



VOLKSANWALTSCHAFT

# Annual Report

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

2011

International Version



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## Preface

Now in its 35<sup>th</sup> year, the Austrian Ombudsman Board (AOB or in German: *Volkswaltschaft*) is anticipating the greatest expansion of its responsibilities and the most profound reform since its establishment: From 1 July 2012 on, its mandate will also include the protection and promotion of human rights.

The new mandate includes all institutions and facilities where people with and without disabilities are in danger of being particularly helpless against abuse, inhumane treatment and measures that deprive them of liberty. In future, a total of about 4,000 public and private organisations and facilities will be monitored and controlled by the AOB. These include, for example, correctional institutions, barracks, police stations, psychiatric facilities, homes for the elderly, long-term care facilities and facilities for persons with disabilities.

The AOB is obliged to establish Commissions in order to fulfil these responsibilities. These Commissions will be interdisciplinary and multi-ethnic and, as the AOB's "eyes and ears", will carry out unannounced on-site visits. Due to the breadth of the new mandate, the AOB will be advised by a new Human Rights Advisory Council consisting of representatives of the federal government, the *Laender* and civil society.

The mechanism of human rights monitoring will be used to oversee human rights guarantees and international standards, to which the Republic of Austria has committed itself by ratifying two significant UN human rights treaties. This will implement the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as well as certain provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Human rights monitoring is a process that is employed preventively to ensure compliance and implementation of the UN conventions. The AOB and the expert Commissions doing the actual monitoring will act as a National Preventive Mechanism (NPM) to ensure this process. This human rights monitoring requires that experts from

different disciplines be observers in various facilities, collect information and facts and evaluate all they have learned in the light of the requirements of international conventions. This is the basis for constructive and critical assessments of institutional and governmental actions on the basis of which improvements and new activities must be initiated. The framework for assessments is defined by the triple obligation to respect, to protect and to fulfil human rights.

The AOB has thus received a constitutional mandate that requires a new understanding of its office. While it previously concentrated on an *ex-post* control of the public administration based on reviewing complaints initiated by individuals, the brief of the new AOB is to expand its previous responsibilities by undertaking preventive monitoring tasks. If these tasks are to be executed with the proper transparency and in full public view, a sound and lasting cooperation with NGOs must be developed. The long-term aim of the AOB is to move towards becoming what can best be described as the "human rights house of the Republic".

The AOB has started to work on this objective in 2011. In addition to its familiar responsibilities, internal prerequisites were created to be able to recruit new staff and restructure previous work processes. The next mission-critical step is to recruit qualified persons able to take on work on the Commissions and the Human Rights Advisory Council as a secondary job. However, this will only create the initial basis for many additional reform steps. For example, the reporting system must also be redesigned. In addition to its annual reports the AOB will have the possibility in the future of sending the National Council and the Federal Council special reports on specific topics and will be obligated to report to the UN Subcommittee on Prevention of Torture (SPT).

All of these measures will significantly change the AOB. They have been initiated with the help of professional organisational consultants. Thanks to our committed employees who have shown a great willingness to implement changes external support was only used in a very limited way. The newly developed concepts will make it possible to change structures and processes in the future and to develop new communication channels – both internal and external – in order to fulfil future responsibilities. Thus reorganisation began with an internal process. In the next step, suggestions will be develo-

ped for information exchange processes with the new Human Rights Advisory Board, the Commissions and civil society.

The AOB contributed actively to the process of revision of its legal bases. Both NGOs that are dedicated to the protection of human rights and the previous Human Rights Advisory Council that had been established pursuant to the Austrian Security Police Act (*Sicherheitspolizeigesetz*) were involved in the constructive legislative process. The Act on the Implementation of the OPCAT (*OPCAT Durchführungsgesetz*) terminates the work of the previous Human Rights Advisory Council after a 10-year period of operation. It must be said that during this period of time, it made a significant contribution to building awareness for human rights and their importance for police work in the broadest sense. The revised human rights mandate of the AOB, however, goes far beyond it.

Both the Council of Europe and the UN General Assembly have passed several resolutions, in which they emphasise the growing importance of ombudsman institutions for the protection of human rights and the promotion of the rule of law. Almost all European countries have charged these institutions with human rights monitoring within the scope of the ratification of the OPCAT. As these institutions have similar responsibilities, new channels for sharing experience and exchanging knowledge are being promoted not only among European ombudsman institutions but beyond them as well. The AOB will also be contributing to this flow of information as it is also the seat of the General Secretariat of the International Ombudsman Institute (I.O.I.) that fosters cooperation among nearly 150 local, regional and national public sector ombudsman institutions. According to its By-laws a member of the AOB always acts as Secretary General of the I.O.I.

It is therefore crucial to make use of the excellent international network that the AOB built up in the past years. Many international organisations, including for example the Council of Europe and the OSCE, are important partners when it comes to pushing the human rights agenda. Also collaboration with the SPT will be essential and will allow making progress on joint human rights-based objectives. The AOB will gladly accept international support and expertise for the current transformation process.

We would like to thank the Federal Ministries and other federal, regional and municipal bodies for their willingness to cooperate during the past year. Our particular thanks go to all our employees who are an integral part of this process of change to which they are actively contributing with a great deal of commitment.



Gertrude Brinek



Terezija Stoisits



Peter Kostelka

Vienna, May 2012

# Introduction

The AOB monitors and controls the administration of the Federal Government and its activities as holder of private rights. The AOB also functions as regional ombudsman board in seven of Austria's federal *Laender*. With this Annual Report, the AOB is informing the members of the National and the Federal Council about the observations it made at the federal level in the working year 2011. The results of its monitoring and *ex-post* control at the regional and the municipal level are available in the reports to the respective Diets.

In order to provide a proper basis for the activities of the AOB described in this report, we would like to briefly touch on its historical development. In 1971, the Federal Chancellery sent out a draft law on a "Federal Administration Advocacy Institution" (*Bundesverwaltungs-anwaltschaft*), which could be obtained from the Austrian State Printing Office. The interest of the population in the creation of an ombudsman institution appeared to be very high, as 13,000 copies of this publication were requested. After intensive and contentious academic and political discussions, the Federal Ombudsman Board Act (*Bundesgesetz über die Volksanwaltschaft*) was enacted on 24 February 1977.

1977 Establishment of the AOB

In other words, the AOB was explicitly not conceived as a "legal protection institution in the technical sense of the term". In the materials for the government bill from 1976, it says:

"Although Austria's legal protection system is, without a doubt, highly developed, one cannot overlook the fact that there are various areas where existing legal protection institutions do not and cannot suffice to fight real or alleged injustice. The very wise saying *fiat justitia pereat mundus* ("Let justice be done, though the world perish"), which is frequently happily ignored, particularly in Austria, expresses that the protection of law alone can never satisfy all the needs of the human being, who is, after all, not only a legal entity but a living being with very individual worries and hardships. If one wishes, one can designate this attempt to humanise the monitoring and investigative functions as a "political" role of the ombudsman, who thus adds a new element to public administration under the rule of law."

Objective of the AOB

Expectations for the AOB were initially low

It is remarkable that the concluding provisions of this federal law contained a provision according to which it became effective as at 1 July 1977 and expired as at 30 June 1983. In other words, this was only a temporary solution. It was unclear both whether the institution could actually fulfil the requirements and what level of importance was attached to it. It was assumed that the AOB would receive not more than 1,500 complaints annually and that a maximum of 5% of them would be considered cases of maladministration.

Despite these reservations, the AOB finally convinced the public, whose attitude had been initially critical, and quickly won trust and acclaim. Even before its expiration, namely as at 1 August 1981, the AOB became permanently integrated into the existing constitutional system and the remaining provisions not requiring a change in the Constitution were proclaimed anew as the Ombudsman Board Act (*Volksanwaltschaftsgesetz*) 1982.

Create trust and confidence

This development has a firm basis and – as one can see from the significant expansion of responsibilities as at 1 July 2012 – it is still ongoing. Regarding the *ex-post* control of the public administration the expectations were clearly exceeded:

- Compared to the estimates made in 1977, complaints have increased more than ten-fold (2011: 16,239).
- On average, the affected parties are informed within 49 days whether the AOB has determined a case of maladministration.

As we have learned from reactions to our work, sometimes the announcement that the party has contacted or intends to contact the AOB solves a problem that had previously seemed unsolvable. Representatives of public authorities know that in any case, they must render account of the matter to the AOB. The figures regarding the AOB's investigative activities presented later in this report back up these statements with numbers.

As the *ex-post* control body for the public administration, the AOB has a function under the rule of law. As an auxiliary institution of Parliament, it is, however, also particularly bound to democratic principles. The intensive, free of charge and largely informal contact with people serves both of the AOB's functions and is at the centre of its day-to-day work.

The everyday routine of the members of the AOB does not consist entirely of working their way through files. The focus is always on dialogue and the discourse with various target groups. This naturally also applies to the employees of the AOB who have to bring not only extensive professional expertise but also significant communication and mediation skills to the table.

Important dialogue  
with different target  
groups

In the 35 years of interaction with its important – and very heterogeneous – environments, the AOB has acquired the trust and acceptance of the population through its work and the manner of how it goes about its business. The television programme *Bürgeranwalt* (Advocate for the People) has made a substantial contribution to this process. Thanks to its new responsibilities, in future the AOB will attract even more interest from the political arena and the general public.

# Overview of the AOB

## Legal mandate

Constitutionally guaranteed right to address AOB

The Federal Constitution provides for a “right to file a complaint about federal administration” that everyone is entitled to under certain conditions. Without exception, every sovereign administrative act for which the Federation is responsible, as well as its actions as holder of private rights, are subject to maladministration monitoring by the AOB. This corresponds to the AOB’s duty to investigate every permissible complaint, to review it and to inform those involved of the result of the investigation, as well as of any measures that may have been initiated. Furthermore, the AOB is entitled to undertake *ex officio* investigations of suspected cases of maladministration. As an *ex-post* control body for the public administration, it is also authorised to file petitions to the Austrian Constitutional Court to review the legality of a regulation issued by a federal agency. From 1988 on, the AOB has been additionally tasked with helping to handle petitions and initiatives of citizens’ action groups.

Service function if AOB is not competent

Due to the fact that the independence of the judiciary is constitutionally guaranteed, court rulings (decisions, judgements or court settlements) are not subject to AOB control and investigation activities. Nevertheless, many enquiries refer to such court rulings. Even if they are judged *a priori* as inadmissible, they are answered and are indicators for topics where there is structural dissatisfaction (e.g. legal guardianship law, child custody disputes, etc.). In these cases, only the consequences of such decisions can be discussed with the persons involved. This is a service provided by the AOB.

Matters involving the administration of the judiciary, however, are within the mandate of the AOB. In the event of a delay by a court in undertaking a judicial proceeding, the AOB can step in both on the basis of a complaint and *ex officio*. These include, for example, the scheduling or execution of a hearing and/or proceeding, the procurement of expert opinions or the execution of an official copy of a court decision. In 2008, authorisation was granted to the AOB to file so-called applications to accelerate proceedings by setting a deadline (*Fristsetzungsanträge*), which previously only the party itself was allowed to do, and to suggest measures to be taken by the super-

visory authority. This is intended to curtail an increasing number of court proceedings whose duration is overlong.

All agencies of the Federation, the *Laender* and the municipalities are obligated to support the AOB in the fulfilment of its responsibilities, to give the AOB access to their files and to provide any necessary information upon request. The institutions being investigated cannot invoke official secrecy vis-à-vis the AOB.

However, there is no authority to investigate matters that are being handled by the non-sovereign administration of private companies providing public services or by legal entities under public law. The numerous divestment and privatisation processes during the last two decades have actually diminished the AOB's investigative authority. Since 1993, the AOB has repeatedly pointed out that consequently an appropriate expansion of its responsibilities is necessary, as the often expressed hope that the divestments of undertakings that are oriented toward the common good would result in improved customer orientation and a higher quality of service has been only partially fulfilled. Therefore, many concerns expressed by dissatisfied consumers reach the AOB every year. This is one of the reasons why there are complaints that do not result in a formal investigative proceeding. The AOB has therefore established collaborations with various complaint offices and boards. However, this is a service that does not change the fact that the AOB cannot recommend structural improvements as it can within its own remit.

No mandate for private companies providing public services

This is the last report on the AOB's activities that can content itself with rendering account of the performance of the tasks described above. As set out in the Preface, the responsibilities of the AOB will be significantly expanded. Starting on 1 July 2012, the protection and promotion of human rights will fall within the AOB's remit.

New mandate from July 2012

## Objective

Due to its function as *ex-post* control body for the public administration the AOB is not only entirely independent but it is also very easily accessible for everyone; it can handle complaints that are not bound to a deadline and listen and respond to the worries and hardships of each individual. And there is no charge for its work. Therefore,

AOB is open to everyone

contact with the AOB must be easy Austria-wide, including for those who are unable to present their matter of concern in a formalised manner. This is why there is a cost-free service number to contact the AOB. The consultation days in – and particularly outside of – Vienna make it easier for all those who would like to present their matter of concern in person. Despite the new responsibilities, this opportunity will not be curtailed in future but will be retained.

AOB enables easier access to justice

From the very beginning, the AOB has had the role of a “compensator” in the complex administrative system. It was not conceived as an alternative but as a complement to the system of traditional legal protection before the courts under public law. Effective enforcement possibilities of entitlements under the law, access to institutions, support in the enforcement of legal rights, as well as the availability of opportunities to attain legally binding decisions are absolutely essential, particularly in the area of protection against discrimination. But there are also other areas of action: For example, the competence of the AOB extends to the so-called public administration authorities acting as entities under private law, where neither the Constitutional Court nor the Administrative Court have any competence. Furthermore, the possibility of intervention by the AOB vis-à-vis local and regional authorities, which participate in legal relations as holders of private rights and carry out public grants and subsidies, closes a gap. However, even in these cases, the principle of an “equality of arms” is realised with regard to form only. Civil law proceedings that do entail costs are the sole possibility in the case of informal rejections or inactivity or against inconsistent action. Therefore, the AOB often acts to avoid court proceedings.

Independence creates obligation to maintain objectivity

In order to be able to pursue these objectives appropriately, the AOB was granted independence under constitutional law. This protects the AOB against any kind of partisan influence – including but not limited to the political arena. The responsibility for the correspondingly objective fulfilment of its tasks is derived from this independence. The independence of the members of the AOB is embodied in the organisational provisions regarding distribution of tasks and its rules of procedure.

Remedy of mal-administration

To the extent that a joint resolution (as a Board) is not required, the three members handle the matters that have been allocated to them in accordance with the distribution of tasks independently. If, after reviewing a complaint, the entire Board decides that this is a case of

maladministration, the accountable persons are generally notified by the Board member responsible for that particular subject matter. If the law permits a remedy of this particular case of maladministration, a recommendation is made and subsequently, often quickly implemented. A member can also initiate a joint determination of maladministration by the entire Board and can issue a recommendations vis-à-vis the competent highest agency or office (Federal Minister, Governor, highest agency of the autonomous administration). Over the years, 80% of these Board recommendations were followed.

# Facts and figures

## Key figures

More and more people turn to AOB

In 2011, 16,239 people contacted the AOB. This means that in comparison to the previous year, this was an increase of a total of 974 submissions. The number of those cases where persons feel that they have been poorly treated or inadequately informed by a public authority at the federal, *Land* or municipal level rose significantly. Compared to the previous year, this was an increase of more than ten percent to 12,331. Only the number of cases outside the AOB's mandate fell.

Key Figures	2011	2010
Complaints regarding administration	12,331	11,198
<i>Investigative proceedings</i>	7,287	6,613
<i>Federal administration</i>	4,665	4,126
<i>Regional/municipal administration</i>	2,622	2,487
<i>Handled without investigative proceedings</i>	5,044	4,585
Complaints outside AOB mandate	3,908	4,067
TOTAL number of handled complaints	16,239	15,265

Increase in the number of investigative proceedings

In 59 percent of all complaints that referred to concrete actions or omissions by public authorities (7,287 cases), the AOB initiated detailed investigations. The number of initiated investigative proceedings thus rose compared to the previous year by ten percent (2010: 6,613). Another 5,044 complaints fell into the AOB's area of responsibility; however, there were insufficient indications for a possible case of maladministration. Just over 3,900 complainants in 2011 turned to the AOB for advice and information outside of its mandate. However, attempts were made to provide clarification and help in these cases as well. The AOB provides information about whom one can contact in order to take advantage of further advisory and/or counselling services.

Investigated Federal Ministries	2011	%
Federal Ministry of Labour, Social Affairs and Consumer Protection	1,320	28.30
Federal Ministry of the Interior	1,306	28.00
Federal Ministry of Justice	646	13.85
Federal Ministry for Transport, Innovation and Technology	320	6.86
Federal Ministry of Economy, Family and Youth	308	6.60
Federal Ministry of Finance	247	5.29
Federal Ministry of Agriculture, Forestry, Environment and Water Management	195	4.18
Federal Ministry for Education, Arts and Culture	87	1.86
Federal Ministry of Health (excl. health and accidental insurance)	68	1.46
Federal Ministry of Science and Research	59	1.26
Federal Ministry of Defence and Sports	56	1.20
Federal Ministry of European and International Affairs	18	0.39
Federal Chancellery	35	0.75
TOTAL	4,665	100.00

The AOB's area of responsibility covers all public administration, i.e. all authorities, administrative bodies, agencies and departments responsible for implementing federal law. The AOB carried out a total of 4,665 investigative proceedings in matters involving federal administration.

4,665 investigations in the federal administration

Just as in recent years, social affairs, an area handled by Ombudsman Peter Kostelka accounted for the lion's share of complaints and investigative proceedings: 28.3% of all initiated investigative proceedings related to this sector. Problems with the granting of pensions, sick pay, childcare allowances or unemployment benefits are existential questions for many people and require a quick clarification of the complaints. The AOB contacts all public social insurance carriers and offices of the Public Employment Service Austria (AMS) directly; furthermore, it is sometimes necessary to also involve the Federal Ministry of Labour and Social Affairs.

Social affairs

Administration of the judiciary

In 2011, 646 complaints regarding the judiciary were addressed to the competent Ombudswoman Gertrude Brinek; this was 13.8% of all investigative proceedings. For the second consecutive time, a decrease in the number of complaints has been observed; the AOB considers this to be the result of improved information and complaints service. In 2007, the Austrian judiciary introduced ombudsoffices (*Justiz-Ombudsstellen*) which are located at the higher regional courts and are headed by experienced judges. Anyone involved in court proceedings may turn to the ombudsoffice if they have questions or complaints concerning the work of the courts.

The AOB's remit covers administration of the judiciary, the Public Prosecutor's Office, the penal system and investigations into delays in court proceedings. In 2011, a large part of the complaints, however related to court rulings by the independent judiciary.

Internal security

Ombudswoman Terezija Stoisits recorded 1,306 complaints regarding internal security issues in the year under review. This means a rise in the number of complaints by 67% (2010: 781). Like in previous years, this is due primarily to the large number of complaints relating to the law on aliens and the law on asylum. Complaints did not relate solely to matters involving the Federal Ministry of the Interior and agencies subordinate to it, but primarily concerned the Asylum Court and the Independent Federal Asylum Senate (*UBAS*). Beginning in 2012, the AOB introduced a separate complaint register for these complaints to enable a more precise presentation and allocation of responsibilities.

Investigative proceedings: regional & local authorities	2011	2010	Change in %
Vienna	848	817	3.8
Lower Austria	570	575	-0.9
Styria	365	345	5.8
Upper Austria	328	298	10.1
Carinthia	184	166	10.8
Salzburg	164	166	-1.2
Burgenland	163	120	35.8
TOTAL	2,622	2,487	5.4

In addition to the federal public administration, the AOB also monitors administration of the regional and municipal authorities in seven of the federal *Laender*. Only the *Laender* of Tyrol and Vorarlberg have their own regional ombudsman. In 2011, the AOB conducted a total of 2,622 investigative proceedings of regional and municipal government administration. In comparison to the previous year, the number of investigated cases in these sectors has risen by 5.4%.

It is not surprising that the most populous *Laender*, Vienna, Lower Austria and Styria, occupy the top three places with regard to the number of investigative proceedings. In comparison to the previous year, the number of cases rose in Vienna, Upper Austria, Carinthia, Styria and Burgenland, but fell in Lower Austria and Salzburg.

Regional trends

Complaints relative to regional and municipal government administration	2011	%
Regional planning and housing, building law	711	27.12
Social welfare, youth welfare	558	21.28
Municipal affairs	336	12.81
Citizenship, voter register, traffic police	241	9.19
Health care system and veterinary sector	177	6.75
Finances of the <i>Laender</i> , regional and municipal taxes	152	5.80
Regional and municipal roads	130	4.96
Education system, sports and cultural matters	98	3.74
Agriculture and forestry, hunting and fishing laws	59	2.25
Trade and industry; energy	57	2.17
Office of <i>Land</i> Government, public services and compensation law for regional and municipal employees	46	1.75
Nature conservation and environmental protection, waste management	39	1.49
Transport and traffic on regional and municipal roads (excl. traffic police)	18	0.69
Science, research and the arts	0	0
TOTAL	2,622	100.00

Focal points in the federal *Laender*

As in recent years, in investigative proceedings at the regional and municipal level, various thematic focal points predominate. At the top of the list are problems in the areas of regional planning and building law. In 2011, a total of 711 cases were brought to the attention of the competent Ombudswoman Gertrude Brinek. The rising trend in complaints about guaranteed minimum income and youth welfare in 2010 continued in 2011, as one can see from the number of investigated cases handled by the competent Ombudsman Peter Kostelka (558). In the course of her investigations, Ombudswoman Terezija Stoisits was repeatedly confronted with complaints regarding problems surrounding the execution of the citizenship law. Compared to 2010, percentage distribution of complaints among the thematic focal points remained the same with one exception: complaints regarding regional planning rose by three percentage points.

Resolved complaints relative to regional and municipal government administration	2011	2010
No case of maladministration	4,163	4,021
Maladministration on the part of the authorities	1,041	829
Investigative proceeding currently inadmissible (administrative proceeding still ongoing)	1,217	1,141
Complaints outside the AOB mandate	1,177	1,240
Complaints not suitable for handling (per the relevant regulations)	128	106
Complaint retracted	647	600
Cases which the Board jointly determined a case of maladministration and issued a recommendation	3	12
Challenges to regulations	1	0
<b>TOTAL</b>	<b>8,377</b>	<b>7,949</b>

Average duration of investigation: 49 days

In the year under review, a total of 8,377 investigated cases were resolved, i.e. 6% more than in the previous year. Concurrently, the number of cases where maladministration was detected also increased, although not quite as strongly, going up from 829 (2010) to 1,041 (2011). Thus the percentage of cases in 2011 where maladministration was ascertained was at 12.4%. The average duration of an investigative proceeding was 49 days in 2011.

In 1,217 cases, the complaint fell within the AOB's area of responsibility, but there was no reason to initiate an investigative proceeding. In these cases, complainants were supplied with additional information, including legal information. 1,177 cases were outside the scope of the AOB's mandate but the AOB endeavoured to provide information and advice: It contacted the relevant authorities and identified possible approaches for a potential solution for the complainants. In 647 instances, the complaint was withdrawn.

Information outside of the mandate

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 54 *ex officio* investigative proceedings (2010: 70)

54 *ex officio* investigative proceedings

## Citizen-friendly communication

### Communication with the Public

- 276 consultation days
- 7,933 people contacted the AOB personally or by phone
- 15,911 people wrote to the AOB
- 27,682 documents comprised the AOB's correspondence
- 11,715 letters & e-mails were sent to government authorities
- 66,000 hits were registered on the AOB website

Citizens evidently welcome the fact that the AOB is easily accessible and reachable in person, by phone or in writing. The AOB's correspondence with people who suspected a case of maladministration rose compared to the previous year by 10 percent, comprising more than 27,682 items of written correspondence. About 11,715 letters and e-mails were exchanged with government authorities at the federal, *Land* and municipal level.

Easily reachable

Traditionally, the AOB's consultation days in the federal *Laender* are very popular. People have the opportunity to speak to a member of the AOB personally about their matter of concern. 276 con-

Increase in number of consultation days

sultation days with more than 1,800 personal discussions were held in 2011 (2010: 273). In accordance with the demographics, the largest number of consultation days was held in Vienna (74). Tyrol and Vorarlberg, where complaints about regional and municipal administration are not handled by the AOB, accounted for 25 and eight consultation days, respectively.

Consultation days	2011	2010
Burgenland	21	17
Carinthia	24	26
Lower Austria	41	43
Salzburg	19	19
Styria	36	28
Tyrol	25	21
Upper Austria	28	35
Vienna	74	74
Vorarlberg	8	10
TOTAL	276	273

TV programme *Bürgeranwalt* celebrates anniversary

For more than ten years, the AOB has been providing an additional service with the extremely popular TV programme *Bürgeranwalt* (Advocate for the People) that is broadcasted by the Austrian public broadcaster *ORF*. High viewing figures make the programme an important platform for the AOB's work. On average, around 323,000 households follow the efforts of Ombudspersons Gertrude Brinek, Terezija Stoisits and Peter Kostelka, who address the population's everyday problems with Austrian authorities.

More airtime, new topics

Collaboration with the *ORF* was expanded in 2007 and weekly airtime was increased from 30 to 45 minutes. Since then, the *Bürgeranwalt* programme presents not only cases handled by the AOB, but also matters handled by the Consumers Association of Austria and similar organisations. The programme also follows up on what happened to the cases after the broadcast and whether a satisfying solution could be found for the complainant.

For the anniversary broadcast on 12 January 2012, the programme host Peter Resetarits picked the most outstanding moments of the last ten years from the archives. Ombudsman Kostelka examined why eating poppyseed dumplings could eventually lead to losing the driving licence. One of Ombudswoman Stoisits's cases filled the *ORF* studio to overflowing when proponents and opponents of the planned bypass route around the town of Schützen exchanged arguments. That the AOB persistently pursues the population's matters of concern was demonstrated by one of Ombudswoman Brinek's cases: The lack of an access road to some of the properties on the *Schafberg* area in Vienna became a legal dispute lasting many years.

The Internet is being increasingly utilised as a point of contact for the AOB. The continuously rising number of visitors shows that the website, which was completely redesigned in 2010, is gaining popularity among the population. In the past year, around 66,000 people visited the website at [www.volksanwaltschaft.gv.at](http://www.volksanwaltschaft.gv.at). Two thirds of the hits came from Austria, while the remainder came from abroad (93 countries). In the majority of the cases, the AOB website is found through search engines. One third of the users, however, accessed the website directly.

The AOB website gets 66,000 hits

The website offers concise information about the AOB's work. The "cases of the week" that are presented on a regular basis and the summaries of the weekly *ORF* TV programme *Bürgeranwalt* are particularly popular. The complaint form was downloaded 8,500 times proving that users welcome the unbureaucratic access to the AOB. The clearly structured display of the consultation day schedule in the individual federal *Laender* is also accessed frequently. Experts have the possibility of accessing AOB statements on federal and state draft legislation and documents on selected cases in which the members of the AOB jointly determined a case maladministration and issued a recommendation to the competent public authority.

The most popular contents

## Important events

The AOB is a regular platform for sharing experiences and expertise and this will expand even further in future. Its new responsibilities make it necessary for it to provide a forum for civil society in particular.

Ombudswoman Stoitsits  
presented UNHCR study

Upon the initiative of Ombudswoman Terezija Stoitsits, a study commissioned by the UN High Commissioner for Refugees (UNHCR) was presented in the AOB in June 2011. The study showed that the majority of the Austrian population not only has many prejudices surrounding the topic of asylum, but also a serious knowledge deficit. 59 percent of the interviewees held the opinion that asylum seekers more readily resort to violence and crime than other segments of the population. According to 69 percent of those interviewed, they also represented a burden for the social system. Many of the respondents were not aware of the difference between asylum seekers, refugees and migrants. It was notable that people who had already had contact with asylum seekers had a far more positive attitude towards the topic of asylum. In the panel discussion, NGO representatives agreed that the subject must be communicated better in the media in order to fight prejudice and to overcome the existing knowledge deficit.

Ombudsman Kostelka:  
Exchange of information  
with NGOs

On 27 September 2011, Ombudsman Peter Kostelka invited more than 30 representatives of NGOs and counselling facilities to share information and exchange opinions on family benefits for persons who are not Austrian citizens. The event was prompted by numerous, ongoing complaints by people who have problems with family and childcare allowances and turn to the AOB with their concerns. More than half of the complaints are submitted by families from other countries and the trend is rising steeply. In a disproportionate number of these cases, the AOB finds cases of maladministration. This is a result of the fact that the legal situation in this area is extremely complicated due to frequent changes in legislation and the requirements under EU law; furthermore, authorities often lack clear parameters when enforcing the law. The AOB's work has shown that there is a great need for information in this area: NGO representatives and experts reported their experiences in their day-to-day work, complaining about structural problems in enforcement and

providing valuable suggestions for future investigative proceedings by the AOB.

And in the sector of building and regional planning law, the competent authorities also do not always react to problems with the necessary efficiency. Builder-owners often ignore statutory provisions; construction carried out without any kind of building permit is not a rare occurrence and arbitrary deviations from approved plans are not uncommon. To the great annoyance of the residents, subsequently made application amendments and building inspection proceedings can drag on for years. Also zoning proceedings lead to conflicts more and more often. This was why Ombudswoman Gertrude Brinek held a roundtable in November 2011 on the subject "Building Code – Building Permit – Building Practice. Law and reality in Austria". AOB experts presented exemplary cases handled by the AOB. Dr. Josef Hauser, Regional Ombudsman of Tyrol, as well as jurisprudence experts and academics shed light on current developments in this area of law.

Ombudswoman Brinek:  
Focus on building law

Whether in the context of consultation days, at panel discussions or as event host, it is especially important for the members of the AOB to facilitate ongoing dialogue with the public and to actively make contact with the various target groups who all have their own respective needs regarding information. The members of the AOB are often asked to make presentations, host expert conferences or participate in events. For example, Ombudsman Kostelka spoke at a conference about "The new EU architecture of fundamental rights after the Lisbon Treaty" in April 2011. In August 2011, Ombudswoman Brinek and the Serbian Ombudsman Sasa Jankovic were invited by the European Forum Alpbach to discuss the contribution of ombudsman institutions in achieving a better access to justice. In December 2011, Ombudswoman Stoisits took part in a panel discussion about "The Universal Periodic Review (UPR) and human rights policies in Europe". All AOB members took the opportunity in 2011 to discuss issues related to democracy and parliamentarism with school groups within the scope of so-called "Democracy Workshops". Consultation days in the federal *Laender* were also utilised to discuss community issues.

Dialogue with  
the public

Open doors In 2011, the AOB again opened its doors for numerous events. For example, the Federal Board of the Austrian Association of Municipalities (*Gemeindebund*) held its annual conference at the premises of the AOB. On 25 May 2011, the Austrian Society of Jurisprudence (*ÖGGL*) held a symposium titled "Risks and Opportunities of Administration Reform and Deregulation" in the AOB premises.

School groups and University students But the AOB opens its doors not only to representatives of NGOs, science and academia but also to University students and school groups. Lively discussions enabled the young guests to gain genuine insight into the organisation and the responsibilities of the AOB.

# General conclusions

## Ombudswoman Gertrude Brinek

In the past year, the trend toward increasing complaints relating to legal guardianship continued unabated. Cases where the administration of the judiciary deserves criticism are, however, rare. It continues to be the case that the demands made by the persons affected and their family members vis-à-vis legal guardians are often not within the scope or the desired scope of their statutory responsibilities. However, the AOB frequently deals with desperate complainants whose actions clearly reflect the helplessness and the feeling of a complete disenfranchisement of their rights, particularly regarding financial issues. The AOB has no competence whatsoever with regard to control or questioning of a verdict regarding the scope of the legal guardianship. This is why I can only point to possibilities how a new impetus can be given and/or application for a judicial review initiated. I welcome the fact that the draft of the “National Action Plan on Persons with Disabilities 2012 – 2020” pays greater attention to this growing problem in society.

Legal guardianship:  
Increasing complaints

Whenever I am invited to speak at conferences or workshops or events, I take advantage of every opportunity to explain – especially to older persons in the audience– the authority of close family members to act on behalf of relatives and about the possibility of a timely set up of a durable power of attorney and health care proxy. I would like to particularly thank the senior citizen representative associations for their support. Additionally, the Ministry of Justice and the Austrian Bar Association and the Chamber of Civil Law Notaries also provide excellent information on this topic. Nevertheless, I am convinced that all of us must undertake increased efforts to inform citizens about these possibilities of early self-determination.

Possibilities of early  
self-determination are  
still being underused

The most important contribution to increase confidence in the rule of law is to foster dialogue with the judiciary and to discuss observations both based on complaints and their review and on discussions with experts on jurisprudence and application of the law. This dialogue also includes attendance at conferences of various professions, e.g. public prosecutors or relevant scientific societies.

Traditional specialist forums, such as the European Forum Alpbach, are particularly well suited for sharing knowledge and ideas.

New monitoring responsibilities

I welcome the new preventive monitoring responsibilities of the AOB with regard to the UN Convention on the Rights of Persons with Disabilities (CRPD). They complement and enhance our previous responsibilities, especially in those areas that fall into the competence of regional and municipal administration that are a focus of my activities. Unfortunately, the deadlines for the remodelling of public buildings to provide barrier-free accessibility were extended. It also is not helpful that in all federal *Laender* there are different regulations for barrier-free building and living. The same applies to the public transportation system. The reasons for this, however, cannot be expanded on here. Nevertheless, it is incomprehensible that in the construction industry and the transportation system – both public and private – no consideration is taken of the demographic development and the fact that it is inevitable that mobility becomes limited in old age. Thanks to committed people with disabilities I can regularly point out the dramatic consequences of various barriers to accessibility in the *ORF* TV programme *Bürgeranwalt*.

No culture of apology

I will also continue to demand a robust “culture of apology” in public administration. I continue to observe that generally attempts are made to avoid apologies for poor performance, as this is viewed as a personal “admission of guilt” with possible liability attached. However, this attitude overlooks several things. First of all, not every error leads to liability of public authorities. And secondly, would it not be appropriate for good public administration to not wait for liability claims to arise but to apologise quasi *ex officio* and, if applicable, to make compensation for damages? Good public administration should not mean that the person affected must prove an error, but rather that public administration can, at any time, prove the opposite.

Decisions take too long

It is still the case that the decision periods for public administration agencies mandated by law are viewed not as maximum deadlines but as standard deadlines. Public authorities often overlook the fact that the decision is to be made “at the latest” within the deadline, but even this deadline is often not complied with. Reminders from the affected citizens and intervention by the AOB are necessary, for example, for the requested administrative decision to be issued. Only in rare cases do authorities and public agencies adopt our

suggestion to inform the affected persons of the reasons for any lengthier duration of the proceeding and to indicate when they can count on a decision. Of course, this does not change the fact that delays can have financial consequences or that uncertainty impairs people's quality of life. But many people simply want "their matter of concern to be settled".

## Ombudswoman Terezija Stoisits

In my area of responsibility, there was a total of 2,605 new cases in the period under review, of which 1,959 cases concerned federal administration authorities and 646 regional and municipal administration authorities. In the area of federal administration, most of the complaints submitted concerned issues within the purview of the Federal Ministry of the Interior. Most of the complaints at the regional level referred to traffic fines, citizenship and municipal taxes and fees.

2,605 new cases

Complaints concerning the Asylum Court again rose substantially. In the year under review a total of 717 complaints was submitted (2010: 222). The reason for almost all the complaints was the duration of the appeal proceedings. Regrettably, I was forced to conclude this year as well that the Asylum Court could not fulfil the objectives prescribed by the lawmakers. On one hand, the backlog of old proceedings undertaken by the previous Independent Federal Asylum Senate could not be completely finished by the end of 2011, and on the other, the Asylum Court is already backed up with a large number of new proceedings. It has been noted that procedural delays are anywhere from 6 months to 3.5 years. Even though the President of the Asylum Court lately did not request more personnel on the occasion of the presentation of the three-year progress report (1 July 2008 to 1 July 2011), the situation cannot be called satisfactory. Government plans to change the structure of the Asylum Court system in the near future might eventually offer the possibility to increase staff.

Again more complaints about the Asylum Court

The Austrian Citizenship Act (*StbG*) is a federal law that is executed by the *Laender*. In the course of the past years, more strict interpretations of the citizenship law have been observed. Complaints received by the AOB show clearly that the Austrian Citizenship Act contains some harsh provisions that make it impossible for persons who

Hardship under the citizenship law

have lived in Austria for a long time and are well integrated to obtain Austrian citizenship. The competent Federal Ministry of the Interior has not been open to any AOB suggestions. Therefore, it will be up to the members of the National Council to propose policy changes.

Examples Proof of an adequate means of support is required, which in and of itself cannot be criticised. However, the fact that some people cannot overcome the income obstacles through no fault of their own and are thus completely excluded from attaining citizenship is open to criticism. The Austrian Citizenship Act namely does not provide for any exceptions. There is also no exception for illiterate persons with regard to proving the required knowledge of German. Here too an exemption would be necessary to cushion existing hardships if the persons affected can prove that they have made all efforts to acquire German language skills even though they have been unsuccessful.

Children often affected Non-Austrian children adopted by Austrian parents do not automatically receive citizenship by way of the adoption. Many parents find it unacceptable that after the adoption procedure a citizenship proceeding is still required. Also the provision that the citizenship of illegitimate children can be derived solely from the Austrian mother needs to be amended. Many people today live in a non-marital partnership. It is inexplicable why citizenship cannot pass from the illegitimate father to the child if there is proof of paternity. And finally, one other item should be mentioned. The demand has been on the books for years: Putative Austrians should be able to obtain citizenship by way of a special circumstances provision. These persons were treated for years as Austrians by public authorities without any fault on their part, although they never had Austrian citizenship.

People with disabilities in the school system The UN Convention on the Rights of Persons with Disabilities (CRPD) obligates Austria to guarantee an integrated educational system. People with disabilities have the right to full access to the educational system and to participate in it at all levels. In the existing school system, there is the model of separate schools, which are set up to meet the needs of disabled people, as well as the model of integration into the mainstream school system. In the mainstream school system, support is provided by making assistance available. This assistance can refer to both help in managing personal needs and to school instruction. Every possibility that facilitates access to education for people with disabilities is welcome. Therefore, the aforementioned assistance should be provided in as comprehensive a

way as possible. The maximum age for completion of compulsory schooling as mandated by law should also be made more flexible to enable students with disabilities to stay in the school system longer, in other words in their familiar surroundings.

The AOB criticised a draft law which constituted a licence exemption for outdoor areas of restaurants and pubs. When the new legal provisions came into effect in August 2010 the Constitutional Court shared the AOB's concerns. As the AOB has been confronted for years by complaints from people who suffer noise from outdoor restaurants, numerous investigative proceedings relating to this topic have been carried out. Noting that considerable noise pollution caused by pubs and restaurants with an outdoor area is neither rare nor insignificant, the Constitutional Court rejected the licencing exemption as arbitrary. As the Constitutional Court now confirms, a reconciliation of interests between pub clients and persons who live in the vicinity of such garden restaurants is absolutely necessary. The AOB criticised simply suppressing this reconciliation of interests by way of a statutory provision as completely inadequate. The new statutory regulation that is to be developed by the end of 2012 should be able to satisfy the requirement of a reconciliation of interests.

Outdoor areas  
of restaurants

Consultation days outside of the AOB headquarters are an important element of its members' activities. In addition to District Authorities and public agencies within the *Land* Government whose offices I visit on a regular basis, I held consultation days in the Police Detention Centres in Schwechat and Wels. In the Initial Reception Centre (*EAST*) Thalham, asylum seekers who generally cannot come to Vienna or submit a written petition due to language obstacles have the opportunity to speak to me. Numerous persons took advantage of this opportunity.

Consultation days in  
Police Detention Centers

## Ombudsman Peter Kostelka

Rewarding working year

The working year 2011 was probably one of the most rewarding and challenging during my tenure. In addition to our “core business”, all AOB members contributed to the process of the OPCAT implementation. In intensive debates we developed a joint position to diverse questions regarding the reorganisation of the AOB and the further steps to be taken in order to realise the mission statement, that is to establish the AOB as the so-called “human rights house of the Republic of Austria”. Many decisions associated with this process regarding primarily the structure, methodology and focal points will have to be developed by the AOB with the new Commissions and with the new Human Rights Advisory Council.

As defined by the “Paris Principles”, each National Human Rights Institution for the Protection and Promotion of Human Rights (NHRI) must be able to promote the harmonisation of national legislation with international human rights instruments. It must also be capable of cooperating with NGOs, international organisations, institutions and legislative bodies, but also be able to raise public awareness on certain issues. In the last decades, very diversely structured NHRIs have been established in about 60 countries. The Council of Europe has developed a very constructive and consistent working relationship, which is focused on the transfer of knowledge, with ombudsman institutions, which – in Europe at least – were created quite a while ago and therefore require some fine-tuning that is focused on human rights. There have been and still are voices at the UN level that express a preference for organisational models for NHRIs that should not be competent for handling individual complaints, something that I, as Secretary General of the International Ombudsman Institute, deeply regret.

NHRI accreditation

NHRIs have applied for (re)accreditation by the International Coordinating Committee (ICC) in only 16 of the 27 member states of the EU. The AOB undertook this time-consuming procedure voluntarily in January 2011 and in greater detail than previously in 2000. This step was taken in awareness that practically every application is associated with general observations to the applying institution and to the country to which it belongs. After the re-accreditation process the AOB continues to be a member of the ICC and is an internationally recognised NHRI with a so-called “Status B”. It should be highlighted

that the ICC explicitly urged the AOB in May 2011 to continue its efforts regarding the OPCAT implementation. However, a recommendation was also made that does not raise questions about the independence of the AOB as an institution, but certainly does so regarding how the members of the AOB are appointed. That the AOB is led by three highly esteemed former members of the National Council was considered insufficient to comply with the “principles of plurality” for executive bodies despite their very different biographies. This assessment can and must be discussed. After straying onto disastrous paths of disregard for human rights in the 20<sup>th</sup> century, Austria is a stable representative democracy and, within its organisation as a state, the AOB is without a doubt to be attributed to the legislative branch. That UN bodies or the Office of the UN High Commissioner for Human Rights (OHCHR) were criticising Austria or the AOB with these statements – as was often heard – is not correct per se. Despite existing working relationships to the OHCHR, the ICC and its sub-committee are associations in accordance with Swiss association law and as such are not attached to any UN organisation. Each (re)accreditation petition is only the formal prerequisite for inclusion in the ICC or for the confirmation of ICC membership. Therefore, recommendations by the ICC are not binding under international law (Report of the Secretary General, UN Doc. A/HRC/10/54 dated 26 January 2009). Through the mediation of the Federal Ministry for European and International Affairs, we will shortly begin substantive discussions with representatives of the ICC in view of the new “human rights mandate”.

The right not to be discriminated represents the central core of human rights and is the prerequisite for all other rights. Studies show that EU-wide 82% of those who experience discrimination do not file complaints. This is primarily due to the fact that many do not know whom to contact and also have no confidence that the complaint can actually have a positive effect. Based on a report of an NGO, I have examined how administrative District Authorities, Municipal Authorities and the Independent Administrative Tribunal (UVS ) handle reports of ethnic discrimination regarding access to restaurants, pubs and clubs. Based on these results, the members of the AOB unanimously determined that there is maladministration involved in the enforcement of Art. III (1) (3) of the Introductory Act to the Administrative Procedure Acts (EGVG ). The AOB has requested the Federal Government to ensure that the prohibition of discrimination be enforced throughout the country uniformly and effectively. In

Protection against  
discrimination must  
be more effective

accordance with the recommendations of the European Commission against Racism and Intolerance (ECRI), measures to build awareness for staff involved in administrative penalty proceedings and awareness campaigns were recommended.

Access to family benefits The fact that problems with the granting of family benefits primarily affect families from foreign countries has potential for discrimination and in such cases, a disproportionate number of errors on the part of administrative authorities can be found. The legal situation in this area is extremely complicated due to frequent amendments of legislation and requirements under EU law. Frequently, the enforcing authorities lack clear guidelines. It is a breach of EU law that, in the event of long investigations or conflicts regarding which country is competent for family benefits, families must survive for a long time without any financial support.

More support for caregiving family members A very important issue for me is increased support for caregiving family members. Within the scope of its activities, the AOB notes repeatedly that the system of coverage under social insurance law for caregiving family members still has gaps and shortcomings. The AOB therefore demands expansion of free insurance to those caregiving family members who are caring for a person without public health insurance of their own and therefore cannot take advantage of free co-insurance.

Persons with disabilities must be able to decide about their way of living The recognition of the right of people with disabilities to freedom of movement and the free choice of their place of residence, their way of living and the right to participate in the community, as well as respect of privacy are the primary elements of the UN Declaration on the Rights of Persons with Disabilities. Based on complaints I must regrettably often find that such concerns, even when they are expressed clearly and transparently, are considered of secondary importance. It is not a rare occurrence for people with disabilities to be torn away from their residential environment and placed in an institution away from their family because they cannot pay for local care. Solutions were found wherever it was possible – sometimes public attention in the framework of the TV programme *Bürgeranwalt* is necessary for that. This is unsatisfactory. The heading of Article 19 of the UN Declaration on the Rights of Persons with Disabilities speaks of “Living independently and being included in the community” and it is linked with the stipulation that participation in social activities be guaranteed to persons with disabilities.

Animal protection has also been an important issue in 2011. The determination of abuse in connection with housing breeding sows in gestation crates, as well as the recommendation to amend the Animal Husbandry Regulation to the Animal Protection Act triggered demonstrations by affected farmers at my consultation days. I have made it clear that the AOB did carefully consider all facts when making its legal assessment. It was never the intention to discredit a profession. The Animal Protection Act that was adopted unanimously in 2005 was called one of the strictest laws in Europe and emphasised its orientation toward recognised animal protection standards. After tough negotiations, the Federal Ministry of Agriculture, Forestry, Environment and Water Management and the Federal Ministry of Health agreed shortly before the end of the year on a negotiation result that should bring improvements in the medium term.

Animal Protection case  
triggers demonstrations  
by farmers

## International activities

### International Ombudsman Institute (I.O.I.)

- Expanded activities The International Ombudsman Institute (I.O.I.), whose Secretary General Ombudsman Peter Kostelka has been since 2009, links currently 147 independent public sector ombudsman institutions worldwide that monitor and control public administration at the national, regional, and local level. The I.O.I. has regional groups in Africa, Asia, Australasia and the Pacific, the Caribbean and Latin America, as well as North America and Europe and has members from more than 90 countries. Since autumn 2009, the AOB has been operating the General Secretariat of the international organisation and now, in its third year, has been able to significantly expand its activities.
- Focus on training programmes First of all, the transfer of knowledge was intensified. In June 2011, the General Secretariat of the I.O.I. held a so called "Sharpening Your Teeth" training programme for investigation experts of ombudsman institutions for the second time in Vienna; this programme was developed by the Ombudsman of Ontario (Canada) and 37 participants from more than 20 countries and five continents attended the three-day seminar on systemic investigative proceedings. Nine scholarships funded by I.O.I. membership fees made it possible for ombudsman institutions with limited resources from Lesotho, Tanzania, Uganda, Romania, Mauritius, Australia, Papua New Guinea, Saint Lucia und Sint Maarten to take part in the seminar. Due to the continuing high demand from member institutions, the General Secretariat of the I.O.I. will organise another training programme in Vienna in autumn 2012. In addition to this, regional training programmes are planned in Hong Kong, New Zealand and Europe.
- Regional projects Using the same source of funding, the Executive Committee of the I.O.I. was able to grant subsidies for regional projects last year for the first time based on a transparent tender procedure. The focus of the projects was the transfer of knowledge between world regions and the sharing of experience within the regions on topics of current interest. In Europe the implementation process of the Optional Protocol of the Convention against Torture (OPCAT) has often led to new responsibilities for ombudsman institutions who had been charged with assuming a National Preventive Mechanism (NPM) function. In

September 2011, there was a seminar in Warsaw organised by the European I.O.I. region that examined the role of ombudsman institutions in this area. Another seminar that was co-financed by the I.O.I. took place in Barcelona and was dedicated to the question of controlling private companies providing public services. In collaboration with the Association of Ombudsmen of the Mediterranean, a training took place on the subject of "The powers of the mediator and the ombudsman" for investigation officers of ombudsman institutions from North Africa. The North American region held a "Sharpening Your Teeth" seminar in Jacksonville, Florida, for its members. Other regional projects financed by membership fees, including the development of an online training tool for I.O.I. member institutions in South America, are planned for 2012.

In 2011, the I.O.I. intensified its activities in the areas of science and research. A regional research project that is being conducted by the Ludwig Boltzmann Institute for Human Rights is dedicated to the comparative analysis of ombudsman institutions in Australasia and the Pacific Region. Focal points are the legal bases of the I.O.I. member institutions, how they are embedded in the political system, the analysis of their mandates, as well as the prime focus of their investigative activities. After comprehensive research into the literature about the legal basis, mandate and activities of ombudsman institutions, a detailed questionnaire-based survey was conducted among selected institutions, especially about their activities, resources and competences. After working through the literature and other materials, a detailed research report is being written on the basis of a systematic analysis of the questionnaires. Completion of this study is projected for autumn 2012. Together with the results of a similar research project about European ombudsman institutions by Prof. Gabriele Kucsko-Stadlmayer, which was published in 2008, it will be part of a series about ombudsman institutions worldwide.

Science and research

In 2011, the Board of Directors of the I.O.I. also defined the basis for a comprehensive reform of the I.O.I. By-laws which will ensure the successful further development of the Institute in the future. Based on a meeting of the By-laws, Governance and Membership Committee chaired by I.O.I. President and New Zealand Chief Ombuds-woman Beverley Wakem in May 2011 in Vienna, the General Secretariat developed a draft of revised By-laws. This draft was presented to the members in a transparent and comprehensive regional consultation process in spring 2012 and will be submitted for a vote at

I.O.I. reform is on track

the I.O.I. World Conference that will take place in November 2012 in Wellington, New Zealand. The most important aspects of the reform are the inclusive orientation of the I.O.I., clearly formulated membership criteria, a stronger involvement of the member institutions into the Institute's decision-making processes and a more sustainable operation of the I.O.I. by extending the office-holders' term of tenure.

## International organisations

Sharing experience  
relative to OPCAT

International sharing of experience is particularly important in the run-up to the pending implementation of the OPCAT. This was the primary reason why Ombudswoman Brinek and Ombudsman Kostelka attended the seminar "OPCAT and Ombudsman" in Warsaw in September 2011. The event provided an outstanding opportunity to discuss structural questions, methodological approaches and the financial aspects of the OPCAT implementation. In December 2011, the AOB participated as an observer in an expert conference organised by the Council of Europe for ombudsman institutions that are assuming a function as a National Preventive Mechanism. The status of the OPCAT implementation in Austria was also the main topic at a meeting between Thomas Hammarberg, the Human Rights Commissioner for the Council of Europe, and members of the AOB in July 2011.

ICC / OHCHR

After its reaccreditation that was completed in 2011, as a National Human Rights Institution (NHRI), the AOB is represented on the International Coordinating Committee (ICC) of National Human Rights Institutions with a B-status. Ombudsman Kostelka attended the 24<sup>th</sup> annual meeting of the ICC in Geneva in May 2011, as well as the meeting of the European Group of the ICC in September 2011 in Madrid. Additionally, the AOB regularly provided expertise about areas relevant to human rights for reports and internal working papers of the OHCHR and participated actively in the preparations for the establishment of an ICC secretariat for the NHRIs in the European region.

UN Human  
Rights Council

In January 2011, the human rights situation in Austria came under scrutiny as part of the UN Human Rights Council's Universal Periodic Review (UPR). The subject of this evaluation was whether and how Austria has implemented its obligations along the entire human rights spectrum. The AOB played an active role in preparations for this review, both in Austria and at the international level, and was

represented by Ombudswoman Terezija Stoisits at the key meeting of the Human Rights Council in January 2011. In preparation for a planned comparative report about "Access to cultural heritage" in June 2012, an independent expert for cultural rights appointed by the UN Human Rights Council attended talks at the AOB in spring 2011.

The responsibilities, challenges and opportunities for further development of national human rights institutions were among the priorities of the 2011 Lithuanian OSCE Chairmanship. The AOB participated actively in the dialogue, including a "Supplementary Human Dimension Meeting" with a number of distinguished attendees in Vienna in April 2011, with Ombudsman Kostelka representing the AOB. He also took part in an OSCE conference in July 2011 for NHRIs in Vilnius and reported on behalf of a working group on the subject "The relationship of National Human Rights Institutions (NHRIs) with the executive branch – mutual responsibilities, expectations and results".

OSCE priority

The goal of the EU-funded twinning project "Support for the Strengthening of the Serbian Ombudsman" (2009 – 2011) was to help Serbia's ombudsman institution, which was only established in 2007, to improve its work. The AOB supported the two-year long twinning project, which was headed by the Greek and the Dutch ombudsman institutions, by sending experts several times to provide in-country assistance. On the occasion of a three-day study visit in Vienna, the sharing of information was focused on the AOB's communication with the citizens and the media, as well as the reporting system. The AOB was also represented at the closing conference of the twinning project in September 2011 in Belgrade.

EU twinning project with Serbia comes to an end

## Bilateral contacts

The AOB sees itself as a partner of newly established ombudsman institutions. The ombudsman of the German-speaking community in Belgium, whose institution was established only in 2010, visited the AOB in January 2011 to gain a picture of the AOB's diverse responsibilities and to benefit from ideas and impulses for his own work. Other guests who took part in meetings at the AOB were members of the Ethiopian Human Rights Commission and a delegation of the Argentinean *Defensoría General de la Nación*.

Sharing of experience

## International conferences

Conferences on topics  
with a special focus

In 2011, the AOB was represented at numerous international conferences that were focused on the areas within its mandate. For example, an UNDP (United Nations Development Programme) conference in Istanbul in March 2011 dealt with questions surrounding equality for women, with Ombudswoman Brinek attending. This topic was also the focus of an OSCE workshop in Prague in March. Questions relating to migration were at the centre of a meeting in May 2011 in Athens that had been initiated by the Council of Europe; rights for people with disabilities and legal guardianship were the focus of a conference in Croatia in October 2011. AOB experts made significant contributions to these events.

Regional ombudsman  
conferences

The members of the AOB intensified the sharing of experience and information within the scope of major regional ombudsman conferences. In September 2011, Ombudsman Kostelka visited Novi Sad (Serbia) to take part in a conference of the European Ombudsman Institute. Ombudswoman Stoisits and Ombudsman Kostelka took part in the 8<sup>th</sup> National Seminar of the European Network of Ombudsmen in October 2011 in Copenhagen, which was dedicated to the subject "Law, politics and the ombudspersons in the Lisbon era". In his function as the Secretary General of the I.O.I., Ombudsman Kostelka also attended the 26<sup>th</sup> Conference of the Australasian and Pacific Region of the I.O.I. in Taipei, and subsequently, travelled to Bangkok for meetings with the Thai ombudsman institution.





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The unabridged version of the 35<sup>th</sup> Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council is available in German and can be found on the Website of the Austrian Ombudsman Board.

