divergences between the medical documentation and the documentation for the measures taken in some cases.

This raises great concern with respect to the constitutionally guaranteed right to personal freedom since only that degree of deprivation of freedom that is absolutely necessary is allowed, and detention may not be made more restrictive without detailed substantiation. Therefore, the NPM considers it to be absolutely necessary to exercise a special degree of care in substantiating the decision to place a prisoner into a specially secured cell.

The commission found it noteworthy that placements into specially secured cells were frequently made due to fear that the prisoner was a danger to himself and/or to property. In this context, the treatment of highly inebriated, substance-impaired and mentally ill persons must be scrutinised. Alcoholic intoxication and the excited state caused by alcoholisation are mental syndromes. Therefore, the treatment of persons affected in this way should be within the competence of a clinic specialising in such afflictions.

A physician's recommendation of close observation in a specially secured cell cannot replace the necessary competent specialised diagnosis and treatment of the disease. The failure to provide medical care in these cases is problematic in light of the state's special duty of care when it deprives persons of their freedom. Moreover, in such cases, the principle of equivalent healthcare, demanded by the CPT (see CPT standards, p. 94, margin no. 32), is violated.

Strict requirements for  
documentation

Based on the findings of the commission, a request was made to the Federal Ministry of the Interior to strongly remind police stations that the grounds under the Code of Conduct for Detention for placing a prisoner into a specially secured cell must be precisely, carefully and clearly documented in each individual case. In addition, the NPM believed it was necessary to sensitise personnel to the fact that competent specialised diagnosis and treatment must, if necessary, be ensured to prisoners that are a danger to themselves and/or to property or when dealing with highly inebriated, substance-impaired or mentally disordered persons.

Ministry orders training

In response to the criticism of the NPM, the Federal Ministry of the Interior required employees working in Upper Austrian police detention centres to be sensitised to the need for written substantiation when prisoners are

placed into specially secured cells and the need to guarantee medical care to these persons. According to the Federal Ministry of the Interior, the police department of Upper Austria met with the commanders of the Linz, Wels and Steyr police detention centres in June 2014. In July 2014, selected employees of these police detention centres received appropriate training. Since then, all of the employees of police detention centres of Upper Austria have received such training.

The NPM considers these training and sensitisation measures to be an important step in ensuring that legal requirements for the detention of prisoners in specially secured cells and the documentation thereof are observed in the future. It can only be hoped that the measures already taken result in a permanent increase in the quality of the substantiation and documentation of the placement of prisoners into security cells.

In 2012 – when faced with the question of whether persons impaired by addictive drugs are fit to undergo detention – the NPM proposed a thorough reconsideration of the placement of inebriated, substance-impaired and mentally ill persons and persons who are a danger to themselves into specially secured cells. The Federal Ministry of the Interior announced that it would develop a guideline elaborating a desirable approach so that the healthcare needed by such persons is adequately taken into account in the future. Unfortunately, the Federal Ministry of the Interior has been unable to implement its announced policy thus far. In justification, the Ministry stated that the development of such a practice guideline is closely related to the revision of the guideline for police medical service and the Code of Conduct for Detention.

Substance-impaired and mentally ill persons

However, the current practice shows that it is urgent for the Federal Ministry of the Interior to reconsider its dealings with inebriated, substance-impaired and mentally disordered persons and prisoners who are a danger to themselves. The development of criteria for the medically necessary transfer of such persons to specialised clinics instead of their placement into specially secured cells could minimise the risk of jeopardising the health of this particularly vulnerable group of persons by making a bad decision. Therefore, the NPM will continue to urge such a solution.

Practice guideline must still be developed

- *Under the detention regulations, the reason for placing a prisoner into a specially secured cell must be documented in each individual case.*
- *A guideline must be developed, which takes the healthcare of inebriated, substance-impaired, and mentally ill persons and persons who are a danger to themselves into account.*

### Inadequate partitioning of toilet areas in cells for multiple inmates

Tow-person cells  
in Salzburg police  
detention centre

In the course of their visits to the Salzburg police detention centre, the commission criticised the fact that the toilet area in two-person cells is only separated from the rest of the cell by a partition so that the toilet area can be seen from the side. The commission found the partial walling off of toilet areas (without doors) to be problematic since a prisoner may be observed by a fellow prisoner or a guard while relieving himself. This would constitute a violation of the right of privacy.

In this regard, the Federal Ministry of the Interior stated that renovating the 43 cells at the Salzburg police detention centre (by building walls, installing doors and then installing flooring and painting each cell) is not feasible under the budget. If a prisoner believes that his privacy is being invaded, he can make an express request to use a two-person cell alone – if there is free capacity. The Federal Ministry of the Interior stressed that, in general, police detention centres always respect a prisoner's desire to use a cell for multiple inmates alone, as long as the number of persons housed at the Salzburg police detention centre permits and there are no countervailing concerns.

Eight-person cells in  
Steyr police detention  
centre

Also at the Steyr police detention centre, the commission found that the toilet in a cell occupied by six prisoners serving an administrative penalty was not walled in on all sides at the time of the visit. Moreover, the prisoners' toilet in the eight-person cell in the second upper floor is walled in all directions and has a door but it is open at the top. It is humiliating and degrading for prisoners to have to relieve themselves in such a way that their fellow prisoners are directly confronted with smells and/or noises. Therefore, the NPM asked the Federal Ministry of the Interior to take the necessary structural measures as quickly as possible to separate the toilet from the rest of the cell at the top as well.

The Federal Ministry of the Interior rejected the suggestion of the NPM to extend the toilet wall to reach the ceiling. On one hand, such a structural change would prevent any ventilation of the toilet area. On the other hand, extending the wall would be too expensive due to the historic construction of the ceilings at the Steyr police detention centre. Moreover, the space available at the Steyr police detention centres does not permit the cell in question to be occupied by one person.

However, the Steyr police detention centre has given its assurance that the cell will only be occupied by a maximum of six persons in the future. Moreover, upon request, a person may, if there are adequate resources, be moved to a single cell or given sole use of a cell for multiple inmates. If a prisoner asks to be alone in a cell and an appropriate inmate cell is free, the request will be granted. The overall renovation of the Linz police detention centre is of particular interest here, especially since most detentions take place in the Linz central area. Thought is being given to closing down other detention areas,

particularly the Steyr police detention centre, after the overall renovation of the Linz police detention centre is completed.

In principle, the NPM welcomes the option – raised by the Federal Ministry of the Interior – for a prisoner to make sole use of a cell for multiple inmates if he expressly requests this and there is free capacity. However, this does not change the fact that the semi-partitioning of the toilet areas in cells for multiple inmates does not fully meet the standards developed by the CPT (CPT Standards, p. 18, margin no. 49; Finland Report of 11 May 1999, paras. 72, 73).

In cells occupied by multiple persons, the toilets should be walled in on all sides. The structural deficits of the toilet areas, which the Federal Ministry of the Interior does not intend to eliminate – primarily for budgetary reasons – can result in a (potential) infringement of the privacy rights of the affected persons, and therefore the NPM feels obliged to criticise this situation. Moreover, the assignment of a cell for multiple inmates to an individual person, which is currently a possibility, can only serve as an interim solution, which does not eliminate the cause of the problem. In addition, misunderstandings can arise in communications with persons who speak foreign languages – even if appropriate efforts are made – and there is no adequate assurance that the affected persons will be made aware of the possibility of single use of cells for multiple inmates.

Infringement of the right to privacy

Moreover, the occupancy of the Salzburg police detention centre and the Steyr police detention centre can quickly change and this could exacerbate the basic problem of the failure to protect the right of personal privacy. In addition, the spatial resources of the Steyr police detention centre apparently do not permit the cell in question to be occupied by only one person at the moment. Since every individual prisoner has a right to the protection of his personal privacy, the assurance of the Federal Ministry of the Interior that the aforementioned eight-person cell will “only” be occupied by six persons does not dispel the concerns of the NPM.

At the Graz police detention centre, the NPM has already criticised repeatedly that toilets in cells for multiple inmates are only separated from the rest of the cell by doors that are not fully closed off. The Federal Ministry of the Interior considered completely walled in toilets; however, there has been no implementation thus far. Most recently, the Ministry stated that it had obtained offers to partition the toilet areas up to the ceilings. However, since the offers needed to be corrected, the Federal Ministry of the Interior could not name a specific date by which the construction measures would be implemented. The NPM welcomes the actions of the Federal Ministry of the Interior and will await the implementation of the structural measures.

Inmate cells at Graz police detention centre

No complaints about  
Linz police detention  
centre

In the Linz police detention centre, the toilets in many cells are also not (completely) walled in. In some cases, there is not even a curtain as visual protection. In this case, the Federal Ministry of the Interior gave its assurance that inmate cells in which the toilet is not walled off will not be occupied by more than one person until structural improvements have been made. Based on this assurance by the Federal Ministry of the Interior, the the NPM will – for the time being – not voice any criticism.

- *The toilet areas in the two-person cells at the Salzburg police detention centre must be structurally separated.*
- *The toilet area in the eight-person cell at the Steyr police detention centre must be structurally separated.*
- *The toilet areas in the cells for multiple inmates at the Graz police detention centre must be structurally separated.*
- *The cells for multiple inmates at the Linz police detention centre without (fully) walled in toilet areas shall not house more than one prisoner until they have been renovated.*

#### Communication during medical examinations

Good knowledge  
of language  
indispensable

In the course of a visit to the Innsbruck police detention centre, the commission gave intensive scrutiny to communication between physicians and prisoners. According to the recommendations of the CPT, special attention should be paid to the physical and mental condition of prisoners in detention facilities.

Above all, good communication between physicians and prisoners is necessary for a proper assessment of the state of their health. An assessment of the mental state of a prisoner requires a precise verbal exchange with the prisoner being examined. However, this can only be conducted in a language that the examiner and the examinee have sufficiently mastered. Otherwise, an interpreter or a bilingual person must be deployed. Knowledge of the so-called “small talk” vocabulary of a language is not sufficient for the examiner or the examinee if a thorough examination is to be conducted.

When perusing the patient records of all of the persons detained at the Innsbruck police detention centre at the time of the visit, the commission noted that no interpreter or bilingual person had been consistently deployed for four prisoners whose native language was not German. However, the NPM considers the deployment of an interpreter – or at least a bilingual person – to always be indispensable when conducting medical examinations of detainees who do not speak adequate German.



The commission also noted a need for improvement in the formulation of Detention Log III, which must be maintained for new admissions, and which must, *inter alia*, contain a notation if an interpreter or bilingual person is deployed. To date it is not evident whether the police physician deployed an interpreter or just some other bilingual person in the specific case. Therefore, the NPM suggested several changes to Detention Log III.

Changes to the detention log

At the intake of a prisoner, a medical case history sheet (questionnaire) must be filled out for him or her. This sheet contains numerous medical terms, which can only be understood by someone with a good command of the language. A self-assessment or inflated self-assessment provided by a detained person can result in a prisoner providing false information about the state of his own health because he does not correctly understand the medical terms. For this reason, the NPM suggested that every detained person should automatically receive the medical case history sheet in his or her own native language – regardless of his or her knowledge of basic, everyday German.

Case history sheet should be in native language

The Federal Ministry of the Interior stressed that police and prison authorities make every effort to ensure proper communication between medical staff and non-German-speaking detainees. If necessary, physicians must bring in interpreters when assessing the person's fitness to undergo detention or other medical questions.

Interpreters versus bilingual persons

In practice, a three-stage process is used: 1. enlisting the assistance of fellow prisoners, 2. enlisting the services of employees charged with assisting persons in detention pending forced return or with repatriation counselling, and 3. enlisting the services of interpreters. According to the Federal Ministry of the Interior, this system has proven its worth thus far – when individual requirements are taken into account. Therefore, the Federal Ministry of the Interior does not intend to enlist the assistance of professional interpreters for medical examinations on an exclusive or even a more frequent basis. Of course, bilingual persons (e.g. relatives, fellow prisoners or employees charged with assisting persons in detention pending forced return or with repatriation counselling), who are utilised for medical examinations, are not subject to any duty of confidentiality with respect to health-related patient data. However, the Federal Ministry of the Interior stressed that such bilingual persons may only be deployed with the consent of the affected prisoner.

In this regard, the Federal Ministry of the Interior also informed the NPM of an advanced training event held in June 2014 with 23 participants from all of the *Länder*. This event again sensitised police physicians to the necessity of a precise verbal exchange between the physician and the person being examined and the need to enlist the assistance of interpreters or bilingual persons.

The Federal Ministry of the Interior ordered the inclusion of the following items in Detention Log III: 1. the distinction between deploying an interpreter and a bilingual person, 2. the full name of the interpreter or bilingual person, 3. the consent of the prisoner to the deployment of a bilingual person and his awareness that a bilingual person has no duty of confidentiality. The Federal Ministry of the Interior also considered the suggestion of the NPM that prisoners always be given the case history sheets in their native language in the future to be valuable advice.

Ministry implements proposals to large extent

It is gratifying to note that the Federal Ministry of the Interior was willing to implement almost all of the proposals of the NPM. In the view of the NPM, the use of the three-stage process described by the Federal Ministry of the Interior seems likely to ensure good verbal communication between physicians and prisoners. The NPM also sees the ongoing sensitisation of police physicians as an important step toward avoiding communications deficits and misunderstandings in the course of medical examinations.

The version of Detention Log III newly revised by the Federal Ministry of the Interior should now make the fact whether interpreters or bilingual persons are deployed for medical examinations clear and transparent. More precise information from prisoners in the case history sheets which are provided to them in their native languages will contribute to a better informed assessment of the health status of detained persons by police physicians in the future. The NPM hopes that the physicians working in police detention centres are aware of their responsibility to make a proper assessment of the health status of prisoners, which always presupposes good verbal communication.

- *An interpreter or a bilingual person must be deployed when conducting a medical examination of a non-German-speaking detainee.*
- *Information regarding the deployment of an interpreter or a bilingual person must be documented in the detention logs.*
- *Every prisoner must be provided with the medical case history sheet in his or her native language regardless of any knowledge of German.*

### 2.6.3 First impressions of the new Vordernberg detention centre

During the last reporting year, the Federal Ministry of the Interior informed the NPM of the construction of a new detention centre in Vordernberg devoted exclusively to detention pending forced return. With the Vordernberg detention centre, which is designed for 200 prisoners, the Federal Ministry of the Interior sought to reform detention pending forced return in line with the latest knowledge and standards (see NPM Report 2013, p. 73). The Vordernberg detention centre was placed in operation after receipt of the workplace authorisation on 28 February 2014.

Detention centre operational

In April 2014, the competent commission made an announced first visit to the Vordernberg detention centre. In the course of this visit, there was also a detailed round table discussion with the managerial staff of the Vordernberg detention centre. The commission saw the work climate and the respectful treatment of detainees as very positive. The commission sensed that the staff was highly motivated to help shape this innovative project and work together to provide good service. The commission was also impressed by the spacious architectural design and the fixtures and fittings in the building. In many ways, the commission recognised the efforts of the Federal Ministry of the Interior to design and organise detention pending forced return in accordance with modern standards that protect human rights (e.g. placement into large, well-designed residential units, a broad spectrum of recreational opportunities, psycho-social care, separation of the diagnostic and curative activities of physicians and the use of qualified healthcare personnel, etc.).

The staff of the Vordernberg detention centre stressed, on one hand, the constructive collaboration between the police and the private security company G4S, and, on the other hand, the clear division of tasks and authority between them. However, the commission will only be able to judge the practical implementation of the division of work between the police and G4S in the course of additional visits.

Collaboration between police and G4S

At the concluding meeting, the commission formulated several proposals for improvement. Documentation of all the activities engaged in and the measures taken by the G4S personnel would increase transparency and accountability. The commission also considers it important that retrievable information be quickly translated and made available in the relevant (27) languages. The commission criticised the fact that prisoners must surrender their mobile phones. Finally, the commission expressed its concern that prisoners should be promptly released or given into the care of Caritas after termination of detention pending forced return.

Proposal for improvement

During its second visit in August 2014, the commission rated the living conditions at the Vordernberg detention centre as generally good and found no serious irregularities. During the concluding meeting, the commission still made several recommendations. The manager of the Vordernberg detention

Access to information

centre and the manager of G4S made some promises in this regard, and the commission hopes to see their implementation in the course of follow-up visits.

During its visit in December 2014, the commission gave intensive scrutiny to the access of prisoners to information. It was particularly critical of the inadequate deployment by the staff of professional interpreters, the poor information provided to prisoners regarding their ability to contact legal advisors, the prohibition on the use of the Internet and mobile phones by prisoners and the segregation of hunger-striking prisoners in their own group. The commission also recognised the need for staff training in the area of identifying and treating potential victims of human trafficking.

The NPM confronted the Federal Ministry of the Interior with these points of criticism. At the editorial close for this report, the Ministry had not responded.

- *Documentation of all activities engaged in and measures taken by G4S personnel.*
- *Quick translation of the available information into 27 languages.*
- *Prompt release and placement in the care of Caritas after termination of detention pending forced return.*

#### **2.6.4 Klagenfurt police detention centre – no social area for prisoners serving an administrative penalty**

On the occasion of its visit to the Klagenfurt police detention centre, the commission criticised the conditions of detention for prisoners serving an administrative penalty. The commission found it problematic that prisoners serving an administrative penalty held in closed detention have no access to a social area. Moreover, the commission determined that the activities available to them within the cell are very limited (games, reading), especially since there were still no electrical outlets for radios and TVs at the time of the visit.

No money for a social area

The Federal Ministry of the Interior responded that there is currently no money in the budget to renovate the Klagenfurt police detention centre so as to build a social area. In the absence of sufficient capacity, no space in social areas can be devoted to prisoners serving an administrative penalty. However, the police detention centre will not only provide them with games and reading materials but also with battery-operated electronic equipment and training materials for sporting activities from their stocks.

The NPM finds it very regrettable that the Federal Ministry of the Interior sees no possibility for prisoners serving an administrative penalty to make use of a social area. The fact that they can currently engage in sports activities only in the cell areas is also relevant in this regard. The NPM realises that the Federal Ministry of the Interior must remain within its budgetary constraints. However, prisoners serving an administrative penalty are often confined for long periods of time, which are only interrupted by one hour of outdoor exercise per day and occasional visits, telephone calls or housework.

NPM recommends renovation

The NPM places great value on providing sufficient recreational activities and opportunities for social contact to prisoners (e.g. for conversation, parlour games, joint sports activities, etc.) in order to improve the conditions of detention outside of lock-up times. The Federal Ministry of the Interior should endeavour to renovate the Klagenfurt police detention centre by constructing a social area for prisoners serving an administrative penalty and should make this a priority – including in terms of the budget.

It is gratifying to hear that – according to information provided by the Federal Ministry of the Interior – the 2009 recommendation of the CPT with respect to equipping cells with electrical outlets has been implemented. According to that information, all ten cells in the closed detention area have now been equipped with a switchable electrical outlet.

Equipping cells with electrical outlets

The NPM welcomes the fact that prisoners detained in the closed detention area at least have further access to information and entertainment in this respect – in addition to the use of battery-operated equipment (e.g. radios) and access to centralised radio equipment (the house radio).

- ***A social area for prisoners serving an administrative penalty must be constructed in the Klagenfurt police detention centre.***

### 2.6.5 Linz police detention centre – repeated criticism of hygiene standards and the wretched condition of the baths

**Uncleanliness and pests** On the occasion of a visit made by the commission in 2012, parts of the Linz police detention centre were very dirty; particularly in the security cells. The filth observed, the unpleasant smells and the strong presence of pests (drain flies) indicated inadequate cleaning. The baths gave the impression of being old and very worn-out. During a recent visit to the Linz police detention centre in 2013, the commission was unable to find any improvement in hygiene conditions as compared to the situation found during the previous visit.

In reaction to this criticism, the Federal Ministry of the Interior hired a cleaning company to clean and disinfect some of the cells and stations. In addition, the day cells were painted. The Federal Ministry of the Interior instructed the management of the police detention centre to ensure proper cleaning in the future.

**Wretched condition of the baths** In the course of a visit in 2014, the commission reiterated its criticism of the poor condition of the baths. At the time of the visit, the shower heads in the bath at the female station were so calcified that water sprayed in all directions. The commission also criticised the fact that there was only cold water in the cells.

**Total renovation as a possible solution?** Thereupon, the Federal Ministry of the Interior had the showers repaired (replacement of the shower heads) and had their functions more closely monitored (especially the direction in which the water sprayed). In general, the Federal Ministry of the Interior stated that the baths at the Linz police detention centre are in a condition that reflects their age. The bath at Station A has already been closed due to its wretched condition. Moreover, the Ministry intends to eliminate existing defects in the course of a planned total renovation of the Linz police detention centre. Furthermore, the Federal Ministry of the Interior confirmed that the cells at the Linz police detention centre only have a cold water line. No change will be made until the planned total renovation. However, the prisoners at the Linz police detention centre will be given daily access to restroom sinks with warm water connections for the purpose of washing their bodies.

**TV sets for prisoners** On the positive side, it should be noted that both day cells at Stations A and D of the Linz police detention centre have television sets. Following criticism by the NPM regarding the limited recreational opportunities for prisoners, the police department of Upper Austria provided an additional television set for Station B. In view of the recreational situation at the Linz police detention centre, about which the commission has made a general complaint, the NPM welcomes this measure.

At the suggestion of the NPM, the police department of Upper Austria conducted an evaluation of the personnel situation and ordered the secondment of three employees to the Linz police detention centre. The NPM considers this measure – which will hopefully be in effect over the long term – to be very important in order to improve the personnel situation at the Linz police detention centre, particularly the understaffing of the centre mentioned by the employees.

Improvement in the situation of personnel

- *The Linz police detention centre must be cleaned regularly and at proper intervals.*
- *The showers must be checked regularly (particularly the direction in which the shower water sprays) and repaired, if necessary (replacement of shower heads).*
- *The prisoners must be given daily access to restroom sinks with warm water connections.*

### 2.6.6 Positive findings

**The Vordernberg detention centre is a modern facility for detention pending forced return**

In the opinion of the NPM, the construction of the Vordernberg detention centre, which was placed into operation in February 2014, was a success. The commission was most impressed by the spacious architectural design and the fixtures and fittings for the building. In many ways, the commission recognised the efforts of the Federal Ministry of the Interior to design and organise detention pending forced return in accordance with modern standards that protect human rights (e.g. placement into large, well-designed residential units, a broad spectrum of recreational opportunities, psycho-social care, separation of the diagnostic and curative activities of physicians and the use of qualified healthcare personnel, etc.).

Modern facility for detention pending forced return

### **Collaboration between the NPM and the Federal Ministry of the Interior**

The NPM found its collaboration with the Federal Ministry of the Interior – in the working group, which has met regularly since March 2014 – to be very constructive. The experience has shown that even complex problems that have, at times, remained unresolved for years, can be solved by a personal exchange with representatives of the Federal Ministry of the Interior. Without the willingness of the Federal Ministry of the Interior to move closer to the views of the NPM and give up an initially negative attitude toward the recommendations of the NPM, it would not have been possible

Working group with Ministry

to raise standards at the police detention centres in terms of human rights. The technical expertise and knowledge of everyday prison life held by those participating in the working group were as decisive a factor in the success obtained as was the good climate for discussion. In light of this positive experience, additional joint working groups for clearly defined topics seem appropriate.

### **The personal commitment of the employees**

Small steps with a  
great effect

The dedicated employees at police detention centres also deserve praise. The commissions continually report on employees at police detention centres who go beyond their professional obligations and demonstrate a personal commitment to improving the conditions of detention. The dedication of many employees is demonstrated by obtaining games and reading materials for the prisoners or by their especially considerate and respectful treatment of prisoners. A prerequisite for humane detention, which should not be underestimated, is for the employees at police detention centres to not become frustrated despite challenging and at times very stressful activities and to maintain their empathy toward the prisoners.

## **2.6.7 System-related problem areas - police stations**

### **Inadequate documentation of detention**

During their visits, the commissions routinely inspect the detention books and detention logs at the respective police stations. Deprivations of liberty must be fully documented. If affected persons are required to sign detention logs as a means of protecting their rights, a signature should actually be obtained or the refusal to sign should be documented. Special measures, such as the dates on which handcuffs are placed on the prisoner and removed from the prisoner must be fully documented and the justification should be noted if a prisoner is handcuffed for an unusually long period of time.

„Verifiable“ information  
regarding prisoner  
rights

In the event of a deprivation of liberty, the detained person is entitled to certain minimum rights (notification, information). Otherwise, his right to liberty is infringed. Public security officers must inform affected persons of the right of notification. Every detained person must receive verifiable instructions regarding his/her rights to notification and information. Such instructions are verifiable if they are appropriately documented. In this way, the extent to which such instructions were actually given can be reviewed after the fact. Likewise, any claim of individual rights or waiver of individual rights by the detainee must be signed by hand and thus expressly documented. If a person



who has been granted his/her rights refuses to sign, this must be documented by the relevant police officer to satisfy the requirement of documentation.

As already stated in the NPM Report 2013 (pp. 76 et seq.), the commissions again criticised many deficits in the documentation during their visits. In the past, the NPM has motivated the Federal Ministry of the Interior to take consciousness-raising measures with individual police officers and ensure that the requirement of precise documentation is stressed through training and educational sessions.

During the reporting period, the NPM again observed deficits, such as the lack of signatures by detainees and intervening police officers or information on the time of day and place of the detention. Generally, the commissions can clear up documentation deficits directly with the commander on duty at the concluding meetings.

Clarification at concluding meetings

➤ *Detention at police stations must be fully and verifiably documented.*

#### Inadequate equipment at police stations

During visits, the commissions observed various deficits in the equipment at police stations. These findings during the reporting period included unsatisfactory heating and ventilation systems, no equipment or defective equipment (obsolete radios) or deficits in housekeeping or hygiene. Such complaints are regularly made during the inspections of the NPM, and corrective action is promised by the police stations.

Here, too, the commissions often use the concluding meeting to discuss problems on site and obtain improvements. Only if there is no promise to resolve the problem does the NPM correspond with the Federal Ministry of the Interior after the visit. These are generally problems that require a large budgetary commitment or a commitment of personnel for their elimination.

Local police station promises to eliminate deficits in general

➤ *The police stations must be hygienic, well-kept and equipped with functioning heating systems.*

### 2.6.8 Call bells in detention rooms that can be switched off

During a visit to the Lehen police station, the commission found that the call bell in a detention room had been deactivated. Under the Code of Conduct for Detention, inmate cells are to be equipped with suitable facilities for contacting the guards. This requirement is generally satisfied by installing a call bell system.

**Contacting the guards** The NPM finds it completely understandable that certain retractable persons can seriously disrupt operations by continuously utilising the call bell system. However, the ability to switch off the call bell system is problematic from a human rights perspective because incarcerated persons will then have no ability to contact the guards. If the bell is switched off, there can be no response to the needs of the prisoners and to any emergency situations, particularly – as in this specific case – if the guards forget to (re-)activate the call bell system.

Therefore, the solution to this problem is not to switch the call bell system off and thereby circumvent the provisions of law. In general, the call bell in a detention room should always be activated and acoustically audible. Under CPT standards (p. 16, margin no. 48), persons in police custody must always be able to contact the guards.

**Deactivation no longer possible in the future** In agreement with the Federal Ministry of the Interior, the police department of Salzburg stated that no call bells capable of being switched off will be installed in the future and that the call bells currently in use will be gradually removed. This will guarantee that it will be technically impossible to switch call bells off in the future. If deactivation is still possible during the transitional period, the call bells must remain activated at all times.

➤ *A permanently activated call bell system must be provided so that persons in police custody can always contact the guards.*

### 2.6.9 Voluntary stay in a locked room

During a visit to the Bad Ischl police station, the commission determined that a person was offered the option of resting in a detention room between two interrogations. During this period of time, the detention room was locked.

**Voluntary choice or imprisonment?** The NPM considers “voluntary” stays in locked detention rooms to be problematic. It seems questionable whether a free-will decision can be made in the course of official actions against accused persons in connection with criminal proceedings or whether consent will be given under psychological duress due to a lack of an alternative course of action. It is difficult to

differentiate this from imprisonment, i.e. from deprivation of liberty by the sovereign, especially since the affected person – as indicated – scarcely has any alternative course of action. Therefore, in doubtful cases, imprisonment must be assumed when a person is held in a locked detention room at a police station. If this is the case and there are no grounds for imprisonment (or the constitutionally guaranteed minimum rights are not provided), any such imprisonment is unlawful.

In the specific case, the investigation conducted by the Federal Ministry of the Interior found that the detainee could have left the detention room or the police station at any time by utilising the call bell. Therefore, a distinction could be made to “imprisonment”, i.e. a deprivation of liberty by the sovereign. However, the Federal Ministry of the Interior was also of the opinion that voluntary stays in locked detention rooms are problematic.

➤ *A stay in a lockable inmate cell is only voluntary if there is no doubt that the affected person is aware that his stay is voluntary.*

### 2.6.10 Positive findings

The commissions prepare a comprehensive report on every visit to a police station. Positive observations are made on a regular basis, which are reported to the manager on duty at the concluding meeting and included in the record. The NPM also reports such positive observations to the Federal Ministry of the Interior on a regular basis.

Documentation of positive findings

These positive observations can relate to various areas, such as the construction of the facility, particularly with respect to accessibility for persons with disabilities, or inmate cells, the furnishings and equipment provided to the personnel, the work climate at the particular police station, the documentation of detentions, the professional treatment of mentally ill persons, flexibility in the care of detainees (food) or the commitment to processing and the prevention of violence in family situations.

In the past, the NPM has informed the Federal Ministry of the Interior of its praise for on-site consensual solutions to problems that have been brought to the police station by the public.

## 2.6.11 System-related problem areas - barracks

### Sanitary facilities in military inmate cells

Sanitary facilities in inmate cells

During visits to barracks, the commissions occasionally addressed the question of the standards for equipping military cells and detention areas. For example, the NPM suggested that the Federal Ministry of the Interior transfer the standards for which it is responsible to the Federal Ministry of Defence and Sports. In particular, military cells and detention areas should be equipped with integrated sanitary facilities (toilets, washing facilities and showers).

There are no binding (international) standards regarding such an “upgrade” to military cells and detention areas. Redesigning the sanitary facilities throughout Austria would be impossible for budgetary reasons. The NPM finds it indisputable that there is unequal treatment with persons in police detention.

Matter to be taken into account in renovations and new construction

On this basis, the NPM sought to clarify this with the Federal Ministry of Defence and Sports. As a result, the Ministry assured the NPM that equipping military cells and detention areas with integrated sanitary facilities would be taken into account when planning large-scale renovations or any new construction.

➤ *To the extent possible, military detention areas should be equipped with separate sanitary facilities in the future.*

## 2.6.12 Positive findings

Even though visits to barracks make up a very small part of the work of the NPM, it should be mentioned that the Federal Ministry of Defence and Sports and the commanders and employees on site are open to the commissions and do not question their mandate to inspect places of detention operated by the military, which has existed since 1 July 2012.

## 2.7 Coercive acts

### 2.7.1 Introduction

In reporting year 2014, the commissions observed 69 acts of direct administrative power and compulsion, including (forced) returns, manifestations, football games, raids and major events.

As in previous years, there were no or hardly any complaints by the NPM regarding police operations during football games and raids. By contrast, in many cases the NPM criticised the implementation of forced returns (returns to non-EU states) and returns (returns to EU state under the Dublin Regulation) and the conduct of contact meetings prior to these official acts.

The picture was more diverse with respect to manifestations. While the conduct of the police was exemplary at smaller manifestations, the police operations with respect to counter-manifestations and the related excesses of the “Black Bloc” in the course of the Vienna Academics Ball needed improvement. The Federal Ministry of the Interior expressed its understanding of the criticism of the NPM in this regard and promised to make improvements.

### 2.7.2 System-related problem areas

#### (Forced) Returns

In Tyrol, the commission criticised the activities of a translator deployed at a contact meeting. He was not a trained interpreter but a bilingual person with medical knowledge. At times he conducted the meeting himself and added independent content, which he considered relevant. A translation must always objectively reflect the content of the discussion. An interpreter should not inject himself into the conversation or conduct the meeting. The Federal Ministry of the Interior promised not to use the services of this person in the future.

Interpreters must remain objective

Another point of criticism was that no case history was taken for medical reports. In this case, the Federal Ministry of the Interior promised to take consciousness-raising measures with respect to all of the public health officers and contract physicians used by the Innsbruck police detention centre.

The NPM repeatedly complained that no psychiatrist is deployed in case of a hunger strike. In this regard, the Federal Ministry of the Interior stated that the public health officer himself must decide whether it is necessary to deploy a psychiatrist. The NPM pointed out to the Federal Ministry of the Interior that a hunger strike is a very sensitive matter.

Need for psychiatric opinion in case of hunger strikes

The NPM also considered the lack of a case history for a person with a fear of flying and the failure to provide information regarding the possible

side effects of a medication to counter his fear of flying to be problematic. Ultimately the medicine was not administered.

Care for chronically ill The authorities should always give adequate consideration to the health care of chronically ill persons during (forced) returns. Following the suggestion of a commission, the NPM asked about the extent to which care on the other side of the border is taken into consideration in these official acts.

The Federal Ministry of the Interior pointed out that medical needs must be communicated to the target state when persons are transferred to another EU member state under the Dublin III Regulation. With the consent of the affected person, a data sheet with all of the medical findings is sent to the target state. If the illness is severe, information regarding the individual care that is being given is provided. If there is a readmission agreement applicable to a forced return to a non-EU state, such an exchange of information may also be possible. Moreover, liaison officers can be deployed.

When a forced return is made to a non-EU state with no such agreement, no such procedure is available from a legal standpoint. The jurisdiction of the Austrian authorities ends “at the border”. There is no legal basis for an exchange of sensitive health data or for influencing the healthcare provided in the target country and there is no ability to act in a sovereign manner in a foreign country. It should also be taken into consideration that drug-dependent persons, who have received substitution therapy in Austria, may not automatically take such medication with them when entering a foreign country. Criminal provisions may apply. Under the case law of the European Court of Human Rights, particularly with respect to Art. 3 of the European Convention on Human Rights (ECHR), the proceedings prior to forced return must determine whether there is a possibility of treatment in the target country and thus whether measures to end the person’s stay in Austria are permissible.

With respect to one instance of forced return, the commission complained about the uncoordinated process of receiving a family into the Zinnergasse family shelter in Vienna. This facility is not for detention pending forced return. Rather, more moderate measures are taken there. The family was initially confused with another family. Moreover, it was unclear whether an interpreter would come and, if so, which one. It was also unclear who was responsible for providing the food for the baby. The Federal Ministry of the Interior promised to investigate this case and sensitise the employees.

Good communication is very important During another forced return in Salzburg, the absence of an interpreter resulted in great uncertainty on the part of the person being removed. The Albanian woman was presented with documents in German, which she could not understand due to insufficient knowledge of the language. Moreover, the affected person was unable to immediately follow instructions for the same reason, which the employee interpreted as uncooperative behaviour.

The woman was obviously very upset by her inability to communicate. The Federal Ministry of the Interior called the failure to deploy an interpreter a misunderstanding.

Commission 6 criticised the fact that there were too few officials present during the simultaneous forced returns of three families with children. There should not have been three forced returns involving children at the same time – of which at least one was highly problematic due to massive resistance – with this number of officials. Despite the tension between preparing the affected persons and their right to personal liberty, the persons being removed must be afforded sufficient psychological preparation. The Federal Ministry of the Interior agreed with the view of the NPM. The Ministry stated that the deployment of more female officials or female counsellors during detention pending forced return would have been beneficial in this case.

Inadequate preparation and too little support

On the basis of the observations made by the commissions in Vienna, the NPM has repeatedly complained that the separation of families during forced returns and returns has been considered acceptable. Thus, in one case, the husband disappeared as the task force was attempting to return the wife and children to Poland. It is true that the return was interrupted; however, the NPM complained about the planned course of action by the authorities, which did not take Art. 8 of the European Convention on Human Rights (ECHR) sufficiently into account. The NPM was pleased that the return was interrupted and postponed. The welfare of the children and the effect on family life must always be taken into consideration – even during actual (forced) returns. Under Art. 8 ECHR, in doubtful cases, the protection of children and family life must take precedence over the interests of the state in removing or deporting the family. However, the Federal Ministry of the Interior is not opposed to this, since every (forced) return must ultimately be subject to an individual case review.

Separation of families

The conversations of the commission with a single mother and her children also led to criticism. The NPM stressed that certain “information” – which may have been intended as factual – such as that resistance against the forced return could result in a criminal complaint and court proceedings, could be perceived by the affected person as threatening and intimidating in the difficult situation of a forced return. Even if this information is basically correct, it would be better – in the opinion of the NPM – to avoid such statements in such touchy situations.

Empathy in conversations

- *Separating families during (forced) returns should be avoided.*
- *It is helpful to deploy additional female officials when deporting families with children.*
- *A psychiatric report and/or psychological preparation can prevent difficult situations.*
- *If a person is fearful of flying, there should be a medical report, including the prescribed medicines.*
- *If a person being removed or deported is chronically ill, the authorities in the target country should be informed of the person's medical needs if there is a legal basis for doing so.*
- *A sufficient amount of baby food must be made available.*
- *Good conduct of interviews with due regard for the situation should be standardised.*
- *Professional interpreters should be used during (forced) returns.*

#### **Role conflicts of the Association of Human Rights Austria**

As one of its last recommendations (June 2012), the former Human Rights Advisory Board of the Federal Ministry of the Interior suggested that the Association of Human Rights Austria (*Verein Menschenrechte Österreich*) should not be entrusted to be the sole contractor in the capacity of human rights observer. Moreover, conflicting roles for the Association of Human Rights Austria as human rights observer, interpreter and return counsellor should be avoided.

**Human rights observers** It was upon the recommendation of the commissions, that the AOB initiated *ex-officio* investigative proceedings in early 2013. The question was whether the Federal Ministry of the Interior should also hire additional organisations as human rights observers in the future. The Federal Ministry of the Interior said it had accepted the proposal of the former Human Rights Advisory Board of the Federal Ministry of the Interior. Accordingly, the Ministry was already discussing activities as future human rights observers with other NGOs. The Federal Ministry of the Interior said it intended to rotate various NGOs as human rights observers. However, no decision had been made in this regard by the end of 2014.

**Role conflict** In addition, the NPM criticised the Association of Human Rights Austria in its capacity as interpreter in many cases. This related to the quality of the interpreting services as well as the risk of role conflicts if the organisation functioned both as interpreter and return counsellor. Thus the commissions observed, for example, that, in the course of contact meetings, employees of



the Association of Human Rights Austria attempted to “convince” persons being deported to cooperate with police and not resist the forced return.

The NPM is of the opinion – as was the former Human Rights Advisory Board of the Federal Ministry of the Interior – that combining various functions in a single entity inexorably leads to role conflicts because the underlying interests and goals of the functions are different. While (social) support during forced return or detention pending forced return is typically based on a relationship of trust with the person being supported, the activities of a professional interpreter must be strictly objective and must proceed from a position that is independent of the interests of the other participants.

The Federal Ministry of the Interior confirmed that it is important to make a strict separation between the roles of human rights observer and return counsellor. However, with respect to the possibility of a dual role of return counsellor and interpreter, the Federal Ministry of the Interior expressed the opinion that a relationship of trust is often established during return counselling, which can then have a positive effect on interpreting. For this reason, the Federal Ministry of the Interior is glad to have bilingual employees of organisations hired to prepare persons for their return participate in contact meetings.

The NPM does not dispute that there is a positive effect when a return counsellor speaks the native language of the person being deported. Nevertheless, a bilingual return counsellor cannot replace a professional interpreter.

It is still an open question whether other NGOs are interested in the project and, if so, which NGOs may serve as human rights observers in the future.

- *Repatriation counsellors cannot replace professional interpreters.*
- *Repatriation counselling and interpreting services must be provided by different persons.*

### **Informing the commissions of police operations – new decree of the Federal Ministry of the Interior**

In the NPM Report 2013, the NPM complained that the commissions were often informed of police operations at a very late stage or not at all. For this reason, the NPM reached an agreement with the Federal Ministry of the Interior that the decree governing the prerequisites for whether and when the commissions will be informed of police operations (“Notification Decree”) will be revised.

NPM and Ministry form working group

In a working group in early summer 2014, the NPM and the Federal Ministry of the Interior agreed on a new version of the so-called “Notification Decree”. It redefines important terms, such as “targeted campaign”, “major event” and “assembly” and, in particular, no longer relies on the arrest forecast as to the anticipated dimensions of a police operation. The intent was to reach a balance so that the commissions would be informed of all operations with potential impacts on human rights but would not be “flooded” with information about operations.

So far, the commissions have had little criticism of the handling of the new regulation. Of course, even with the best intentions on the part of all participants, it cannot be ruled out that, in practice, the NPM will be notified of a police operation at too late a stage. For example, a commission complained that a contact meeting at the Zinnergasse family shelter was scheduled for 4 p.m. When the commission arrived shortly before 4 p.m., the meeting had already ended.

#### **Legal controls on aliens relevant to the basic level of social services**

Information sheets

For years, the employees of the Aliens Police Authority and the Federal Ministry of the Interior have implemented legal controls on aliens, which also comprise aspects of the basic level of social services. In accordance with a recommendation of the former Human Rights Advisory Board of the Federal Ministry of the Interior, information sheets were translated into 13 foreign languages to be handed out to controlled persons in the appropriate languages. This measure is intended to counter uncertainty regarding the purpose of the control.

In one case, the commission criticised the fact that the monitoring bodies did not provide the affected persons with the information sheets. The Federal Ministry of the Interior regretted this incident and assured that the information sheets would generally be given out.

After accompanying a legal control on aliens relevant to the basic level of social services, one commission criticised the fact that the police did not provide the commissions with lists of the names and addresses of the persons to be monitored and controlled – in contrast to the practice in the days of the former Human Rights Advisory Board of the Federal Ministry of the Interior. Providing such lists would greatly facilitate the activities of the commissions.

Commissions receive lists of names

Representatives of the NPM and the Federal Ministry of the Interior discussed this matter at a round table in October 2013. In the summer of 2014, the Federal Ministry of the Interior announced that the authorities had been instructed by decree to provide the commissions with these lists prior to control actions in the future.

One commission criticised the fact that a controlled person had to spend some minutes in the stairwell corridor in his underwear in the course of a legal control on aliens relevant to the basic level of social services. The Federal Ministry of the Interior promised the NPM that it would sensitise the employee involved.

In connection with another incident, the Federal Ministry of the Interior stated that employees also address controls relevant to the basic level of social services as part of further training. The briefings and debriefings before and after each deployment are used to point out past experiences and reflect on new experiences.

Further training  
measures

### **2.7.3 Manifestations against the 2014 Vienna Academics Ball and the excesses of the “Black Bloc”**

As they do every year, the Vienna commissions observed the police operation during the manifestations against the Vienna Academics Ball in 2014. This is certainly an extremely difficult operation. The NPM will not comment on the tactical operation principles. However, it should be noted in a positive sense that the police department of Vienna endeavoured to make a critical evaluation in order to obtain the best possible information for the operation the following year.

In the course of their observations, the commissions primarily criticised the encirclement of the crowd by the police. Loudspeaker announcements by the police were not acoustically audible so that the encircled persons did not know how they were expected to behave. A lack of computers meant that identification took more than two hours in some cases.

The Academy of Fine Arts located near the scene was having an open house when the building was encircled by police. The guests were unable to leave the event, since there was a lack of equipment in this case, too, and ambiguous information was provided. As a consequence, many guests could not leave the event until after midnight.

Lack of information  
when crowd was  
encircled

In this regard, the NPM reminded the Federal Ministry of the Interior of a recommendation of the former Human Rights Advisory Board of the Federal Ministry of the Interior containing guidelines for encirclement which are in conformity with human rights. The Federal Ministry of the Interior assured the employees that it would remind itself of this recommendation for implementing encirclement.

Another point of criticism by the NPM related to the use of pepper spray, which was a disproportionate reaction according to the commissions. In the opinion of the Federal Ministry of the Interior, the use of pepper spray in the given situation was the least severe means of control. Nevertheless, the

Use of pepper spray

Federal Ministry of the Interior took up the suggestion of the NPM regarding the use of pepper spray, so as to further and more permanently sensitise the task forces in similar situations.

The NPM also complained that sometimes commission members had difficulties in gaining access to operation areas. The police department of Vienna took this criticism of the NPM as a reason to again remind the task forces of the identity and authority of the commission members.

Dialogue,  
De-escalation and  
Drastic Measures

In contact with the demonstrators, a greater use of the “3 D strategy” (Dialogue – De-escalation – Drastic Measures) so successfully employed at EURO 2008 would have been advantageous. In this regard, the Federal Ministry of the Interior pointed out that operations of the Vienna police continue to utilise the principles of proportionality, accommodation of interests and the “3 D philosophy”. The Federal Ministry of the Interior conceded that errors can be made during difficult operations. However, individual events are always taken as a reason for improvement.

- *When the police encircled a crowd, the persons in the crowd must be given clearly audible information.*
- *Encirclement should be for as short a time as possible.*
- *Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this.*
- *The successful 3 D strategy (Dialogue – De-escalation – Drastic Measures) should be retained and further developed.*

#### 2.7.4 Compensatory monitoring measures in the border area

So-called compensatory monitoring measures are compensatory measures for the purpose of monitoring illegal immigration and cross-border crime in the border area. Commission 3 observed some of these operations in the year under review. The commission conducted a detailed concluding meeting with representatives of the police department of Carinthia.

The police department indicated that operations that apprehend more than ten persons have become more frequent. Large groups of persons are divided among the various police stations (Villach, Thörl Maglern and the Klagenfurt police detention centre), but families are kept together. When persons are apprehended in Styria, it will be possible to go to the next stop and process the persons in Leoben in the future. At the Klagenfurt police detention centre, separate rooms for the placement of about 15 persons apprehended in the course of compensatory measures have already been completed. The meals

are governed by contract and provided by the Klagenfurt police detention centre or the Klagenfurt correctional institution.

The commission criticised the fact that no interpreters were available at the time of the operation. They had to rely on bilingual persons who were acquaintances of the public officials. The initial questioning of traumatised persons is very difficult for both the interpreter and the official. Officials reported that they were frequently confronted with apprehending very young, severely traumatised and mainly female asylum seekers from Somalia and other North African countries and with Syrian refugees from war zones. There should be more officials available to do the questioning.

Good communication is important

The commission also made reference to the observed deficits in providing information and stressed the importance of informing detainees about fingerprinting and photographing measures and the further course of official processing. The police department reported that the process had been changed, so that official processing is now quicker. Once an interpreter arrives, general instructions are given before the start of fingerprinting and photographing measures, since written informational materials are often not understandable to the detainees.

Information regarding official processing

- *Interpreters must be available.*
- *The initial questioning of traumatised persons must be done by professionals.*
- *Information about official acts must be provided expeditiously.*

### 2.7.5 Positive findings

The commissions observed official police actions. As already mentioned at the outset, not all observations give rise to criticism. The police behaved in a highly professional manner at almost all football games, raids and events as well as several forced returns. The commissions passed this positive feedback on to the officials and their supervisors at the concluding meetings. The commission gave particularly positive feedback regarding the conduct of several named officials based on many observations. The NPM also informed the Federal Ministry of the Interior regarding them.

Many police operations are carried out properly

In one case involving a manifestation in Vienna, the commission asked to report its positive impressions directly to the police department of Vienna. The NPM gladly granted this request. The reason for this praise was – as in other cases – the de-escalating behaviour of the police through the use of the 3 D strategy. Potential troublemakers were expelled, and the police accompanied the manifestation in a loose formation without shields and

helmets at a generous distance from the protest march. These tactics resulted in the manifestation proceeding smoothly.

New Notification  
Decree

The discussions within the working group regarding the new Notification Decree were characterised by an open exchange of views and mutual trust with the goal of finding a joint solution. The fact that there was no substantial criticism of the information policy of the Federal Ministry of the Interior by the NPM as at the editorial close shows that this mutual trust has thus far been justified.

### 3. Proposals to the legislator

#### 3.1 New proposals

##### 3.1.1 Federal Ministry of Labour, Social Affairs and Consumer Protection

Legislative proposal	Reaction of Ministry	Details
Uniform federal performance standards for retirement and nursing homes (proposal to Federal Government and the <i>Laender</i> )		NPM Report 2013, (pp. 29 et seq.)  Annual Report 2014, (pp. 77 et seq.)
Uniform federal definition of the right to personal assistance for persons with disabilities (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp. 123 et seq.)
Systematic efforts to review federal and <i>Laender</i> laws against the standards of the UN CRPD (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp. 121 et seq.)
Deinstitutionalisation (implementation of Art. 19 UN CRPD), (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp. 123 et seq.)
Social insurance cover for the activities of persons with disabilities in workshops; increasing the penetration of the 1st and 2nd labour markets (implementation of Art. 27 UN CRPD), (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp 127 et seq.)

## 3.1.2 Federal Ministry of Health

Legislative proposal	Reaction of Ministry	Details
Enhancing training ratio in child and adolescent psychiatry specialty fields to counter existing lack of medical specialists	Ministry of Health responded positively to this proposal	Annual Report 2014, (pp. 97 et seq.)
Increasing the safety of pharmaceutical drugs (avoidance of potentially unsuitable pharmaceutical drugs and polypharmacy) for geriatric patients	Ministry of Health promised to sensitise the Austrian Medical Chamber	Annual Report 2014, (pp. 83 et seq.)
Duty of physicians to provide information to employees in other health care professions in retirement and nursing homes to the extent necessary for treatment and care and implementation of the Nursing and Residential Homes Residence Act	Ministry of Health promised to send an information letter to the <i>Laender</i> . A clarification in the Act of the Medical Profession is not ruled out.	Annual Report 2014, (pp. 83 et seq.)
Nursing and Residential Homes Residence Act - expansion of its area of application to guarantee legal protection against atypical age-related restriction of freedom of minors in child and youth welfare facilities and minors in facilities providing assistance to persons with disabilities		Annual Report 2014, (pp. 121 et seq.)
Central register to record measures that restrict freedom (implementation of CPT recommendation)	Ministry of Health and <i>Gesundheit Österreich GmbH</i> (GÖG) held discussions	Annual Report 2014, (pp. 91 et seq.)



### 3.1.3 Federal Ministry of Family and Youth

Legislative proposal	Reaction of Ministry	Details
Uniform federal minimum standards for socio-pedagogical group homes (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp. 102 et seq.)
Legal right to assistance for young adults (proposal to Federal Government and <i>Laender</i> )		Annual Report 2014, (pp. 109 et seq.)

## 3.2 Implemented proposals

### 3.2.1 Federal Ministry of Health

Legislative proposal	Reaction of Ministry	Details
Prohibition by decree or law on the use of net beds in psychiatric facilities and nursing homes, while at the same time ensuring that medication-based or mechanical restrictions of freedom are not used more frequently as a consequence.	Ministry of Health issued a decree prohibiting the use of net beds and established a transitional period until 1 July 2015 for the necessary accompanying measures	NPM Report 2013, (pp. 37 et seq.)  Annual Report 2014, (pp. 93 et seq.)



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The unabridged version of this Annual Report is available in German and can be found on the website of the Austrian Ombudsman Board

