

AUSTRIAN  
OMBUDSMAN BOARD



# Annual Report

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

2017

Protection & Promotion of Human Rights



Annual Report 2017  
on the activities of the  
National Preventive Mechanism



## Preface

The mandate to protect and promote human rights was endowed on the Austrian Ombudsman Board (AOB) in July 2012. The year under review 2017 can be seen as an important milestone in exercising this preventive mandate: the AOB and its six commissions have been committed to protecting persons deprived of their liberty from abuse and inhuman treatment for five years.

During this time, over 2,300 institutions and facilities were visited and some 300 police operations observed. Thanks to the unannounced visits, the examination of documentation and confidential meetings with the personnel and affected persons in the visited facilities many deficiencies were uncovered. The overwhelming majority of these can be classified as of a structural nature. These deficiencies are thus not attributable to accidents, carelessness or selective misconduct, but caused by structural peculiarities. The politically competent persons and the supervisory authorities were informed.

The Austrian NPM made over 500 recommendations and defined standards – also as a result of international experience – which should be guaranteed in the institutions and facilities. It has been successful in improving protection of human rights in many cases to date. However, in some areas, far-reaching reforms on the political side are necessary which can neither be resolved in the short-term nor implemented quickly.

The NPM is doing everything in its power to accelerate these processes. Public support is also necessary to this end. Prevention needs the general public, as information and the right attitude are required. A key aspect of the NPM is thus raising public awareness for human rights. This is done by using a large number of events aimed at different target groups, lectures, cooperation with the media and consistent PR work in an effort to make human rights a topic of discussion and ingrain respect for human dignity in society.

That these efforts are already bearing fruit can be seen from the media coverage after the last annual report was sent to Parliament. Various media seized the findings of the AOB and its commissions. There was great concern about the detected cases of maladministration, and the debate on guaranteeing human rights gained new momentum. Human rights violations towards the residents of retirement and nursing homes in particular were at the centre of the public discussion. This report shows once again that there are still grave deficits in retirement and nursing homes that must be rectified as soon as possible. The dominating theme of retirement and nursing homes in 2017 should however not detract from the fact that there are many persons who are deprived of their liberty in institutions and facilities and that these groups of people are at considerable risk of being treated inhumanely. These include children and adolescents, persons with disabilities, detainees and patients in psychiatric wards. Many of the findings of this NPM report refer to these groups of people and do not only highlight the need for action but also point out possibilities for improvement.

The emphasis is thus not solely on observing deficiencies — threats, maladministration or the violation of human rights — but above all on finding solutions. The subject matter of this report are also concrete recommendations that are intended to be considered as a type of good practice guideline for guaranteeing human rights standards. They should also accentuate that the objective of the preventive work of the Austrian NPM, i.e. to make inhuman and degrading treatment of persons as unlikely as possible, is not merely a political demand but can also be realised with commitment, the right expertise and the framework waiting to be created by the competent politicians.

The work results documented in this report are possible due to the dedication of many people whom we would like to thank. These include the heads of the commissions and all of their members who, with their commitment and expertise, detect and show ways of preventing threats. The Human Rights Advisory Council also deserves our thanks for its support as an advisory body of the NPM. We would also like to extend our sincere gratitude to all of the staff who, with their daily work, contribute significantly to making the protection of human rights a reality.

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



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Vienna, August 2018

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## Introduction

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

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

Detailed reports on the results of the visits

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

Many recommendations by the NPM

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

Exchanging experiences through international cooperation

This report provides a concentrated summary of the entire work of the NPM before the detailed reports. It contains the most important information on the content and scope of the preventive mandate, and describes the organisational framework and the available resources. Statistics on the monitoring work are

also included. These provide information on how many visits took place in which institutions and facilities, and the areas in which deficiencies were frequently observed. The statistical data underline the importance of the visits: the commissions criticised the human rights situation in some 74% of all visits carried out in 2017.

# 1 Overview of the National Preventive Mechanism

## 1.1 Mandate

The Austrian NPM is based on authorisation granted under the Constitution and in a general legal context. The AOB and its six multidisciplinary commissions regularly and extensively monitor public and private institutions that are classified as “places of deprivation of liberty within the meaning of Article 4 of the OPCAT” nationwide and on a regular basis. The main responsibility of the NPM is to detect structural deficits that can lead to cases of maladministration. Additional preventive competencies of the NPM pursuant to Article 148a (3) of the Federal Constitutional Law are the inspection of institutions and programmes for persons with disabilities (Article 16 (3) of the UN CRPD) as well as monitoring and concomitant control of the authorities empowered to exercise direct administrative power and coercive measures. These preventive competences can overlap with the OPCAT mandate and/or complement it.

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

95 visits by the commissions

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

Working groups and round-table meetings

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

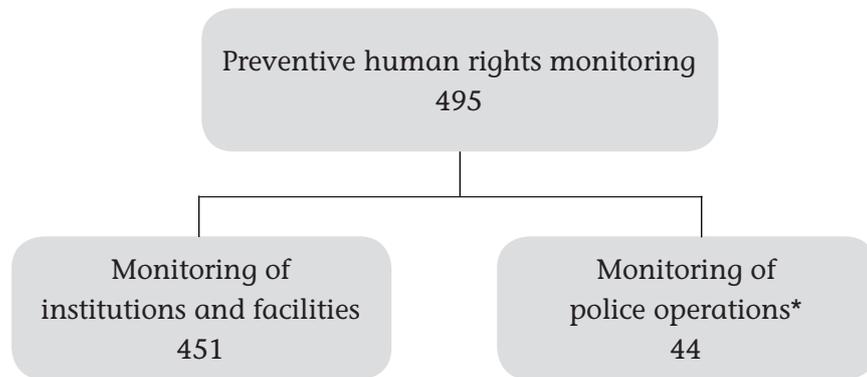
Police training and prison guard training

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

## 1.2 Monitoring and control visits in numbers

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

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



\*these include: forced returns, demonstrations, assemblies

A total of 451 visits to institutions and facilities

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

Observations of 44 police operations

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

1 round-table meetings

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

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

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

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

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

Legend:

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

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

Number of visits in 2017 in the individual *Laender*

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

Around 74% of visits uncovered deficiencies

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

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

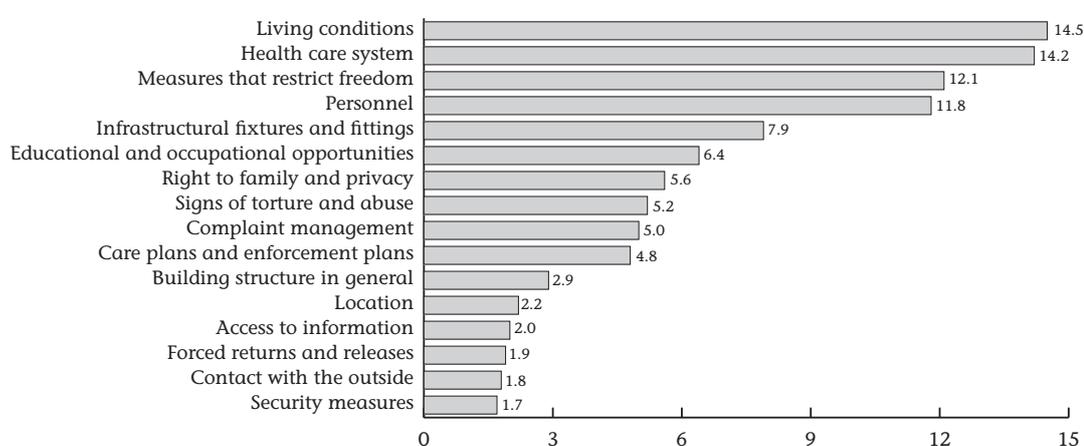
Proportion of visits in 2017 with or without criticism

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

The following graph provides a breakdown of criticisms according to individual issues and the percentage share of all criticisms. It must be taken into account here that the number of deficiencies observed is not equivalent to the number of visits made, as multiple areas were inspected on each visit and therefore the criticisms relate to multiple topics. The most frequent reasons for criticism were living conditions, including sanitary and hygiene standards, food and the offer of leisure activities. The proportion of criticism relating to medical care was almost as high. Measures that restrict freedom as well as insufficient human resources were also grounds for criticism.

### Topics of criticism voiced by the commissions

(share in %)



## 1.3 Budget

In 2017, a budget of EUR 1,450,000 was available to remunerate the heads and members of the commissions, as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,257,000 (2016: EUR 1,163,000) was budgeted for reimbursements and travel expenses for the commission members alone and around EUR 83,000 (2016: EUR 87,000) for the Human Rights Advisory Council. Around EUR 110,000 was available for workshops for the commissions and the AOB staff members working in the OPCAT sector, as well as for other activities. It was therefore possible to avoid budget cuts, thanks in particular to the National Council as the federal legislative body in financial matters but also the Federal Ministry of Finance. Both of them emphasised the necessary financial independence for preventive activities and showed understanding for a sufficient budgetary allocation to the NPM.

## 1.4 Human resources

### 1.4.1 Personnel

In order to implement the OPCAT mandate, the AOB received 15 additional permanent positions in 2012 to fulfil its responsibilities. One permanent position has since been eliminated due to budgetary restrictions. The organisational unit “OPCAT Secretariat” is responsible for coordinating the collaboration with the commissions. It also examines international reports and documents in order to support the NPM with information from similar institutions. The AOB staff members who are entrusted with NPM responsibilities are legal experts who have experience in the areas of the rights of persons with disabilities, children’s rights, social rights, police, asylum and the judiciary.

### 1.4.2 The commissions

Six regional commissions

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), the NPM must entrust the multidisciplinary commissions it has appointed (see Annex) with the tasks they have to perform. If required, the regional commissions may involve experts from other specialist areas provided that members of any other commissions are not available for this purpose. In this way, persons with physical impairments as well as persons with migration or refugee experiences took part in visits to facilities in 2017 in order to contribute their special expertise. The commissions are organised according to regional criteria. They usually consist of eight members and one head of commission.

### 1.4.3 Human Rights Advisory Council

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

## 1.5 International collaboration and cooperation

European NPM Forum

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

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

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

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

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

SEE Network meetings in Belgrade and Podgorica

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

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

Training for improving interviewing techniques

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

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

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

Bulgarian delegation  
inform themselves  
about return processes

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

Visit by the Hungarian  
Ombudsman institution

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

Armenian delegation  
study trip

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

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

Study visit from Kosovo

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

Lebanese Anti-Torture Committee

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

Ukraine twinning project

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

## 1.6 Report fo the Human Rights Advisory Council

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

Constructive cooperation

reports and analysed the resulting monitoring priorities.

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

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

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

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

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

## 2 Findings and recommendations

### 2.1 Retirement and nursing homes

#### 2.1.1 Introduction

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

The activity of the NPM in the highly sensitive area of long-term inpatient care from a human rights perspective attracted considerable interest in 2017. This is substantiated by the huge response to the reporting about this section of last year’s report in the media (see NPM Report 2016 p. 27-47). The fact that structural violence is the subject matter of a report from a control body to the legislative breaks taboos and touches the self-perception of all those involved and the affected institutions. The report brought long-term care in homes to the focus of current media coverage. Any attempt to attribute the problem to isolated “cases of maladministration” or “black sheep” in the industry would be tantamount to trivialising the dramatic nature of the situation.

Great media response to NPM report 2016

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

Care summit as reaction

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

The NPM considers the compendium of evidence-based “Care and nursing” guidelines (“*Pflege und Betreuung*”) published and updated in July 2017 by the Association for Viennese Social Institutions in Vienna as good practice in the

New guidelines for all contractual partners in Vienna

quality assurance field. These are now mandatory in all of the institutions and facilities recognised by the Vienna Social Fund (*Fond Soziales Wien*). Another set of guidelines for aggression, violence and de-escalation management will be completed soon.

Package of measures  
in Tyrol

The expert commission deployed by the *Land* Tyrol after publication of the NPM Report 2016 has presented their “Recommendations for action” including a “Package of measures for the further development of care” which has been resolved by the regional government. The measures include amongst others an amendment of the Tyrolean Nursing Homes Act (*Tiroler Heimgesetz*), the requested replacement of the minute (time) ratio by binding standards for a staffing ratio, night duty and social care, the binding qualification for management in all homes, and the re-organisation of supervision. The wages for all caregivers working in care facilities, hospitals and the health service should also be standardised.

Improved staffing in  
Styria and Carinthia

In Styria, a four-step plan is in place to increase staffing in homes, in which case an additional total of 700 positions for full-time employees are to be created. Mandatory minimum night duty staffing was agreed in this context and is due to be implemented in 2018. The regional government of Carinthia has – as promised to the NPM – since then unanimously agreed a new regulation for the Carinthian Nursing Homes Act (*Kärntner Heimgesetz*). The ratio of nursing staff to those in care will thus be improved from 1:2.5 to 1:2.4 in 2018. From 1 January 2018, every nursing home in Carinthia must have a dedicated member of staff for animation/entertainment.

Dementia project of the  
*Land* Upper Austria with  
Public Regional Health  
Insurance Office

The Upper Austrian regional government made reference to the concept of “Integrated Care Dementia” (*Integrierte Versorgung Demenz*) developed with the Upper Austrian Public Regional Health Insurance Office. The concept started in 2013 and was also tested in selected nursing homes in the second pilot phase in 2017. Far more facilities had expressed interest in participating in this project. The declared objective is the strengthening of existing resources and specifically fostering the skills and abilities of residents with dementia, a diagnostic clarification by medical specialists (neurology, psychology) as well as (neuro) psychological testing by psychologists. The efficacy of different measures is currently being tested. An extensive, consistently structured network of dementia counselling centres and relevant offers which will also benefit nursing relatives are planned for Upper Austria in the future.

Expansion of  
gerontopsychiatric  
competence in  
Vorarlberg

In Vorarlberg, a project on the further development of gerontopsychiatric competence in Vorarlberg nursing homes („*Weiterentwicklung der gerontopsychiatrischen Kompetenz in den Vorarlberger Pflegeheimen*“) was established for protection against violence and duty of care. By the beginning of 2017, 32 out of 51 nursing homes had taken part. The goal of the project is to ensure the professional care of those suffering from gerontopsychiatric illnesses and mostly very elderly residents and to increase the professional

competence of the nursing staff. A group of experts is drawing up guidelines for institutions on the issue of violence.

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

Expansion of competence of supervisory authority mechanism

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

Early warning system in Lower Austria

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

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

Safeguarding the future of care provision is responsibility of State

An "age of longevity and care" is imminent in Austria due to demographic change. In less than ten years, Austria will be one of the countries with the oldest population in the world. New ways of looking at age and models for the inclusion of the elderly in all areas of politics are thus needed – and not only significant changes in the health and social area. Increasingly complex care processes and a changed morbidity spectrum for geriatric patients require a more intensive interlinking of primary medical and nursing care

Longevity and care is challenges all areas of politics

in the facilities too. Psychiatric disorders are very prevalent among the residents of homes. Dementia, depression and anxiety disorders are very widespread. Scientific studies in the area of long-term care showed that multidisciplinary intervention in the care of these persons is the most effective solution. Collaboration between doctors, care specialists and other therapeutic professionals is thus critical. From the NPM's point of view, inadequately coordinated therapy strategies and care planning equally endanger treatment and achieving care (quality) objectives.

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

High demand for  
qualified nursing staff

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

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

Findings from staff  
interviews

In meetings with the commissions, nursing staff often claim to suffer under tight time constraints, extreme workloads, mental and physical stress, unfavourable work atmosphere, rigid hierarchies or constantly changing work rosters. They also concede that, due to stress, certain actions or the failure to act are accepted, which is not compatible with their professional ethics. Some even consider leaving the profession earlier than planned. Clearly, there is a relation between the qualification and the quality of nursing intervention. Some but not all of the structural deficits and incidences of structural violence highlighted by the NPM in previous years are linked to outdated "minimum staffing ratios" that represent *de facto* maximum staffing limits. They reinforce a perception of nursing that does not do justice to the UN Convention on

the Rights of Persons with Disabilities (CRPD) which must be fully observed in this area. The CRPD sets forth the right to support of autonomy and self-determination, rehabilitation, participation and sharing. Not enough attention is given to individual resources, the habits and the mental needs of persons with cognitive and dementia-related impairments. Findings made by Commission 5 can be mentioned as an example of structural violence. In the summer of 2017, they made several unannounced visits to institutions and facilities. There were no residents to be seen in the gardens, on the terraces or in the recreation rooms already at around 6 p.m.

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

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

NPM brochure on preventive standards

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

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

Human rights are the rights of every individual to be granted respect, protection and freedom from the respective state. It is the responsibility of the Federal Government and the *Laender* to respect the human rights of those in need of

care, protect them from injury and violence by third parties or structures and safeguard the conditions necessary for humane care.

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

Respect for human dignity would become essential

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

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

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

Rights for the protection of and respect for human dignity

Even though the principle of respecting and protecting human dignity is explicitly articulated as an objective in most of the *Laender* laws (with the exception of Upper Austria and Lower Austria), the details in the said laws provide no concrete orientation for those in need of care and their relatives. What is also incompatible with the concept of the universality of human rights is the varying degree of implementation in the *Laender* laws, covering just a mere part of the legal positions which Austria guaranteed to realise on an international level, be it in UN conventions or recommendations of the Council of Europe. This is explained in extracts as follows:

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

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

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

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

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

Protection against violence and arbitrary deprivation of liberty

Nursing and Residential Homes Residence Act, relevant opportunities to voice complaints must be available and accessible to residents and their relatives.

Standardisation and precise specification necessary

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

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

### 2.1.3 Complaint management

Complaint management as an important preventive tool

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

Issues on confidence and relationship level

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

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

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

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

Few complaints do not necessarily indicate customer satisfaction

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

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

Residents’ council

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

### 2.1.4 Hospice culture and palliative care

Palliative care in nursing homes is organisational process

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

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

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

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

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

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

No nationwide implementation

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

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

Denial of palliative care is a human rights violation

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

Missing condition for palliative care

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

Alleviation of fears through Care Dialogue

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

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

Guidelines for palliative sedation therapy

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

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

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

### 2.1.5 Drug safety - polypharmacy

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

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

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

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

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

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

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

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

Documentation is not merged

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

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

Use of psychotropic medication

In a Tyrolean facility, a remarkably high number of prescriptions for long-term medication (13 to 16) and additional individual medication was observed for almost all of those in need. One resident was prescribed Psychopax and Temesta at the same time. Both drugs are benzodiazepines (tranquilisers that can cause addiction). Besides, Psychopax is on the Austrian list of potentially inappropriate medication (PIM) (see also NPM Report 2014, pp. 32 et seq. and NPM Report 2015, pp. 38 et seq.) and is thus potentially inappropriate medication for elderly persons. Commission 1 was also critical of psychotropic medication being prescribed for persons who had not been diagnosed with mental illnesses in the nursing home. Even more so, as only the following indications were found: “hiccups”, “for nausea/shortness of breath”, “before showering”; for “agitation, when worried, headache, pressure in the head”.

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

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

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

Large facilities for persons with psychiatric disease

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

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

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

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

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

### 2.1.7 Positive observations

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

Reaction to recommendations by the NPM

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

Measures that restrict freedom

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

Normality principle

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

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

Measures for relieving  
the staff

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

Fall management

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

Pain management

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

Accessibility of call  
buttons and alarm  
systems

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

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

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

Accessibility for persons with disabilities and structural measures

## 2.2 Hospitals and psychiatric institutions

### 2.2.1 Introduction

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

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

Central recording of  
measures that restrict  
freedom

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

Sexual harassment by  
hospital personnel

The Human Rights Advisory Council has dealt with the problem of sexual harassment of patients by personnel in depth and developed recommendations for improvement for the purpose of a preventive approach (see NPM Report 2016, p. 49 et seq.). One suggestion was that the patient advocacies of the *Laender* should be invited when there are allegations of sexualised violence to patients. They could assist the victim support groups in hospitals, especially if a member of the medical facility staff is suspected. According to one promise,

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

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

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

Hospitalisation without medical certificate

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

It was outlined in previous reports (see NPM Report 2015, p. 53 et seq.) that even in the area of application of the Hospitalisation Act pursuant to the jurisdiction of the Supreme Court, the administration of psychotropic medication can constitute a restriction of the freedom of movement in certain conditions. This should, contrary to current practice, be specially documented as a medication-based restriction of freedom and reported to the patient advocacy pursuant to Section 33 Hospitalisation Act. The Supreme Court substantiated this by explaining that it is not critical “within the meaning of restrictions of the freedom of movement” whether a restriction of freedom is effected by physical coercive measures or by pharmacological intervention. The observations made by the NPM during the period under review, however, give reason to believe that in psychiatric hospitals the opinion still prevails that every medication-based therapy is indicated and thus an indispensable component of psychiatric medical treatment. From the NPM’s point of view, it is still essential that potential medication-based restrictions of freedom in

Medication-based restriction of freedom

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

Reporting measures that restrict freedom

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

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

Extension of video interpreting system

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

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

Security deployment

The NPM also criticised the deployment of the security service in Innsbruck Regional Hospital, University Hospital for Psychiatry, in 2017, as the security service was granted extensive powers (see NPM Report 2016, p. 56 et seq.). Thereafter, the Tyrol clinics agreed on further procedures at a meeting with representatives of the University Hospital for Psychiatry and the cooperative management of Innsbruck Regional Hospital, the Police Department of Tyrol and the local Innsbruck police. As recommended by the NPM, it was agreed that only health care staff are authorised to take measures that restrict freedom, such as detention or returning the patient to the psychiatric ward. This also applies in cases of accompanied transportation. Insofar as patients under the Hospitalisation Act escape, the police will have to be called in future if these patients pose a threat to third parties. The security service shall thus

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

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

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

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

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

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

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

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

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

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

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

Threat and restraint

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

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

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

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

Precise prescription of PRN medication necessary

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

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

### 2.2.3 Application of measures that restrict freedom

Protection of personal integrity

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

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

Restraints in beds in hallways and in shared rooms

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

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

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

Follow-up meetings have alleviating effect

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

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

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

CPT standards emphasise importance of follow-up meetings

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

Guidelines

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

Complete documentation is essential

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

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

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

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

#### **2.2.4 Measures that restrict freedom prescribed in advance**

Doctor's prescription  
mandatory

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

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

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

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

Dubious predictions

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

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

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

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

### 2.2.5 Inadequate child and adolescent psychiatric care

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

Considerable underachievement in planning objectives

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

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

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

High proportion of stays  
in adult psychiatric  
wards

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

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

Stressful environment  
for children and  
adolescents

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

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

Transition psychiatry

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

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

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

Care deficits in Styria

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

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

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

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

Insufficient bed capacity in Vienna

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

Rapid implementation of intended projects urgently required

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

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

Increase in number of training places to cover demand

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

Shortage of contracted office-based medical specialists

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

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

Psychosomatic sections  
in psychiatric wards

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

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

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

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

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

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

## 2.2.6 Deficits in regional inpatient psychiatric care

The NPM already pointed out deficiencies in regional inpatient care for persons with psychiatric diseases in Styria and Carinthia in its Report 2016 (p. 59 et seq.).

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

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

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

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

**Inadequate area for hospitalisation of mentally ill persons** A similar problem still exists in the Department of Psychiatry and Psychotherapeutic Medicine at Villach Regional Hospital. The lack of space caused by the inadequate building structure and the lack of a sufficiently

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

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

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

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

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

## 2.2.7 De-escalation training programmes

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

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

Training in non-physical control techniques

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

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

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

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

► *All staff of the medical facility with patient contact should take part in de-escalation training programmes in the interest of comprehensive violence protection.*

## 2.2.8 Protection of privacy and personal space

**Structural deficits** In the year under review, the NPM once again observed that, due to the confined space in psychiatric hospitals, the personal space of the patients is often not adequately safeguarded. Patients are still often cared for in shared rooms, which are only provisionally divided by folding screens.

The legal entities behind the medical facilities regularly promise to refurbish existing buildings and construct new facilities. The implementation of such measures, however, can usually only be expected in several years' time. From the NPM's point of view, interim solutions are thus necessary in order to improve the care situation of the patients.

It can be stressful for patients who are not suffering from a cognitive disorder if they are taken care of in a ward together with patients who have considerable care needs or are seriously cognitively impaired. This can cause sleep problems which can in turn require more of the prescribed sleeping pills. It would therefore be expedient to take care of patients with predominantly neurological complaints in combination with pain symptoms or depression in "quiet" wards. This applies to persons suffering from dementia in particular, for whom the unfamiliar surroundings, strangers, unfamiliar rooms, unfamiliar routines and requirements are frightening. If multi-morbidity or the severity of the psychiatric disease so require, a specialised geriatric psychiatric service is necessary for these patients.

**Therapy conversations in shared rooms** A massive infringement of the privacy and personal space of patients also occurs when they are informed about their diagnoses and treatment in meetings with the staff held in front of other patients or visitors in the room or in the hallway. Observations made on a visit to Zwettl Regional Clinic indicated that doctors

usually do their rounds in shared rooms and that a meeting room is only available for palliative patients. The Lower Austrian regional clinics holding company (*NÖ Landeskliniken-Holding*) seized the criticism as an opportunity to initiate a discussion process and develop solutions in the relevant advisory boards and committees in order to better guarantee the right to privacy and data protection in the future despite structural restrictions.

- ▶ *In the field of psychiatry, refurbishment measures and new construction are urgently required and must be initiated as soon as possible in order to guarantee contemporary care.*
- ▶ *Therapeutic meetings should take place in designated rooms in the interest of protecting the personal space of the patients.*

### 2.2.9 Long-term stays of psychiatric patients

The commissions observed repeatedly on their monitoring and control visits that patients are cared for in psychiatric hospitals for long periods of time although this is not necessary from a medical point of view.

Such long-term stays in psychiatric hospitals do not comply with current standards of medical science and are mainly attributable to the insufficiency of non-residential places for specific groups of persons.

Long-term stays in conflict with UN CRPD

The UN Convention on the Rights of Persons with Disabilities (CRPD) requires that persons with disabilities including psychiatric long-term patients are able to choose where they stay based on their needs and can decide themselves where and with whom they live. In this way, local care should be guaranteed that enables those affected to lead a self-determined life in the community and avoids isolation and segregation. Under this aspect too, a long-term stay in a psychiatric hospital is problematic, particularly in acute psychiatric wards.

The NPM thus considers it urgently necessary that suitable care places are created for seriously ill persons, in particular for persons with multiple diagnoses and behavioural disorders. These care places must have a sufficiently high staff ratio and nursing qualifications in order to be able to adequately care for seriously ill patients. Furthermore, there is a need for transitional treatment places for patients who are being discharged from an acute psychiatric ward.

Expansion of specialised facilities necessary

Placing psychiatric patients in “normal” retirement and nursing homes is, however, not suitable as adequate care cannot be guaranteed in these facilities. The NPM thus argues emphatically in favour of expanding non-residential areas and creating adequate care places for psychiatric patients.

Flawed discharge management

Discharge management at Graz Süd-West/Standort Süd Regional Hospital also gave cause for criticism. Commission 3 observed during their visit that one long-term patient was discharged due to the authorisation of her legal guardian and was transferred to Vienna by an “authorised” person.

As a matter of principle it is, however, impermissible that legally appointed guardians divest themselves of their responsibility by delegating their tasks to third parties. The discharge and transfer of this patient to Vienna was thus conducted without the legal consent for the patient, which was extremely problematic in view of an acute risk of suicide. It was evidently not examined if the authorised “escort” was legally entitled to carry out the discharge procedure.

The reservations on the part of the NPM were considered insofar as authorisations made by legal guardians will be examined more closely in the future in cases where the status is unclear.

- ▶ *The number of non-residential places for taking care of persons with psychiatric diseases must continue to be increased to avoid hospital stays for which there is no medical indication.*
- ▶ *The authority of persons having powers of representation must be carefully examined as part of discharge management.*

## 2.3 Child and youth welfare facilities

### 2.3.1 Introduction

In the year under review 2017, a total of 93 facilities in which children and adolescents are cared for were visited. Most of the observations in 2017 had to do with living conditions, health care and the personnel. There was also a large number of findings on the topics of the “right to privacy” and “signs of torture, maltreatment, abuse, neglect and degrading treatment”. Complaint management was also the subject of many observations made by the six commissions.

Not only facility-related problems are depicted in the findings of the commissions. Structural deficits in child and youth welfare are also described. Negative practices in the facilities are communicated to the management in the concluding meetings. Rectification is frequently promised immediately or implemented directly after the visits. Afterwards many facilities express their gratitude for constructive criticism and external feedback, but are also delighted when notice is taken of the improvements they are working on. If this is not the case or when findings can only be made after viewing the documents, the NPM contacts the private or state-owned competent authorities for child and youth welfare and protection requesting an opinion.

In this way, it was possible to initiate further development of participation opportunities in several facilities last year. The children’s right to participate could be achieved thanks to the active, age-appropriate involvement of the children and adolescents in the meetings on which the development reports are based and the creation of children’s councils. Minors should be given different alternatives to lodge complaints internally or externally, for example by offering letter boxes or installing a digital app that presents the children and youth advocacy organisations. The commissions were also successful in improving medical documentation in several facilities. Increased awareness for the need to store medicines safely was also generated. Promises were made to take children to medical specialists for paediatrics, dentistry and ophthalmology in the future.

Many improvements  
again

At the suggestion of the commissions, a dietitian was involved in creating healthy menu plans that also included the minors’ wishes in several shared accommodations. The NPM assumes that it is necessary to offer minors from dysfunctional families nutritional education in order to realise their right to the best possible health, especially considering that their eating habits develop from model learning. This has nothing to do with strict rules and prohibitions. On the contrary, it must be accepted that some children and adolescents have eaten mainly fast food to date and have never become familiar with common unprocessed foods or alternative ways of cooking. Having their say in the weekly menu plan, shopping and the ingredients of balanced meals

are designed to promote healthy eating. Eating together has been a ritual of cohabitation since the beginning of time. For this reason, it was suggested that the working times of cooks be changed so that children and adolescents can have a warm meal when they come from school.

In several shared accommodations there was positive change. Double rooms are now only used for younger children and all adolescents have their own, separate room. Lockable safes were purchased and new locking systems ordered for the children's and adolescents' rooms in order to protect their privacy. House rules were revised upon recommendation of the commissions to be less strict and the way in which rule violations are dealt with were reconsidered.

Quality has its price The response of many private owners and/or operators to criticism, namely that better quality socio-pedagogical work incurs higher costs, is understandable from the NPM's point of view. Facility operators report that the competent supervisory authorities of the *Laender* have raised the requirements in recent years following recommendations of the NPM, but fail to provide the necessary funds required to this end by increasing the daily rates. Improvements that are considered necessary even by the facilities often have to be postponed for financial reasons. Facilities' attempts to effect an increase in the daily rates on the part of the *Laender* have been unsuccessful.

NPM promotes performance-related daily rates As the NPM is aware that better quality incurs higher costs, the *Laender* are requested to balance the additional costs for urgently required improvements from a human rights perspective with higher daily rates. The amount of the daily rates should be more orientated on the differentiated offers that have to be provided for individually caring for minors with a wide range of problems. A basic amount should be fixed by the *Laender* for all types of facilities, which can be increased depending on the needs of a child including special needs for therapies, special educational costs, additional staff etc. In Tyrol and Styria, there are already standard daily rates for different types of care forms.

Substantial differences in the *Laender* noticeable What is noticeable for the NPM is that there are differences in the facility standards in the *Laender*. Vienna, Lower Austria, Styria, Salzburg, Tyrol and Vorarlberg have implemented a delegation of authority to the regional governments stipulated in the execution laws of the *Laender*. This delegation of authority allows them to enact more detailed provisions regarding the conditions for the construction and operation of socio-pedagogical facilities by regulation. Other *Laender* have guidelines that contain quality standards. The standards are not uniform on a nationwide level, starting with the maximum number of children per group to the required qualifications of the staff. The staffing ratio also varies.

The NPM has been demanding uniform federal standards for years. The UN Committee on the Rights of the Child (CRC) also criticised the lack of uniform quality standards and differences in the numbers of available places in the *Laender* after the last official country review of Austria in 2012. It also

suggested anchoring the right to the best possible quality in out-of-home accommodation in the Federal Constitution.

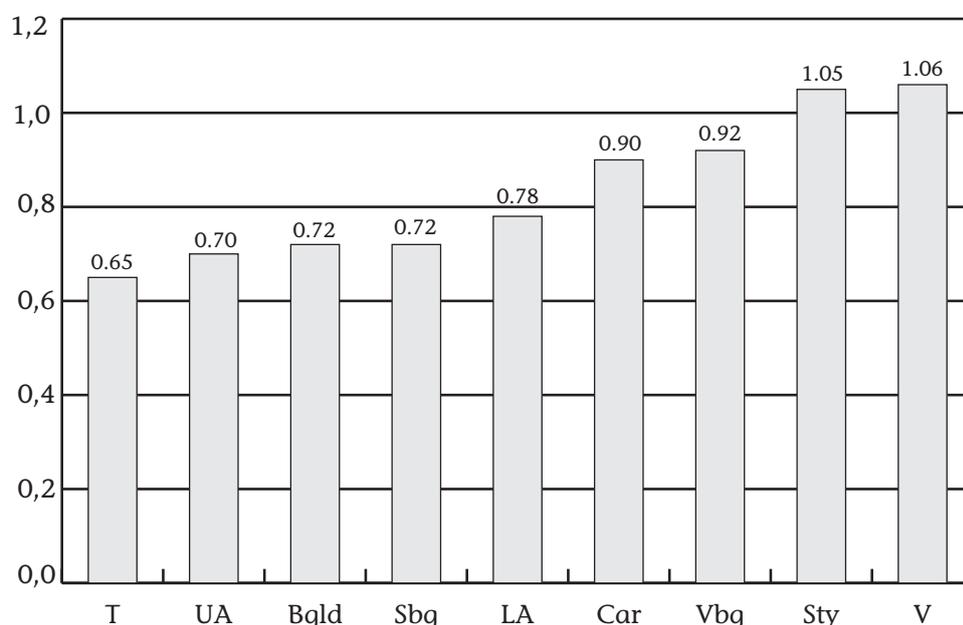
The child and youth welfare statistics and the figures provided to the Laender indicate that despite the Federal Children’s and Youth Service Act (*Bundes-Kinder- und Jugendhilfegesetz*) 2013 it has not been possible to fulfil the recommendation of the UN Committee. Even though the harmonisation of the minimum standards in child and youth welfare was the intention behind this federal fundamental act, there are still differing areas of focus in out-of-home care. These have considerable effects on the socio-pedagogical practice in facilities in the individual *Laender* and affect the development as well as the living conditions of the minors.

Harmonisation of standards not achieved

In 2016, 13,646 children and adolescents were living out of home throughout Austria (7,453 boys and 6,193 girls). Figures for 2017 are not yet available. In total, 8,423 minors live in socio-pedagogical facilities; 5,162 are cared for by foster parents. Since the coming into effect of the Federal Children’s and Youth Service Act 2013 and the implementing laws in the *Laender*, there has been an increase in preventive support and more outpatient child and youth facilities. Nevertheless, the number of children and adolescents in full residential care is growing. The percentage of children and adolescents who live out of home in relation to the total population varies greatly from *Land* to *Land*.

8,423 children in socio-pedagogical facilities

Percentage of out-of-home children and adolescents by *Land*\*



Every 100<sup>th</sup> child in Vienna and Styria does not live with parents

Legend:

- T = Tyrol
- UA = Upper Austria
- Bgld = Burgenland
- Sbg = Salzburg
- LA = Lower Austria
- Car = Carinthia
- Vbg = Vorarlberg
- Sty = Styria
- V = Vienna

\*Source: STATISTIK AUSTRIA, Child and youth welfare statistics 2016

- NPM recommends increased expansion of outpatient support
- The major differences between Tyrol with 0.65% and Vienna with 1.06% can only be partly explained by the idiosyncrasies of the large city. Why the figures between Styria and Tyrol differ so much and the data from the other *Laender* diverge to such an extent is not plausible to the NPM. The *Laender* are thus requested to find the causes of this development and to do everything in their power to prevent out-of-home care through an extended and closely meshed package of outpatient, family-supporting measures. The Association of Austrian Child and Youth Welfare Facilities (*Dachverband Österreichischer Kinder- und Jugendhilfeeinrichtungen*) followed these demands in a press release.
- Cooperation with Ombuds Offices for Children and Youths
- For years, there has been a cooperation agreement with the Ombuds Offices for Children and Youths of the *Laender* that functions very well. Valuable suggestions and invitations for visits were made once again in 2017. A lively sharing of experience took place with the NPM. The Ombuds Offices for Children and Youths were also invited to draft their own report on their observations, which was attached to the special report of the AOB on children and their rights in public institutions and facilities.
- NGO Forum 2017
- The NGO Forum 2017 was dedicated to children and adolescents. Representatives of human rights NGOs as well as from the federal ministries and the *Laender* attended sessions on the topic of “Protecting children and adolescents – preventing violence”. One of the four workshops on offer dealt with the topic of “Children and adolescents in state care”.

- ▶ *Further harmonisation of the Laender minimum standards in the socio-pedagogical care of children and adolescents should be pursued on a nationwide level.*
- ▶ *The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors.*

### 2.3.2 Upbringing free of violence is a human right

- State must protect against violence
- Article 2 of the Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) stipulates that every child who is taken from its familiar surroundings either temporarily or permanently is entitled to special protection and assistance from the state. Article 8 ECHR also protects the right to private life in addition to the right to family life. This includes the right to self-determination of one’s own body and the protection of physical integrity. States have therefore the obligation to protect children and adolescents from all forms of physical violence, in particular sexual violence. Article 19 of the UN Convention on the Rights of the Child (CRC) also stipulates undertaking pertinent preventive measures to prevent violence to and sexual assault of children and adolescents.

In 2013, the NPM resolved, after consultation with the Human Rights Advisory Council, the topic of “Measures to prevent violence” as a monitoring priority for visits to facilities for children and adolescents in out-of-home care. The evaluation of the interviews held by the commissions with minors and staff indicate that in the year under review violence in a wide range of forms poses a problem in almost every facility. The staff complain about an increase in the propensity of minors to use violence. In 2017, there were also observations that minors in socio-pedagogical shared accommodations or homes were victims of violence or abuse by other minors.

Propensity to use violence is on the rise

The commissions still observe that pedagogic staff do not take part in regular training on the topic of violence prevention, meaning that neither a conscious handling of violent incidents takes place nor measures for de-escalating conflicts are taken. Experience of the NPM verifies, however, that caregivers who have been trained in dealing with de-escalation can handle the situation more competently. The objective of these training programmes is to learn how to counter aggressive or violent behaviour and how to act appropriately in such a situation.

Violence protection concepts are an important tool in violence prevention. However, they are still not the standard in every child and youth welfare facility. Besides, the commissions also experienced that there are specific guidelines in many facilities but that the staff are not familiar with them.

Violence protection concepts do not exist or are unknown

Time and again children and adolescents are victims of sexual violence in out-of-home care. This also happens frequently between children. Often those boys and girls who have experienced abuse in their own families are particularly vulnerable, as they were unable to develop a reliable sense of proximity, distance and boundaries. Sexual assault occurs when sexual acts are forced. In such cases, a power imbalance or mutual trust is often exploited and the victim threatened or subjected to physical violence.

It is the responsibility of the qualified staff to protect minors from sexual assault. If once this protection was not possible, such incidents must be worked through in as far as possible, as the way in which the victims, the minor perpetrators and other residents are dealt with is very important. The following examples demonstrate that failure to take effective measures after initial evidence of boundary violations comes to light can have far-reaching consequences.

Sexual assault of children in out-of-home care

During a holiday programme with children from different shared accommodations in Burgenland, an 11-year-old was suspected of having participated in sexual assault. He stated that he had also been subjected to sexual assault by an older resident in a shared accommodation. The boys were interviewed in the child protection centre. However, as their statements differed, it was not possible to clarify what had actually happened. The suspected boy remained in the shared accommodation and nothing was undertaken to

Particularly serious negligence

protect the affected child and other children. A few months later, a pedagogue in the same shared accommodation caught another adolescent when sexually abusing his younger brother. Both boys stated that there had been several similar incidents. The technical supervision was informed by the facility about the incidents. Nonetheless, a spatial separation of victims and perpetrators inside the shared accommodation was only ordered after receiving a letter from the AOB that had been informed about the incidents through an anonymous complaint. In addition, double staffing was prescribed for night shifts.

Insufficient measures to protect children

On an unannounced visit three months later, the commission found an atmosphere of fear. The younger children claimed that they were afraid of the older adolescents and wanted to move out of the shared accommodation. The molesting adolescents had not been moved to a different facility but were still living in the shared accommodation. There were no written concepts or considerations in place regarding how unsupervised contact between the molesting adolescents and the other children can be prevented either. The double-staffed night shifts had already stopped after two weeks due to staff shortages. There was also criticism of the fact that a young mother with her new-born baby, who needed a lot of support from the staff in caring for the baby, were living in the shared accommodation. The Land had authorised the placement of mother and child in the facility even though the shared accommodation was in a crisis due to the incidents, and urgently needed all of the available human resources to implement effective measures to prevent further assaults. The NPM observed a large number of deficiencies and effected the transfer of seven children to other facilities.

Inadequate consequences

The protection of the children living in a shared accommodation in Vienna was also neglected after a 13-year-old had molested younger children there. A few months later, it was noticed that he had secretly met a 7-year-old girl in the night. Some time after that, the girl was seriously sexually abused by the then 14-year-old at such nocturnal meetings in the bathroom. The boy was suspended and moved to another shared accommodation located, however, in the same building complex. As there was visual contact from the rooms of the shared accommodation to other shared accommodations and it thus cannot be prevented that the two minors constantly run into each other, Commission 5 considered this measure to be completely inadequate to prevent further assaults.

No sex education concepts

Effective prevention requires that minors are instructed about the different types of boundary violation and encouraged to seek help. They need to be advised on their rights to physical and sexual self-determination, and learn to question gender stereotypes. Often the underlying structural conditions are in effect conducive to the occurrence of sexual violence. Structural conditions in facilities and a too low staffing ratio can mean that boundary violations are easily missed by the staff. Many employees are aware of the problem but there are no clearly defined strategies and responsibilities to prevent sexual assaults.

In most cases, such a concept is only developed after boundary violations have taken place.

The NPM expressly recommended all of the *Laender* in recent years to look at the implementation of a sex education concept as a mandatory condition for granting permits to facilities. This is already the case in Vienna. Lower Austria and Tyrol reacted to this demand and now already prescribe pertinent concepts for every new residential group as well as for the reorientation and restructuring of existing facilities. A deadline has been set for the implementation of a sex education concept in existing facilities. In Upper Austria, a conceptual framework for sex education applicable to all owners and/or operators and for use in all socio-pedagogical facilities was developed. In addition to this a training course on the topic of sex education was initiated by the University of Applied Sciences.

Sex education concepts as a pre-requisite

- ▶ *Violence prevention and sex education concepts should be a condition for granting permits for socio-pedagogical facilities in all Laender.*
- ▶ *The implementation of these concepts must be monitored by the technical supervision of the Laender.*
- ▶ *Recurring mandatory advanced training of the staff on the topic of sex education is necessary in all facilities.*

### 2.3.3 Handling of rule violations out of date

On their visits, the commissions repeatedly come up against a problematic way of dealing with sanctions. The principal task of socio-pedagogical and socio-therapeutic facilities is to create healing conditions for young persons who are disadvantaged in their development in order to support them professionally and encourage them. Children and adolescents should experience acceptance and recognition as a person, as well as stability, safety and a calculable environment. They have to feel understood and sheltered.

Problematic handling of rule violations

The commissions report about punitive measures that bear all the signs of inhuman and degrading treatment pursuant to Article 3 ECHR. A caregiver, for example, suggested to an adolescent who had scratched himself that he rub salt in the wound in order to change his behaviour. After that failed to bring about the desired reaction, the pedagogue informed him that the effect could be strengthened by water so that he could really “feel” what he had done. Practices that border on sadism must be strictly rejected when dealing with self-harming behaviour.

Cases of degrading, inhuman treatment

In December 2017 serious allegations by former residents and a social pedagogue became public. They concerned two shared accommodations run

by the same operator in Lower Austria and the subject matter was sanctioning practices. The AOB initiated *ex-officio* investigative proceedings thereupon which were not concluded at the time of completing this report. The regional government of Lower Austria deployed a special commission to examine the alleged abuse. The Head of Commission 3 is also a member of this special commission.

Direct link with misconduct

Sanctions should only be applied in pedagogic work after careful deliberation and on a case-by-case basis. They should be directly linked to the misconduct in time and not imposed arbitrarily depending on the caregiver. Cleaning the entire house, taking away a mobile phone for an unlimited period of time, withholding pocket money or grounding for weeks are certainly not adequate reactions to rule violations.

Sanctions that are too strict and bear no relation to the misbehaviour do not bring about the desired positive pedagogical effect. What is often not fully taken into account by the pedagogic staff is that the perceived problematic behaviour mirrors the patterns of behaviour experienced during early childhood and that the children have never learned strategies for alternative types of behaviour. Often the application of strict sanctioning systems is an expression of overload and helplessness by the staff. In one shared accommodation, the penalties imposed were written on a board with information about the misconduct and hung up in the caregivers' room for all to see from the hallway. This practice had the effect of setting a demarcation but in no way took the children's and adolescents' need for help into consideration. This can result in their reacting with behaviour that is even less desirable, which culminates in a spiral of behaviour patterns such as running away from the facility, regression or aggression.

Alternatives must be learned

A learning process can only take place for minors if the consequences for misconduct are clear and plausible. The reaction to rule violations should thus be customised on a case-by-case basis as opposed to a routine manner. Further training measures must be open to staff in order to develop alternatives to inflexible sanctioning systems. The concept of "New Authority" in particular, which rejects punishment in general and relies on the system of making amends, has been successful.

- ▶ *Degrading punishment is forbidden without exception.*
- ▶ *Sanctions must be directly associated with the rule violation.*

### 2.3.4 Measures that restrict freedom

The NPM has been criticising the lack of legal protection for children and adolescents in homes and facilities for the care and education of minors from a human rights perspective since 2013 and has demanded formal improvements in the law. The legislators have now fulfilled these demands and extended the scope of application of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) to such facilities. From 1 July 2018, measures that restrict freedom also have to be reported to the representatives of the residents in facilities in which at least three minors with physical or mental impairments can be cared for.

Nursing and Residential Homes Residence Act applies to facilities for children as from 1 July 2018

The reason, the type, the start and the duration of the measures that restrict freedom as well as the examination of previously applied alternative measures must be documented in writing. In the same way, the reason, the type, the start and the duration of the restriction of a resident's personal freedom applied with their respective consent must also be documented. Restrictions of freedom in socio-pedagogical facilities had to be documented in any case. To date, minors still repeatedly informed the commissions about restraints for which no record was found in the daily documentation.

Lack of documentation

It was also indisputable to date that restrictions of freedom may only be applied if they are appropriate for the situation and the educational objectives, and if no milder alternatives are available. The latter is not the case if, for example, a house door which is also a fire-resistant door is regularly locked to stop minors from running away, and access to the garden is always blocked due to staff shortages. What is particularly problematic here is that these measures usually also affect children in the shared accommodation who are not involved, meaning that their right to personal freedom is breached without due cause. There is no other option here than to apply more intensive pedagogical intervention and to find out why there is a tendency to run away (temporary 1:1 care).

Milder alternatives have to be developed

Minors reported of inadequate restraining techniques such as an adult sitting or kneeling on a child. In one shared accommodation, the caregivers restrained them by holding them by the neck with one arm twisted behind their back. A child was even injured in this way on one occasion. These kinds of practice are in no way adequate restraining techniques and thus worthy of criticism. Further training such as the PART programme (Professional Assault Response Training) are strongly recommended. The *Laender* have announced to the NPM that they intend to inform facilities about statutory amendments in time.

Inadequate restraining techniques

- ▶ *Child and youth welfare institutions must deal with the conditions that the Nursing and Residential Homes Residence Act requires for the permissible restriction of freedom, and they should actively seek cooperation with the representatives of the residents.*
- ▶ *Training on the new legal requirements is essential.*

### 2.3.5 Alarming personnel situation

Major problems with fluctuation	The NPM already reported in recent years about problems in recruiting personnel at the facilities. Vacancies are filled only temporarily or not at all. For the staff this means that they have to take on additional work. The consequence is work overload resulting in resignations. This personnel situation has a negative impact on the care situation of the minors.
Frequent changes of personnel is enormous stress factor	Frequent breaks in relationships are nearly always a very stressful experience for the children and adolescents. During the commissions' visits, when asked what is negative in the shared accommodation, minors often mentioned the loss of caregivers. The frequent change of caregivers in a care facility is deemed highly critical. It can be assumed that minors whose original family bond is insecure are subjected to additional risk factors that can intensify with high levels of personnel fluctuation.  Psychological resilience research investigated why some children cope with severe stress better than others. They reached the conclusion that a stable relationship to a reliable and loving adult is the most important "protection factor" in alleviating the worst consequences of severe stress. The frequent change of personnel is thus a stress factor for children who are traumatised from the loss of trusted persons. This is ultimately reflected in the fact that many of these children are bound to child and adolescent psychiatry and regularly take psychotropic medication.
Inadequate induction training	When there is shortage of personnel, it is often not possible to train in new staff. They are often left alone after a short time and work some night shifts without any support. Sometimes two or more groups of residents are merged at night or at the weekend, and the young employees without any work experience are left alone with these combined group set-ups and minors whom they do not know. Change in the care team thus happens, when new employees, who are very dedicated at the beginning, cannot cope with this high stress level and leave. Facilities do not seem to be able to break out of this vicious circle if they already had a bad reputation in the sector due to frequent staff shortages. The situation is exacerbated if it takes a long time to fill vacant positions (in one case a year).
Facilities need support	Problems like these were highlighted by the commissions in previous years. The NPM therefore requested information from all of the <i>Laender</i> to support

the facilities in solving the fluctuation problems. This is undertaken by the competent authorities for child and youth welfare and protection. The support measures offered by the *Laender* range from staff meetings (also with former employees), extra-occupational advance and further training, supervision, monitoring and coaching to manager training.

The effect of these measures by the competent supervisory authorities, however, seems to be of a limited nature. On follow-up visits to the facilities that are affected by high fluctuation, the commissions found that the situation had sometimes worsened.

Measures taken by the authorities to date are not sufficient

- ▶ *High personnel fluctuation must be avoided at all cost in the interest of minors.*
- ▶ *Causes of fluctuation must be prevented.*

### 2.3.6 Participation of children and adolescents

The commissions conduct interviews with the children and adolescents in order to establish, amongst others, whether participative measures were introduced in the facilities. These include “house councils“, children’s teams, children’s representatives and complaints letter boxes, opportunities to have their say and exercise self-determination. The answers were disillusioning in recent years. In many facilities, meetings of the children’s teams are no longer held or are only held at very long intervals. But according to the children and adolescents, even where they do take place, the adults still decide that their wishes cannot be accommodated.

Need to catch up

Participation, as stipulated in the UN Convention on the Rights of the Child (UNCRC) and the Federal Constitutional Act on the Rights of Children, is more than the right to be heard. It is a fundamental approach that has effects in all areas of out-of-home care measures, from the decision and admission process through the care period to completion of the phase of independence. According to the Quality4Children Standards, which were drafted by order of the European Council for the extra-familial care of children and young adults in Europe on the basis of UNCRC, the child is recognised as the expert for its own life. To this end, it must be informed, heard and taken seriously.

Children as experts for their own lives

Involving children and adolescents in different projects means that they can identify with and better support them. Participation can only function if both the management and the staff of a facility are positive about this topic. It can only take place if the employees are involved in the decision processes of the facility. The most important condition for this is that the children and adolescents recognise positive results and developments because in this way they realise that their commitment pays off.

Deficits in implementation

The impressions gained by the commissions regarding the lack of participation of children and adolescents in facilities and homes were partly confirmed by the supervisory authorities of the *Laender*. Deficiencies in the implementation of measures were also noticeable on the visits of the technical supervision. The terms “participation” and “inclusion” meant nothing to the children. In cases like these, the attention of the staff and the management is drawn to the importance and effectiveness of participation for the success of the socio-pedagogical work. Advanced training on these topics is offered.

- ▶ *Facilities need support in implementing the right to participation.*
- ▶ *The participation of the children and adolescents must be lived in everyday life.*

### 2.3.7 Lack of specialised accommodation places

Extended stays in psychiatry

On visits to child and adolescent psychiatric wards and in child and youth welfare crisis facilities, the commissions are repeatedly informed that adolescents with intensive support needs have to stay longer in inpatient care than required because there are not enough post-inpatient care places available.

Misplacement due to lack of specialised care places

At the same time, the commissions encounter severely traumatised children and adolescents in many socio-pedagogical facilities. The care in this setting is neither sufficient nor adequate and thus not expedient from a pedagogical viewpoint. The affected children need, above all, qualified, needs-based care. However, socio-therapeutic and socio-psychiatric services are missing all over Austria, the inevitable consequence of which is misplacements.

In Carinthia, there are currently 95 socio-therapeutic care places for a total of 828 children and adolescents in full residential care in the inpatient area. In Salzburg, there are 6 care places for 589 minors; in Styria, also 6 care places for 2,100 children and adolescents; in Lower Austria, 304 for 1,271 children and adolescents; in Upper Austria, 74 places for 1,121 children and adolescents; in Tyrol, 19 places for 609 children. In Vorarlberg, there are 20 places for 323 and in Vienna 100 special care places for 2,217 socio-pedagogically cared for children and adolescents. In Burgenland, there are 54 places for 284 out-of-home children and adolescents.

Available places vary greatly in the *Laender*

Even if a comparison between the *Laender* is difficult due to unequal requirement specifications for special care, differing names and responsibilities, it is quite clear that in some *Laender* the ratio of available special places in relation to the number of children housed in socio-pedagogical facilities is very low. In Styria, the imbalance is particularly noticeable. In other *Laender* such as Lower Austria, the proportion is very high. One explanation for this could

be that not all *Laender* have created the mandatory child and youth welfare plan pursuant to the Federal Children's and Youth Service Act 2013 yet. The NPM requests the relevant *Laender* to conduct needs analyses and increase the number of places as soon as possible.

There are also insufficient crisis de-escalation places in Austria. In recent years, the existing crisis centres have been nigh on continuously fully occupied and, at times, even severely overcrowded. This leads to above-average waiting times for a suitable care place. In Vienna, the average occupancy of the crisis centres was 98.57% in 2017. Time and again, on their visits the commissions find twelve instead of the eight children as prescribed. In November 2017, there was overcrowding in half of the crisis centres. In Lower Austria, the occupancy rate fluctuates between 80 and 100 %. Such a high occupancy rate means that these centres can only offer an emergency pedagogical care and not a professional crisis de-escalation. In some *Laender*, minors are even taken directly from the family to a hospital or shared accommodation if the crisis de-escalation places are full or if there is no crisis centre, as is the case in Burgenland. Cases of abuse in a shared accommodation gave cause for the NPM, with the involvement of the Human Rights Advisory Council, to address a recommendation to the regional government of Burgenland to create crisis de-escalation places.

Crisis places  
overcrowded

In addition, there should also be special crisis de-escalation places for children and adolescents with psychiatric diagnoses or post-traumatic stress disorders. The NPM therefore demands the setting up of special crisis centres similar to socio-therapeutic or socio-psychiatric residential groups, with specially trained and experienced staff and a higher staffing ratio.

There are also insufficient care places in facilities for mothers and their children in Austria. There is no mother-and-child-home in Burgenland. In one facility, this resulted in a special permit being issued to a shared accommodation for the care of a baby and its mother. Such a makeshift solution is extremely stressful for both the other residents and the staff. It is also questionable if it was in the interest of the baby's wellbeing.

- ▶ *The number of socio-therapeutic care places must be increased substantially.*
- ▶ *Crisis de-escalation places must be urgently expanded to meet the requirements.*
- ▶ *Crisis centres must be created for children and adolescents suffering from psychiatric or post-traumatic stress disorders.*

### 2.3.8 Obstacles to maintaining the relationship to the family

Too many placements  
in other *Laender*

The right to contact to both parents anchored in Article 9 (3) Convention on the Rights of the Child as one of the most important children's rights is also included in Article 2 (1) of the Federal Constitutional Act on the Rights of Children, and thus guaranteed under constitutional law. The lack of special care places depicted in the previous section is, however, still frequently the reason why many *Laender* house minors far away from their families in another *Land*. As a consequence relationships break, which makes returning the minors to the family even more difficult if not impossible.

A current survey based on 2016 fortunately indicated that there has been a slight decrease in the number of children and adolescents housed in other *Laender* since the first time the data were recorded by the NPM in 2014. An increasing trend was observed only in Carinthia.

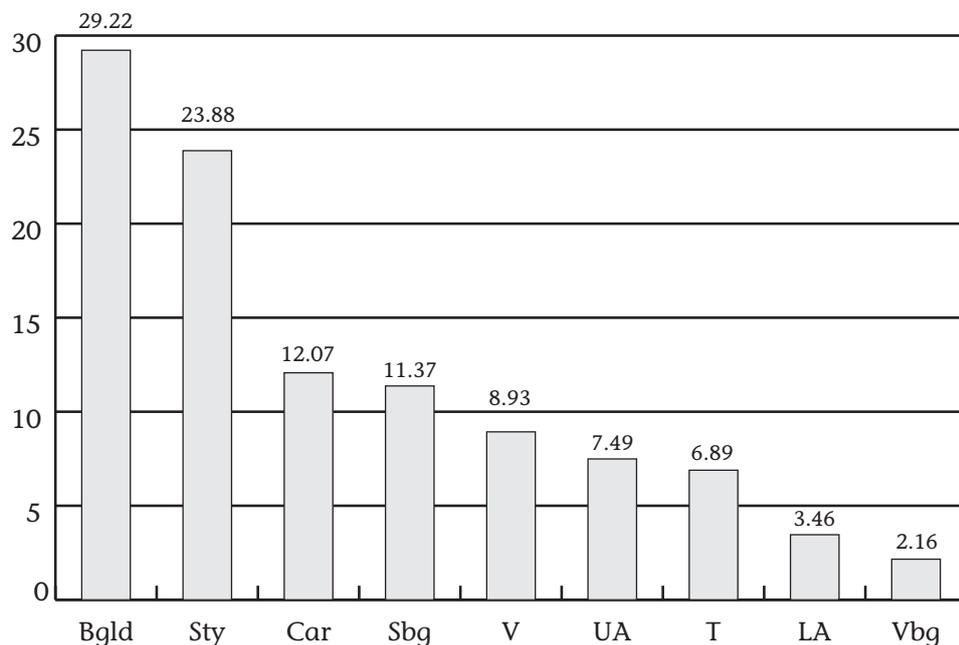
Major differences within  
Austria

At 29.22%, Burgenland has the highest proportion of minors housed outside of their own *Land*. This is even more astounding as, relatively speaking, there are plenty of socio-pedagogical and socio-therapeutic residential groups in Burgenland, yet just a third of the available places are occupied by children from Burgenland. The reason for this appears to be an allowance that the private operators in Burgenland can request for minors from other *Laender*, thus making caring for them more attractive. For this reason, consideration is being given in Burgenland to adopting the model that has been practised in Upper Austria for several years. The model allows a maximum of 15% of the total number of minors in a facility to be from other *Laender*. The number of minors from other *Laender* in Upper Austria has fallen from 126 to 84 since this rule was introduced.

Some improvements  
noticeable

Since 2012 Vienna has reduced placements outside of the *Land* from 354 to 198 by increasing the number of care places. In Salzburg and Styria too, the proportion of minors housed in other *Laender* has decreased since 2014. By contrast, at 23.88 %, Styria still has far too many minors housed outside of their own *Land*. In Lower Austria, placements in another *Land* have had to be authorised by the Department of Child and Youth Welfare of the regional government for quite a while now. Furthermore, this is also only permissible if no other adequate places are available in Lower Austria. At 3.46%, the number of minors housed in other *Laender* is correspondingly low and has been falling constantly since 2014. The structures in Vorarlberg come closest to fulfilling the children's rights requirements. Just 2.16 % of the minors housed out of home live in facilities in another *Land*.

Placement outside of own *Land*  
(share in %)



Legend:

Bgld = Burgenland

Sty = Styria

Car = Carinthia

Sbg = Salzburg

V = Vienna

UA = Upper Austria

T = Tyrol

LA = Lower Austria

Vbg = Vorarlberg

This figures recorded for 2016 coincide with the observations of the commissions, which found facilities on their visits that are almost exclusively occupied by minors from other *Laender*. In Styria and Burgenland, the commissions encountered residential groups in which not one child came from the respective *Land*. If these are very far away from the place of residence of the family of origin and can only be reached with difficulty by public transport, regular personal contact to parents and siblings cannot be supported and secured. Expensive travel also makes it difficult to observe the right to contact. On the initiative of the NPM, facilities in Styria in future will have to ask the technical supervision whether a place is needed for a child from Styria before accepting a child from another *Land*. Do date, this practice was only applied inside the district. The NPM is hoping for an improvement in the situation from this measure.

- ▶ *Out-of-home placement at a great distance from the place of residence of the family of origin must be avoided. The aim is to protect the opportunity to visit and stay in contact in the interest of the children's wellbeing.*
- ▶ *As competent authorities for child and youth welfare and protection, the Laender have to provide a needs-based expansion of the care structures. The proportion of out-of-home minors from other Laender must be kept as low as possible.*

### 2.3.9 Group size affects quality of pedagogic work

Section 12 of the Federal Children’s and Youth Service Act stipulates how child and adolescent welfare is to be organised by normalising standards recognised by experts and using the current status of science as a benchmark. The implementation laws adopted this regulation without subsequently creating harmonised care standards in the *Laender*. There are thus considerable differences in the maximum number of children cared for per group throughout Austria. In addition, group dynamic processes, which occur more frequently in large groups, increase the risk potential even if the staffing ratio is higher. The risk of sexual assault among the minors not being seen by the staff is higher in larger groups.

Group size too high in three *Laender*

In Vienna and Salzburg, a maximum of 8 minors live in one shared accommodation; in Upper Austria, Vorarlberg and Tyrol, the number is 9 minors; in Lower Austria, 10. Carinthia with 12 and Styria with 13 minors per group are far above these standards. Burgenland, where there are even 16 minors per group, is the “leader”. The NPM, with the support of the Human Rights Advisory Council, took the opportunity to address the regional government of Burgenland with the recommendation of limiting the permissible group size to a maximum of 10 minors. The possibility to temporarily inflate the prescribed group size, as is possible in Tyrol and Lower Austria with the approval of the supervisory authority, should also be urgently reconsidered.

Home structures impede pedagogic work

Large homes with several groups are also not compatible with modern social education standards. Similar to large groups, the negative effects of group dynamics in large facilities are much stronger and impede development opportunities.

The staff in particular would like large facilities to be broken down into smaller socio-pedagogical and socio-therapeutic shared accommodations, as individual needs can be better catered to in smaller facilities. This was clearly evident from the interviews with the commissions. Several *Laender* have thus started to separate individual groups from large facilities. There are now no more large facilities in Vienna, Vorarlberg, Salzburg and Styria. The other *Laender* should follow this example. The private owners and/or operators should also be integrated in this separation process and requested to present restructuring plans.

- ▶ *A reduction in group size in accordance with the socio-pedagogical findings is recommended.*
- ▶ *In all Laender, children and adolescents should not be cared for in large facilities any more, but rather in small, family-like residential groups.*
- ▶ *As competent authorities for child and youth welfare and protection, the Laender must ensure that restructuring processes do not come to a standstill before completion.*

### 2.3.10 Different requirements for starting work in the *Laender*

A focal point of the Federal Children's and Youth Service Act 2013 was the professionalisation of the staff. Only qualified and suitable staff, in particular from the fields of social work, social education, psychology and psychotherapy, should be employed to work in child and youth welfare as intended by the legislators. This staff should be offered extra-occupational advance and further training as well as supervision on a regular basis. The staff must render their services in compliance with professional standards which are defined in detail by the *Laender*.

Focal point of the reform not implemented

Implementing laws adopted the regulation set forth in the Federal Fundamental Act according to which child and youth welfare services may only be rendered by qualified staff. However, the definition of who is qualified staff and under which conditions differs from *Land* to *Land*. For some *Laender*, these are exclusively graduates of colleges for social education and of universities of applied sciences with degrees in social work, as well as persons with university degrees in psychology, education or psychotherapy. In other *Laender*, kindergarten pedagogues, after-school staff, teachers, nurses, social workers, care staff for persons with disabilities, and youth workers are also recognised as qualified staff.

Different definition of qualified staff

Some *Laender* provide for extra-occupational qualification opportunities. In Burgenland and Vienna, persons who have no knowledge of education can work in socio-pedagogical shared accommodations if they begin their training in the first year of employment and complete this within five years. In Styria, they have to have completed two-thirds of their training before being allowed to work. The NPM considers these regulations to be extremely critical. What is even more difficult to understand is that an extra-occupational qualification is permissible for staff in socio-pedagogical and socio-psychiatric shared accommodations. In Vienna, these shared accommodations in which the most challenging children and adolescents live are run by private operators for example. They are free to hire staff who have not completed any pedagogic training. In the facilities of the Viennese Municipal Department 11 (MA 11), by contrast, only social pedagogues who have completed their training are allowed to work.

No qualified personnel

No harmonised regulation of education	The social pedagogue profession is not regulated in any pertinent law. Over many years, efforts to implement a harmonised regulation at the federal level have failed. As a consequence, the level of education is inhomogeneous, as educational institutions pursue different models in terms of learning content and the number of lessons and hours of practical experience. The same applies for the advance and further training offered. The NPM holds the view that a contemporary and harmonised regulation in these areas has been necessary for a long time. People who work in the social sector must have the necessary qualifications.
Also no uniform regulations for staffing ratios	The staffing ratio is also regulated differently in the <i>Laender</i> and, in some cases, not clearly defined. In some <i>Laender</i> , regulations stipulate that there must be a minimum number of care persons depending on the type of housing. In other <i>Laender</i> , there is no regulation and the number of qualified staff is only prescribed for the facilities in the respective permit notice. The NPM also views this very critically.

- ▶ *The NPM demands that only well-trained staff should work in child and youth welfare facilities.*
- ▶ *Uniform training standards and quality standards in child and youth welfare must be created for all of Austria.*

### 2.3.11 Continuation of support after reaching legal age

Entitlement to support ends after reaching legal age

The Federal Children's and Youth Service Act 2013 (*Bundes-Kinder-und Jugendhilfegesetz*) stipulates that parenting/educational support can be extended after the recipient has reached legal age if this is absolutely necessary to achieve the objectives defined in the assistance plan. There is no legal entitlement as was the intention behind the legislative proposal. In some *Laender*, the extension is only granted for six months or a year, which causes a feeling of insecurity for the adolescents.

Moreover, young adults in almost all *Laender* only receive further support in the form of full residential care if they were already living out of home. This means that adolescents are often not accepted in full residential care before reaching their 18th birthday even if out-of-home care has been indicated.

Individual support needs

When the number of young adults in residential care in 2016 is assessed in relation to the total number of those in full residential care, it is noticeable that some *Laender* continue granting assistance for longer than others. The amount of assistance granted to young adults is thus twice as high in Salzburg, Tyrol and Styria as it is in other *Laender*. These significant differences cannot only be explained by different support needs of the individual adolescents.

The supporting measure for young adults is capped at the age of 21 in any case. This is also a point of criticism by the NPM, as many minors who are living out of home do not start higher education for fear of not being able to complete it in time before the support stops.

- ▶ *The NPM demands an entitlement to support after reaching the legal age.*
- ▶ *Measures for young adults should be approved for the entire duration of their education.*

### 2.3.12 Unaccompanied minor refugees in reception conditions under the Basic Provision Agreement

Unaccompanied minor refugees are entitled to special protection and assistance from the state (Article 20 United Nations Convention on the Rights of the Child (UNCRC)). This obligation to protect and the measures derived therefrom are also explicitly set forth in the EU Reception Conditions Directive (2013/33/EU). The NPM uses these legal bases – besides the UNCRC, the ECHR, the EU Charter of Fundamental Rights and the Federal Constitutional Act on the Rights of Children – as assessment criteria for the fulfilment of state obligations. Pursuant to the UNCRC, unaccompanied minor refugees must be guaranteed the highest attainable health standard (Article 24). With Article 28 of the UNCRC, the Republic of Austria also recognises the right of every child to education. Other Articles of the UNCRC are also of importance for refugee children: the principle of non-discrimination (Article 2); the obligation to family reunification (Articles 9 and 10); the right to benefit from social security (Article 26) as well as adequate standards of living and maintenance (Article 27).

Assessment criteria

The laws relevant for child and youth welfare (Federal Children's and Youth Service Act) and the enacted implementing laws of the *Laender* as well as the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) make no distinction between minors from Austria and unaccompanied minor refugees. This is fulfilled for underaged unaccompanied minor refugees who are usually admitted to socio-pedagogical facilities. Older, predominantly male adolescents on the other hand, remain in reception conditions under the Basic Provision Agreement.

No justification for different standards

This has not only a negative impact on the quality of care. The distinction between Austrian children and refugees in this area is illegal and unconstitutional in the view of the NPM. The Supreme Court has also ruled that minors without Austrian citizenship must be treated the same as Austrian minors with regard to child and youth welfare services (OGH 4Ob 7/06t).

Facilities run under the child and youth welfare regime usually have substantially more resources than facilities that have to survive on the basis of daily rates for reception conditions under the Basic Provision Agreement and that can thus only implement lower standards. Furthermore, the *Laender* have also developed their own approach when it comes to the care of unaccompanied minor refugees. After visits by Commission 3 in Styria in recent years, the NPM criticised several times that the regional government authorised quarters for unaccompanied minor refugees exclusively as residential homes with a 1:15 staffing ratio unlike in other *Laender* where they are authorised predominantly as residential groups with a 1:10 staffing ratio. In larger facilities, this meant that the risk of many avoidable problems was accepted. A new Basic Welfare Support Act regulation in mid-2017 enabled Styria to at least draw level with other *Laender* with respect to staffing ratios. The benchmark for approved places was reduced from 40 to 30 and a somewhat higher daily rate for crisis care places was introduced. Throughout the country, there is a lack of special socio-therapeutic care places for unaccompanied minor refugees, which exist neither nationwide nor in sufficient numbers.

NPM observed many deficiencies

In 2017 the commissions noticed repeatedly that unaccompanied minor refugees with a seriously problematic background frequently changed facilities after a relatively short time. Despite clear indications of a mental illness requiring treatment or entrenched addictive behaviour, they showed no willingness to undergo psychiatric assessment or this was not performed due to a lack of services. Some of these unaccompanied minor refugees can only be accommodated in residential groups for a limited time before going missing again. It appears that it is not possible to build up a relationship using conventional concepts to those who are most in need of intensive support. The long waiting times for therapy places additionally thwart all efforts to counteract the risk behaviour.

The NPM observed repeatedly that the needs of minors in reception conditions under the Basic Provision Agreement are not sufficiently met, even though the situation has improved considerably compared to 2015 due to the decrease in new arrivals. Nevertheless, the list of deficiencies observed in 2017 is long and shocking in parts. It must be emphasised, however, that the caregivers themselves perform their work with great dedication.

Not enough qualified personnel

The management of facilities for unaccompanied minor refugees is responsible for providing a non-discriminatory and inclusive working environment. But it has to proactively prevent the potential work overload of the staff. It is indisputable that in many facilities not enough staff are employed or their qualifications are inadequate. There is rarely enough time to train in new members of staff. In extreme cases, as observed by Commission 4 in Vienna for example, this is limited to working one single shift with an experienced member of staff before taking over night shifts alone. The lack of pedagogic support concepts in the face of the imminent risk of radicalisation was also

criticised in this facility. There were also no concepts on how to deal with clients with mental disorders. Fortunately, there was an immediate reaction to the criticism from the NPM, and the regulatory requirements were tightened significantly. Commission 5 visited a recently opened facility in Lower Austria in which adolescents with particularly challenging behaviour were supposed to find a home. Since conciliar-psychiatric support was not in place despite the corresponding diagnoses of some residents, power struggles and altercations happened as anticipated. Repeated self-harm including an attempted suicide were met with interventions that are completely incompatible with pedagogic standards and in some cases could be classified as degrading treatment. The shared accommodation was closed down shortly after the visit by the commission, and the adolescents moved to another facility. The regional government of Lower Austria informed the NPM that special concepts are being considered for the support of unaccompanied minor refugees with similar needs, whereby “special care places” in existing facilities with additional staff and increased financing are planned.

The most frequent reactions to traumatic experiences in connection with exposure to violence and migration are symptoms of post-traumatic stress disorder (PTSD). The NPM holds the view that pedagogic staff must be vigilant regarding children and adolescents suffering from repeated sleeping disorders and nightmares or lack of concentration, or displaying aggressive or pessimistic and passive behaviour with a tendency to withdrawal. Care should be taken to involve native-speaking therapists during crisis de-escalation and to place these children and adolescents in a residential group that is relatively homogeneous with regard to the age structure and ethnic background in accordance with the “quality for kids standards”.

Insufficient support for  
traumatisation

Several facilities that provide reception conditions under the Basic Provision Agreement, which were visited by the commissions, were impersonal, bare or confined. In some cases, shared rooms were so small that it was not possible to be alone or receive visits and the environment was not conducive to learning. Broken or badly worn furniture, the lack of the simplest “study area” with desks, and the smell of faeces in the sanitary area were criticised on-site by Commission 1. These deficiencies were taken by the operator as an opportunity to initiate extensive refurbishment measures. The unaccompanied minor refugees welcomed the additional space created by converting four-bed rooms into double rooms as recommended by the NPM. In more extreme cases, not only was the accommodation unacceptable, but minors were sometimes even found in a neglected condition. At times, the unaccompanied minor refugees complained about restrictions (locked fridges, no WLAN, mobile phone bans and curfews etc.) or collective punishment. As follow-up visits showed, many of the deficiencies were rectified after the intervention from the NPM.

Sanitary and hygiene standards were sometimes considerably lower in basic provision facilities for unaccompanied minor refugees than those typical for the respective locality. One reason for this is that unaccompanied minor refugees are often not given sufficient support even though they are just beginning to develop self-organisation and self-responsibility skills. The same applies to preparing meals, as an understanding of healthy eating habits and an interest in cooking have first to be kindled. Sufficient support in going to important appointments (e.g. with the Public Employment Service, youth coaching, therapy offers, grinds, the doctor etc.) can only be provided if the conditions for comprehensive refugee social work are in place.

Right to education, participation and inclusion

Reports from the commissions indicate that many of the adolescent refugees are unable to exercise their right to education, participation and inclusion. The commissions reported that on unannounced visits they encountered unaccompanied minor refugees who just lay on their bed all day and voluntarily spoke of unfulfilled (sometimes unfulfillable) expectations, rejection, powerlessness and fear of the future. Minors of school age attend class, but there are no adequate training and further training offers everywhere for all of the others. German courses are only held once or twice a week in some regions. Faster integration as well as simpler communication with the support staff and the surroundings outside of the accommodation for unaccompanied minor refugees is thus difficult. In addition, staff in many facilities do not have the necessary language skills. In line with the UNHCR, the NPM recommends making it possible to hold daily German classes for unaccompanied minor refugees. Forced inactivity represents lost time in the biography of the adolescents and impedes their integration sustainably. The situation of those affected can become particularly uncertain from the end of their 18th year when they have to leave the accommodation for unaccompanied minor refugees and are not sufficiently prepared for an independent life. However, it also needs to be said that a group of the Vienna basic provision facilities are specialised in offering continued support for unaccompanied minor refugees.

- ▶ *The child's wellbeing must be the main focus in supporting unaccompanied minor refugees. The financing of the care facilities for unaccompanied minor refugees and the standards of reception conditions under the Basic Provision Agreement must be aligned with those of the socio-pedagogic facilities.*
- ▶ *Special attention must be given to the need to treat traumatisation and psycho-social knock-on effects. Qualified staff must be trained in recognising anomalies and symptoms so that they can quickly initiate help measures.*
- ▶ *The training and education opportunities for minor asylum seekers who are no longer of school age should be improved as a matter of principle.*

### 2.3.13 Positive observations

During the last year, the commissions also observed developments in some facilities that the NPM considers good practice.

In a Styrian facility, it was welcomed that the “New Authority” system is being practised in the shared accommodation. The principle of making amends was also established in school and kindergarten. “New Authority” is a systematic approach that empowers managers, pedagogues as well as parents, and gives them the opportunity to build up a respectful relationship culture and stimulate development processes. The manager of the facility who is also a New Authority coach presented these concepts on information evenings, which also triggered a positive reaction for the shared accommodation. This also contributed to the children being better integrated in the village community.

Integration thanks to exceptional dedication

## 2.4 Institutions and facilities for persons with disabilities

### 2.4.1 Introduction

The NPM visited 89 institutions and facilities for persons with disabilities in the year under review. The commissions observed deficiencies in the following areas in particular: measures that restrict freedom, living conditions, educational and occupational opportunities, health care and personnel.

Some shortcomings were discussed during the visits and subsequently rectified. For example, Commission 6 recommended a facility to contact the competent representatives of the residents to discuss the application of measures that restrict freedom and possible alternatives. The facility followed the recommendation without delay. In several facilities – after the respective recommendations of the NPM – improvements were promised immediately and implemented quickly. Complaint boxes were installed or house rules revised.

Some problems were solved quickly

Problems that cannot be solved immediately are formally addressed by the NPM to the operators of facilities or to the supervisory authorities. For example, Commission 2 reported about maladministration in a facility in Salzburg. The NPM confronted both the operator and the *Land* with the observed deficiencies. The management of the facility then hired more care staff, installed a support psychological service, established a psychiatric conciliar service, introduced regular supervision, revised the house rules and organised care measures based on individual needs. A workshop was held with the clients in which the criticism of the NPM was dealt with. In other cases, inadequacies in the application of measures that restrict freedom were removed. In one facility

the time-out room was designed better; in another, awareness processes with regard to restrictions of freedom were initiated.

Sometimes the conditions criticised by the NPM continue to exist at first because the implementation of the recommendations takes longer or can only be realised in stages or those who will have to pay for them reject the improvements in the first place.

Misconceptions of guarantees of UN CRPD

The NPM observed on many occasions that some operators and authorities have misconceptions of disability, barrier-free accessibility, self-determination or inclusion. Even in the sixth year of the activities of the NPM, it is still necessary to first create awareness in meetings for the material guarantees of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) which has been applied since 2008.

UN CRPD protects persons with psychological impairments

Pursuant to Article 1 of the UN CRPD, persons with disabilities include those “who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others“. This perception of the term is to be found neither in politics, the media nor in the public opinion in Austria. In some cases it is still denied to the commissions that persons with chronic mental illness and persons with substance use disorders suffering from mental impairments are covered by the scope of protection of the UN CRPD.

Barrier-free accessibility means access without help from third parties

The NPM has to educate on many levels. One supervisory authority argued for example that, contrary to the observations of the commission, an accommodation was barrier-free. And this even though the supervisory authority knew that wheelchair users could only use exits with the help of mobile ramps and are therefore dependent on assistance from the staff. The guaranteed barrier-free accessibility is thus not given, as this by definition requires access to the surrounding area without help from third parties in as far as possible. A lack of barrier-free accessibility was also evident in the inappropriate layout and furnishings of many institutions and facilities including too high reception counters in the entrance area or cloakrooms, and sanitary facilities that are unsuitable for wheelchair users. Some structural measures would have had to be reported as measures that restrict freedom pursuant to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*). These included doors that could only be opened by physically strong or big persons. External experts with disabilities who are consulted regularly by the NPM provide important input when dealing with these questions in particular. In 2017 the NPM also experienced that criticism substantiated by visual evidence by these persons during the visits was accepted.

Self-determined persons make their own decisions

But, as the NPM observed on several occasions, perceptions of what self-determination in essence means are often only sketchy in the institutions and facilities. Self-determination means that persons can make their own decisions

and organise their lives just as others can. Ensuring as much independence as possible for persons with disabilities and the right to decide for themselves are some of the most important principles of the UN CRPD. The care and support services provided in institutions must be customised as far as possible in order for this to be realised. Special attention must be given to rituals and needs, age, health condition, sexual orientation or language abilities. For example, it makes an enormous difference if existing abilities and preferred movement patterns are taken into consideration when moving persons with physical impairments. The more physical impairments a person has, the more important the tactile and kinaesthetic interaction when performing everyday activities (e.g. motion support, conscious motion control and help in using still existing body tension).

A lot of discipline, empathy and attention are required to allow that the current physical and mental state of persons with multiple disabilities flows into their everyday routine. Every nursing action on persons whose ability to move is actively or passively impaired is an intrusion into their private and personal space. Boundary violations for reasons of needing help can easily become a matter of course but are still unacceptable. The commissions found enough examples of this in the year under review. Rounds on which physical examinations were performed in the presence of third parties, be they other residents or their relatives and friends, were criticised as were changing dressings while the patient was eating or missing protection screens during personal hygiene, intimate care or excretion.

Occasionally, clients in residential facilities or sheltered workshops complained that they are not involved in decision-making processes. Decisions are made only with legal guardians or they are given no opportunity to inspect the documentation. The way in which everyday behaviour is documented mirrors the basic attitude of the respective organisational culture. These “unwritten rules” almost always deviate strongly from official internet presentations and models. Entries such as “XY is acting up or defiant today, but also well-behaved, obedient, weepy etc.” that judge behaviour in a derogatory manner without reference to the relevant situation demonstrate a power gap. For the NPM, remarks like these are evidence that there can be no mention of the joint development of rules for living together and communication with and about each other. When paternalistic fundamental convictions already prevail towards those who are able to express their dissatisfaction, it can be assumed that a sensitive approach to dealing with persons who cannot articulate their discontent is not possible.

As there is no universal “person with disabilities”, “one fits all” concepts are not compatible with the UN CRPD. In order to cater to the individual person, customised development and objectives planning should be defined together regularly (see NPM Report 2016, p. 93 et seq.).

Customised support  
necessary

Deinstitutionalisation facilitates individual ways of living

Customised ways of living are facilitated by inclusive types of housing close to the local community. Commission 1 reported of examples of good practice. The operator of a residential home moved the residents to a block of apartments close to the local community. In this building, the clients now live right beside other tenants. Customised support is provided and those being cared for can decide on their daily routine themselves. There is also sufficient assistant staff at the weekend. It is thus possible to go to festivals, discotheques or other events. The residents drafted their own house rules.

In spite of some positive incidences, however, there is a lack of comprehensive concepts for deinstitutionalisation in Austria. On the contrary, in some cases institutions and facilities are extended and deinstitutionalisation is considered to be difficult to implement. Sometimes the authorities also argue that persons in care prefer existing institutions and facilities to types of housing close to the local community. In this context, it is often overlooked that changing the habits and socialisation that have been taught over years is combined with fear. Deinstitutionalisation therefore requires cautious preparation and extensive information on processes and opportunities.

There is no change without resistance

Just how difficult it is to bring about change in institutions and facilities is illustrated by the case of a residential and day-care centre for persons with disabilities in Salzburg, which is operated by the *Land*. The NPM criticised many cases of maladministration in 2016 (completely inadequate buildings, no barrier-free accessible places to be alone, missing therapy and rehabilitation opportunities), which were vehemently refuted. A plot of land has since been purchased on which a turnkey residential facility with therapy places will be built in 2019. At the beginning of 2017, the documents presenting the rationale and financing for the new building were submitted to the Diet by the *Land* Government. In these documents the *Land* Government conceded that the existing confined conditions made it impossible to provide contemporary care for persons with disabilities. However, according to the lawyer of the facility, the deterioration of development opportunities caused by this is attributed to the peculiarities of the disabilities of persons living there, and not to insufficient structures. In a debate in the Diet in January 2018, the NPM insisted that it is necessary that the Land Government sits down with experts (e.g. self-advocacies, monitoring committee) and defines an inclusive concept in order to be able to provide persons with considerable support needs appropriate living conditions as well as the necessary therapy, support and care services.

The opposite of inclusion is isolation

Self-determination is also the condition for inclusion, in other words integration in society. It does not exist when persons with disabilities live and work isolated from the rest of society. This, for example, is the case when the only available sheltered workshops and houses of the same operator organisation are run in close proximity to each other. There are still regions in Austria where persons with disabilities are dependent on one employer and have to act in closed systems due to a lack of alternatives. One facility visited by Commission 3 in

Carinthia was granted permission to run years ago even though it is located 12 or 15 km from the nearest villages. It takes an hour to reach the next bus stop on foot. There are few neighbours with whom the residents can come into contact in the direct vicinity. (Re)integration is thus *de facto* impossible. Inclusion cannot be realised in such an environment.

Another problem affects some 23,000 people in Austria whose capacity is less than 50% than that of a person without disabilities and who are occupied in a daily structure or sheltered workshop. There they merely receive pocket money of about EUR 65 a month regardless of the scope of their work performance. This occupation is not legally recognised as an employment contract. Those occupied have only accident insurance but no health or pension insurance. This contradicts the UN CRPD, which is why the alignment with regular employment contracts should be a goal for the Government and the legislators.

Regular working conditions demanded in daily structures

The NPM often encounters young persons with impairments for whom – according to the medical model of understanding disability – a long-term incapacity to work was observed. A classification as “incapacitated for work” implies that these persons are excluded in any case from assistance by the Public Employment Service Austria (*Arbeitsmarktservice*). It is thus no longer possible to complete a (part) apprenticeship, and the only way to facilitate daily structure is through sheltered workshops run by services for persons with disabilities. This is inadequate from a human rights point of view and highlights the need for reform that can only be solved through political programmes with the interaction of the Federal Government and the *Laender*. The NPM has and will continue to advocate this.

Determination of long-term incapacity to work is obstacle to apprenticeship training

In general, the NPM can report very positively about many institutions and facilities. The cooperation with the management of the institutions and the staff was often good. One section of this chapter of the report is dedicated to positive practices.

The official country review of Austria 2019 by the competent UN Committee will investigate to what extent or if at all Austria fulfils the provisions of the UN CRPD. From the view of the NPM, many obligations are still not fulfilled despite improvements. The deficiencies described at the outset also have to be rectified in any case. Further problems are discussed in the following sections.

Official country review for the implementation of the UN CRPD

## 2.4.2 Victim support for behaviour that violates boundaries

Creating awareness for development and measures for protection against violence in institutions and facilities for persons with disabilities is one of the core tasks of the NPM. In the past few years, the NPM has observed that when several risk factors converge, physical violence by the clients against other

residents and the staff is more frequent. Working with persons with multiple disabilities in particular can result in the extreme overload of organisations.

Commission 6 twice visited one facility in Lower Austria that also admits adult residents with high aggression potential. The staff claimed not to have been sufficiently prepared for the admission of three clients who, in addition to an intellectual impairment since birth, also required psychiatric treatment. Other residents in particular had to suffer from uncontrollable, aggressive, impulsive outbursts and aggression towards others as well as occasional physical attacks both as victims but also as observers. There was no clear concept on how to deal with this situation and which type of support has to be offered to the other affected residents.

Human Rights Advisory Council drafts statement on victim support

The NPM observed that victim support aspects were structurally denied in this facility and requested the Human Rights Advisory Council to address this topic using the incidents as a basis. The experts drafted an extensive statement that can be read on the AOB website. The NPM hopes to have created easier access to the document developed for them in an “easy to read” version in particular. The following aspects are depicted as extracts:

The Human Rights Advisory Council emphasised that persons with disabilities in assisted institutions and facilities belong to a particularly vulnerable group. The possibilities to set boundaries as well as accept help after experiencing violence are few. Therefore, mechanisms and measures are required to protect the human rights of those affected. At the same time, it is also important not to respond to those who act aggressively towards others and who have severe intellectual impairments and psychiatric disorders exclusively with criminalisation, enforcement and cancellation of the home contracts. This would thwart any successful attempt at providing support.

The protection of these victims cannot be subject to any compromise. Top priority must be given to the safety of persons in institutions and facilities. This includes anchoring a professional approach in the institutions and taking clear stance on violence.

Missing violence protection concepts

Suitable quality standards should be defined as the basis for effective victim support. Currently, guidelines on dealing with violence in institutions for persons with disabilities are not available in all *Laender*. All of the *Laender* should define these standards in order to prescribe a clear course of action for operator organisations.

Regardless of this, operators must ensure that persons can live (and work) in their facilities without violence. In order to reach this goal, preventive approaches have to be implemented in three areas: in primary prevention by preventing aggressive behaviour; in secondary prevention by taking de-escalation measures; and in tertiary prevention through structured follow-up. Sufficient resources are a basic condition for achieving this goal. Clients who

are affected by violence should be provided with accessible information in simple language, peer counselling inside and outside the facility as well as customised therapy services. Easy, barrier-free access to victim support facilities must be guaranteed.

Another important factor is that staff are sufficiently trained in violence prevention and can avail of supervision. Commissions recommended installing an emergency call system, which requires sufficient staff during the night and effective communication channels. Such a system should be a component of general emergency planning and not only be restricted to violent incidents.

Personnel training is essential

Ultimately, the measures taken when violence is used must be made unequivocally clear to violent clients. The availability of pertinent therapy offers is particularly important in this context. Many of the suggested measures can help both the victims and the perpetrators.

What is crucial for the success of these measures is that the preventive approach is implemented on all levels and safety aspects are considered in all activities. As a consequence, clients with a high potential for aggression and violence are only admitted if the respective facility is prepared for potential risks by means of safety management.

The NPM would like to emphasise that the main responsibility for fulfilling these requirements is with the public sector. In practice, it is often the case that only few shared accommodations or sheltered workshops are willing to admit clients with a high potential for violence because the risk appears to be too high for them.

Public sector responsible for providing offers

The lack of suitable alternatives is also “homemade”, as clients with a high potential for aggression are passed from facility to facility. Instead, it is necessary to create stable conditions with increased staffing. In a privately run facility in Lower Austria, clients were repeatedly expelled from the facility in spite of being in fulltime care according to notification from the supervisory authority. Those affected were “suspended” because of violent incidents and threats, and were homeless for some time as a punishment because they have no family ties. The facility failed to observe the procedure that is in place when clients can no longer be cared for: the *Land* Government was not informed of the sanction in advance. Discharging persons with disabilities from care without ensuring an alternative is, in the view of the NPM, a serious violation of human rights. This is regardless of the kind and severity of the incidents leading to expulsion.

Suitable and trained staff, adequate rooms and external support services can only be guaranteed with the corresponding financial resources. These funds must be made available.

Sufficient funds must be available

Effective violence prevention through participation

The NPM also observed positive examples in 2017, however. Mandatory de-escalation training programmes are planned in many institutions and facilities, violence protection concepts were drafted and implemented. Commission 4 reported about one facility that drafted a guideline for violence prevention with the involvement of the clients. The deployment of psychologists to support the entire team or individual persons was also viewed very positively. Several institutions and facilities also enshrined the opportunity of codetermination and self-determination as part of violence prevention. This can mean that the workplace is designed by the clients themselves. In this way, problems or crises can be detected and overcome at an early stage.

- ▶ *The authorities must draft quality standards for victim support in institutions and facilities. These should then serve the operators as guidelines for their work.*
- ▶ *The condition for effective violence prevention is the relevant training of the staff. This should be mandatory in institutions and facilities for persons with disabilities.*
- ▶ *Clients with a high potential for violence should only be admitted to an institution if it is prepared for dealing with potential risks.*
- ▶ *Regulations under Federal and Laender laws should stipulate a formulated de-escalation concept as the condition for granting permits for institutions and facilities for persons with disabilities.*

### 2.4.3 Sexual self-determination of persons with disabilities

Persons with disabilities are not gender-neutral beings

The NPM found different approaches to the topic of sexuality in institutions and facilities. Due to the wide range of models applied, the NPM tried to elaborate a framework for this topic that is compatible with human rights. The Human Rights Advisory Council was also asked for a statement in this respect. This process has not yet been completed.

The perception still prevails that persons with physical and/or mental disabilities are gender-neutral beings. This is also the case in institutions in which the management and staff deal with the care and needs of persons with disabilities on a daily basis. Commissions are often confronted with the statement that sexuality is “not an issue” or that there are no sexual needs. But even in institutions which generally recognise that persons with disabilities have sexual needs, the prevailing underlying conditions make satisfying these needs impossible.

Sexuality is one of the basic needs of human beings and is of significance for the development of the personality, health and wellbeing. This is indisputable in the international human rights discourse.

The right to sexuality arises from the right to health (the best of physical and mental health possible). The UN Committee on Economic, Social and Cultural Rights stipulated that certain types of freedom are linked to the right to health. These include control over one's own body including sexual freedom. The UN Special Rapporteur on the right to health also emphasised that this right also includes sexual health as well as a fulfilling and safe sex life. This includes being able to obtain sufficient information, contraceptives and health services. The competent UN Committee also observed that persons with disabilities are still subjected to discrimination in this respect. LGBT persons experience discrimination in several respects.

Right to sexuality is a human right

The right to respect for the family also includes a right to self-determination regarding one's own sexuality. But the principles of the UN CRPD such as equality, non-discrimination, self-determination and the principle of normality also infer the right to live in an environment in which persons with disabilities are not denied a self-determined sex life. On the one hand, this means that there are no bans (e.g. visiting bans) that impede this and, on the other, that necessary support is offered.

Reality shows that there are barriers in many institutions that inhibit or impede the realisation of the right to sexuality. All of the commissions reported about facilities they had visited in which there are no sex concepts. Commission 3 reported about views that the creation of sex concepts is not the responsibility of the facility. But even when there are concepts, these are not implemented, as was observed by Commission 5. In some institutions, the relevance of these concepts is denied by alluding to the advanced age of those affected.

Sexuality is a taboo in many institutions

The commissions observed that there is no privacy in many facilities. Shared rooms, no privacy screens, the lack of opportunities to lock rooms or visiting and overnight bans made it difficult to be alone. In some cases, it is the express wish of the relatives that every desire for masturbation or sexual advances are prevented in advance. The caregivers play a vital role insofar as they have to respect sexual integrity in their everyday work and address the topic actively with parents and legal guardians. Uncertainty and fears must be faced constructively.

Protection of sexual integrity

It can often be difficult to recognise sexual needs or to properly understand utterances from clients who are severely impaired in their ability to speak or use nonverbal communication. Staff in institutions have to be very sensitive and attentive here. A lack of information and sex education makes it difficult for persons to develop a self-confident attitude to their own body. This not only inhibits having an active sex life, it also increases the risk of becoming a victim of sexual violence.

According to studies, girls and women with disabilities are three times more likely to be subjected to sexual violence than other groups of persons because they are perceived as powerless and defenceless victims. Men with disabilities

Empowerment can protect against sexual violence

also have a higher risk of becoming a victim of sexual violence even if to a lesser extent than women. Easily accessible internal and external sex education offers and counselling opportunities should therefore be available.

Sex support must be possible

The freedoms mentioned also include the opportunity to avail of external sex support as is specially offered by some associations for persons with disabilities. Availing of paid sex services must be accessible for persons with disabilities – regardless of whether they live inside or outside of institutions and facilities – within the legally permissible framework. It must be considered in this context that many persons have difficulty in masturbating due to their intellectual and motoric impairments. When sexual needs cannot be fulfilled, helplessness can turn into anger and aggression that are directed towards the self or third parties. Denial of the sexuality of persons with disabilities, a lack of sex concepts in facilities or the categorical exclusion of all support services is not compatible with human rights standards. The rights of transgender, homosexual or bisexual persons should be given special emphasis here.

Inspection of the underlying conditions will be a focal point of NPM preventive monitoring and control work in the future. It should be mentioned in this context that there are existing examples of good practice and several institutions and facilities are pursuing this topic with great commitment. For example, Commission 3 reported about a facility in which the topic of sexuality was communicated openly. Together with a sex therapist, a concept was drafted involving the residents and sex education kits provided. Commission 5 reported about seminars on sexuality that were also offered outside the facility.

Commission 6 visited a facility in which support from a sex pedagogue is offered and all residents have sufficient privacy to enable them to lead a self-determined sex life. The Commission also reported about a residential group that set up a couple-support circle. Other institutions introduced mandatory participation in further training on this topic for the staff.

- ▶ *Sex concepts should be mandatorily created and implemented by all operators of institutions.*
- ▶ *Persons with disabilities must be guaranteed sufficient privacy in all facilities.*
- ▶ *Persons with disabilities should have the opportunity to receive sex education and information in institutions.*
- ▶ *Operators of facilities should remove legal uncertainties on the part of the staff through training and guidelines.*

#### 2.4.4 No saving at the expenses of human rights

Besides positive developments such as the National Council resolution on increasing budget resources for the occupational integration of persons with disabilities as well as the promotion of independence and budget increase of the Monitoring Committee in October 2017, the NPM also continued to observe backward steps.

Commission 2 thus reported about cost-cutting measures in a facility for persons with mental illnesses which meant that the intensity of care had to be reduced considerably. The staffing ratio was reduced from 1:2 to 1:4 due to cuts and on the initiative of the *Land*. This resulted in additional autonomy for some of the residents. Others, in turn, had serious problems with the change of shifts and reduction in the presence of qualified staff. Some residents reacted to the altered conditions with defecation and bedwetting. Persons with increased care needs had to leave the facility. Joint activities were reduced due to staff shortages.

Relocation of persons with mental illnesses due to cost-cutting measures

The reasons for the relocations were explained as having to do with changes in support needs and a necessary distinction in the types of housing. However, the *Land* conceded at the same time that the staffing ratio also had to be reduced for cost-cutting reasons. The *Land* argued that, in line with the principle of normality, a change in facility is reasonable for persons with impairments if this change is prepared accordingly.

The NPM cannot understand this argument. First of all, it is incompatible with the UN CRPD that persons with disabilities are taken from their care environment and moved to other facilities for financial reasons. Persons who are suffering complex long-term, mental illnesses rely on types of housing with as little stress as possible in which they are familiar with the routines to stabilise their situation. For the persons with chronic mental illnesses in particular, it is important to ensure together with those affected that a satisfying quality of life is achieved.

Financial reasons are no justification for relocation

But there has to be a balance between the conscious promotion of abilities and the safeguarding of resources in order to avoid overload. This can only be achieved through a specific continuity of care and constant monitoring of individually defined and pursued goals.

Overload must be avoided

When planning a change in the type of housing and care, multi-professional teams have to evaluate in how far help to helping oneself and the promotion of self-responsibility can be sufficiently guaranteed. Changes brought about by cost-cutting measures of the *Land* that act contrary to the wellbeing, the health or the maintaining of an already achieved functional level of those affected must be avoided. Deterioration in the quality of care and forced relocations have to be avoided.

Principle of normality is no justification for lack of preparation

Second, the principle of normality cannot be justification for a forced relocation or change in type of care for financial reasons. The principle of normality requires that the clients are not denied access to any fields of life outside of the facility. They have to receive the support necessary to enable them to lead a life that is as self-determined and individually organised as possible. According to information from the commission, the preparation in the facility was insufficient.

But there are only few incentives for independence in many other institutions and facilities too. Without the relevant planning that has the wellbeing of those affected as its exclusive focus as well as support and preparation, reference to the principle of normality is not appropriate and can only be seen as cynical. It is not compatible with the principles of the UN CRPD that persons with chronic mental illnesses with increased care and nursing needs have been losing their home due to staff shortages without sufficient preparation and without being offered alternatives.

Inclusion must be considered in budget planning

Economic grounds may therefore not result in the restriction of necessary services and measures. It is even more important to emphasise this, as further cost cuts cannot be ruled out in the near future. Awareness of the fact that inclusion may not leave any person behind must be the basis of all budget planning.

- ▶ *Cost cuts may not be allowed to result in persons with mental illness being moved to other institutions and facilities against their will.*
- ▶ *In order to enable the affected persons to live a more independent life, they have to be prepared as well as possible and supported accordingly.*
- ▶ *The inclusion of persons with disabilities must be considered as a basic principle in all budget planning.*

### 2.4.5 Pain in persons with disabilities

When persons without disabilities feel pain, they can take painkillers, consult a doctor, avail of physiotherapeutic help, go to therapy or communicate their pain to their surroundings.

Pain is perceived less by others

Persons with complex or multiple disabilities are often denied this. Even though according to one study, approx. 60% of children and approx. 75% of adults with severe and multiple disabilities suffer from chronic pain, there is still the widely held view that persons with disabilities are less sensitive to pain than others. As a consequence, persons without cognitive impairments receive analgesics three times more often than persons with cognitive impairments.

When persons with disabilities have pain, it is sometimes not perceived or played down by the care staff.

Commission 3 reported about a facility in which no pain assessment was conducted. It is obvious that this is untenable particularly for a group of persons who is reliant on a considerable amount of support services. The reasons for this are not ostensibly the negligence of the care staff but are above all the lack of knowledge and a complex diagnostic environment. The magazine "*Behinderte Menschen*" ("Persons with disabilities") focussed on this topic in the No. 2/17 edition. It is particularly important to address this issue from a human rights perspective because both the right to health (Article 25 UN CRPD), the right to physical and mental integrity (Article 17 UN CRPD) and in serious cases even the right to protection against violence (Article 16 UN CRPD) or protection against degrading treatment (Article 15 UN CRPD) are violated if pain is not treated.

Lack of knowledge

It is often difficult for persons who are unable to speak and have complex disabilities to communicate their needs. Expressions of pain in whatever form are sometimes not taken seriously and attributed to the respective disabilities. This is why the caregiver has a crucial role in perceiving the sensitivities of persons with disabilities in particular. Communication barriers that lead to misunderstandings can only be overcome by care staff if there is a stable, long-term relationship to the clients and if they are familiar with their gesticulation and facial expressions.

Communication barriers must be overcome

The professional support of persons with disabilities who are suffering from pain on the part of doctors and the care staff is thus indispensable, and the refusal to give the necessary attention is inhuman. For this reason, qualified staff must have the necessary knowledge to notice when these persons are in pain and take the right steps for treatment. Care staff should also be routinely instructed in alternative pain treatments and apply the same as an alternative or supplement to medication-based treatments. Positioning aids, suitable seating, customised wheelchairs and the like can help to reduce pain. But breathing exercises, reducing tension or aromatherapies are also examples of ways of alleviating pain.

Knowledge dissemination on the topic of pain is necessary

Persons with complex disabilities should not be merely passively observed, perceived and diagnosed. In the interest of self-determination and the independence of the clients, it is necessary to provide them with the most suitable tools possible or to develop the same with them so that they can communicate their needs themselves. In the Report 2016, the NPM already criticised the frequent lack of willingness to apply supported communication. This has considerable negative effects in the area of pain diagnosis.

- ▶ *Knowledge about pain diagnoses and the treatment of persons with disabilities must be enhanced for both the care staff and the medical staff.*
- ▶ *Stable relationships between the staff and the persons being cared for are necessary to be able to perceive when these are in pain. High fluctuation rates and staff shortages have thus to be avoided.*
- ▶ *The use of supported communication when required is urgently necessary as communication barriers have to be removed.*

## 2.4.6 Discrimination of persons with chronic mental illnesses

Since its establishment in 2012, the NPM has repeatedly ascertained structural deficits in building up needs-based social and health services for persons with chronic mental illnesses. The consequence is that the affected persons are denied social inclusion, and a deterioration in health is accepted (see NPM Report 2015, p. 85 et seq.). The life situation of many persons with chronic mental disorders is characterised by poverty and dependence on institutions.

Housing in remote farmsteads

In Carinthia, there are about 30 centres for psychosocial rehabilitation in which some 650 persons with mental or psychiatric diseases live. In these centres they have no access to professional occupational and social rehabilitation or to leisure facilities. However, they also have no other alternative. Many of the centres are remote farmsteads in which the residents have often been living for decades and sometimes work on the farm for a mere pocket money. Due to a lack of alternatives, the younger chronically ill persons are housed in medium-sized remote institutions and facilities. There they have no chance of ever being able to build up outside contacts, entering sponsored employment, starting a family or choosing other types of housing. The criticism of the care structures approved by the regional government of Carinthia as formulated in the NPM Report 2016 (see NPM Report 2016, p. 97 et seq.) was enhanced by a number of additional and concrete recommendations.

Commitment to implement the UN CRPD

On *Land* level, the regional government committed unanimously to implement the UN CRPD by 2020. For that reason alone, the *Land* has to rectify the structural shortfalls of recent decades in this area. The discrimination of persons with chronic mental illnesses in institutions such as centres for psychosocial rehabilitation is possible because unlike other facilities for persons with disabilities, their housing is not subject to the Carinthian Equal Opportunities Act (*Kärntner Chancengleichheitsgesetz*). The consequences are inadequate support of those affected and of the centres for psychosocial rehabilitation.

The NPM achieved that outpatient care structures close to the local community and the financial provisions for establishing a *Land* monitoring office were agreed with the implementation of the Psychiatry Plan 2017. The implementation of the UN CRPD at the Office of the Carinthian Ombudsman

for Persons with Disabilities will thus be guaranteed. By the end of February 2018, the NPM expects to receive an interim report containing the results of an evaluation of the living conditions and individual support opportunities of all residents under 40 living in centres for psychosocial rehabilitation. The NPM made a recommendation to include centres for psychosocial rehabilitation and after-care facilities for those suffering from drug and alcohol addiction in the scope of the Carinthian Equal Opportunities Act. In this regard it has been confirmed that priority will be given to adding this measure to the Governmental Programme 2018-2023. The current regulation of Section 2 (3) of the Carinthian Equal Opportunities Act can only be classified as the unobjective legal discrimination of persons with chronic mental illnesses whose limitations have not been considered and recognised as mental disability to date. Robert Musil described the discrimination of persons with chronic illnesses in his novel “*Der Mann ohne Eigenschaften*” (“The Man Without Qualities”) with the words: “The unfortunates suffered not only from inferior health, but also from an inferior illness.”

- ▶ *The NPM repeats the recommendation that the scope of the Carinthian Equal Opportunities Act be extended to include the housing of persons with mental illnesses in so called centres for psychosocial rehabilitation, but also of persons with substance use disorders in after-care facilities.*

### 2.4.7 Serious substance use disorders are mental disabilities

Whilst the pathological significance of depression and anxiety disorders as illnesses mostly goes unchallenged, patients with psychiatric diagnoses and/or substance use disorders (dependence on and abuse of alcohol or drugs) have to live with the prejudice that their situation is their own fault. Drawing borders between the prevailing perceptions of what is normal and what is illness-related behaviour questions the identity of those affected and puts their social integration at risk. Not every psychiatric disease ends in mental disability. Nevertheless, there are chronically ill patients who cannot cope with the requirements of everyday social roles over a long time or permanently.

Discrimination,  
institutionalisation and  
exclusion from society

Based on the social model of disability, the NPM thus comes to the conclusion, in contrast to widespread prejudices (and several regulations in the *Laender* laws), that “chronic addiction” can be covered by the term “mental disability” in the meaning of the UN CRPD. The condition, however, is that this is accompanied by a long-term medical functional impairment that in combination with social barriers results or could result in difficulty in taking part in society.

UN CRPD covers  
chronic addiction

**Psychiatric comorbidities** Dependence on addictive substances, in particular, illegal substances, is stigmatised in society. This isolates persons from their surroundings, and relatives are also often marginalised. And yet the reasons for addiction are manifold. In addition to genetic, neurobiological and neurochemical factors, social, psychological and neuropsychological influencing factors also often play a significant role. Concomitant comorbid psychiatric disorders are more the rule than the exception with alcohol and drug abuse. It is important to recognise that these illnesses are not healed once the “drugs” are no longer inside the body or withdrawal symptoms (abstinence syndrome) have eased off. On the contrary, the substance-related dependencies continue and relapses can be perceived as an integral part of the illnesses. At this point, it is worth drawing a comparison with other chronic somatic and psychiatric diseases (diabetes mellitus, high blood pressure, asthma, schizophrenia, depression), as these also require long-term or lifelong treatment and multi-professional interventions.

**Structural deficits** Commissions 3 and 6 visited outpatient and inpatient facilities that offer opioid substitution therapies in Carinthia, Lower Austria and Styria for the first time at the end of 2016 and during the year under review 2017. This brought several structural deficits to light that worthy of detailed discussion. Experts criticised that the existing treatment concepts restricted personal rights but that there were no individual declarations of consent. In some cases, the focus of the treatment is only on the substance use disorder but not on the underlying psychiatric or somatic illnesses. The treatment of these is thus inadequate.

A massive undersupply of outpatient and inpatient treatment options and the resultant unacceptable waiting times for persons who wish to undergo opioid substitution therapy was observed in Carinthia. The regional government of Carinthia has since promised to take remedial action. Instructions were also issued to further develop the outdated Addiction Aid Plan with new concepts for the “Carinthian Addiction Strategy 2018 to 2028”. This is urgently necessary in the view of the NPM because contrary to most of the other *Laender*, the health care of those suffering from addiction in Carinthia is provided mainly in the Clinic Klagenfurt (*Klinikum Klagenfurt am Wörthersee*), and only to a minor extent in facilities which are recognised by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection according to Section 15 of the Narcotic Substances Act (*Suchtmittelgesetz*). To date, the regional government of Carinthia has not managed to convince office-based doctors to become involved, which would make it possible to offer more outpatient treatment.

In one facility, Commission 3 viewed the lack of individual therapy plans drawn up with the consent of the patients as well as the insufficiently established cooperation with adult psychiatry in emergencies or crises as highly critical. Also the lack of verifiable evidence that patients are informed

that the mortality risk increases exponentially through fatal overdoses in the event of discontinuation or withdrawal of opioid substitution therapy is criticised as dangerous inaction. Due to the availability – considerably increased through the Darknet – of hitherto completely unknown highly dangerous synthetic designer drugs, which is confirmed by the State Office of Criminal Investigation, the current development is very critical. There were eleven predominantly young drug-related deaths in Carinthia in 2017.

In the summer of 2017, under the leadership of Gabriele Fischer, university professor and an internationally recognised addiction expert, the NPM established a working group with members from all of the commissions, in which both AOB staff and a former recipient of opioid substitution therapy were involved. The task of this working group was to systematise existing observations on outpatient and inpatient institutions and facilities for persons suffering from addiction, to name structural human rights problem areas that occurred several times and to develop scenarios for the NPM approach on future visits. The working group completed their activities at the end of October 2017 after holding three meetings. Based on this, members of this working group will form a commission that will work on specific areas of focus throughout Austria.

- ▶ *Those suffering from addiction must have free and quick access to treatment programmes. Needs-based, top quality treatment programmes based on scientific standards must thus be guaranteed in the inpatient and in outpatient sector.*
- ▶ *The adequate treatment of comorbid disorders and illnesses has to be an integrative component of such treatment programmes in after-care facilities.*
- ▶ *Relapses must be seen as a part of substance use disorders that is inherent in crises and require an in-depth multidisciplinary therapeutic approach.*
- ▶ *Professional action-oriented expertise on assessing and predicting suicidal tendencies must be applied before therapy is (involuntary) discontinued. Evidence must be provided that the affected person has been informed of the increased mortality risk caused by discontinuing therapy.*
- ▶ *Follow-up care facilities must implement standardised crisis and discharge management with functioning interfaces to better quality care services in hospitals.*

### 2.4.8 Positive observations

The NPM also visited institutions and facilities in 2017 whose overall approach can be considered good practice.

Open to the „outside world“ A fundamental factor in enabling inclusion is the central location of apartments and residential groups inside towns. Several of the institutions and facilities fulfil this requirement and make a point of opening up to the “outside world”. One residential group for example runs a partner post office and another runs a “repair cafe“. Both of these services are gladly accepted by the local populations. In one facility where emphasis is on artistic creation the takings from art sales go to the artists.

Integration in the primary labour market Although integration in the primary labour market often proves to be difficult for many clients, the commissions were able to report about the great dedication of many institutions. One facility has maintained contact to regional companies for many years. As a result, clients at least have access to marginal employment.

Encouraging clients to complain Effective complaint management is not only helpful in enabling persons in institutions and facilities to exercise their rights, but also can serve as a preventive measure against violence and aggression. It is not only about having the opportunity to complain but having the confidence to formulate a complaint. Some facilities encourage their clients to articulate complaints in order to learn from them. In these cases, complaints are perceived as a positive factor and as a tool that self-determined persons can use.

One of the facilities enabled their staff to visit other facilities. The teams were able to share their experience, network and thus learn from each other.

Flexible options One facility for persons with severe intellectual and multiple disabilities stands out due to the fact that highly qualified multi-professional teams care for the clients according to their individual needs. There are “Client Days” when residents take a day off from the daily structure and do something together with their caregivers. Communication books are created for each nonverbal resident to record and explain their individual ways of expression.

► *Examples of good practice should serve as models for the operators of institutions and facilities.*

## 2.5 Correctional institutions

### 2.5.1 Introduction

The NPM made a total of 35 visits in 2017 to observe the conditions under which persons were held in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. The main results of these visits can be divided into ten sections.

The first section presents criticisms of the placement and treatment of persons who were mentally ill when they committed criminal offences. The second section covers prison inmates with psychological idiosyncrasies, and the third section is devoted to the topic of women in prison. The fourth part concerns health care. The fifth part deals with the right to privacy. Recommendations regarding psychological supervision for employees in facilities of the penitentiary system and facilities for the detention of mentally ill offenders can be found in the sixth chapter. Details regarding the challenges of dealing with persons who speak different languages can be found in the part entitled "Access to information". The deficiencies in living conditions that the NPM observed are followed by remarks on structural deficits at the facilities visited. As in past years, the reporting part ends with positive observations.

Summary of observations

### 2.5.2 Facilities for the detention of mentally ill offenders and follow-up care facilities

#### 2.5.2.1 Reform of facilities for the detention of mentally ill offenders

The core area of the NPM's mandate includes monitoring of the living conditions of persons who were mentally ill when they committed criminal offences and were deprived of their liberty for special preventive reasons. The court may order that "preventive measures" be taken with respect to these persons – in addition to or in place of the punishment. It depends on whether said persons could be held accountable for their actions at the time of the crime.

"Preventive measures" are ordered for an indefinite period of time. They are to be carried out for as long as their purpose requires. This does not preclude life-long detention and is precisely why placement of persons in facilities for the detention of mentally ill offenders is particularly sensitive from a human rights perspective. Any encroachment on personal freedom may only continue for as long as "necessary". One may only be deprived of personal freedom "if and to the extent that this action is not disproportionate to the purpose of the measure" (Art. 1 (3) of the Federal Constitutional Act on the Protection of Personal Liberty).

Problems from a human rights point of view

**Structural deficits** From the very first visits to wards and facilities for the detention of mentally ill offenders, the NPM found serious deficiencies (see NPM Report 2013, p. 56). These include a lack of treatment alternatives, placement among regular prisoners, overly long detentions due to a lack of after-care facilities, too few experts and a lack of quality standards for the preparation of expert opinions. Persons being held in detention frequently told the NPM that they desired more transparency and information regarding decisions to loosen prison rules.

**Reform has been sought since 2014** Based on these observations, the NPM demanded fundamental, in-depth reform: facilities for the detention of mentally ill offenders should be made more treatment-oriented and humane. In June 2014, the Federal Minister, encouraged by media reports regarding a distressing event (see NPM Report 2014, pp. 86 et seq.), established a working group for this task. More than 40 experts from different areas of detention in facilities of the penitentiary system and detention of mentally ill offenders participated in this working group, including a representative of the NPM. At the beginning of 2015, the group submitted a 96-page final report with a requirements catalogue.

Based on the working group’s proposals and recommendations, some organisational improvements were made to better assign prisoners with mental health care needs to facilities where they can receive the best possible treatment. Nevertheless, it took two and a half years before the draft of the Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) was presented before the general public at a “Conference to implement a modern form of detention for mentally ill offenders” on 18 July 2017.

**Draft of the Detention of Mentally Ill Offenders Act** The Federal Minister acknowledged that the detention of mentally ill offenders is embedded in criminal law. The criminal courts have full jurisdiction: from temporary imprisonment to a complete refusal to imprison. In the future, persons will be placed into modern forensic therapeutic centres, which will offer care and treatment. Restrictions on personal freedom in prison will be linked to a modern legal protection system. The long-outdated designation of the persons detained in these facilities as “mentally disturbed” is now abandoned. Instead, the draft speaks of “criminal offenders with serious mental disorders”. According to the authors of the draft, more than 90% of the working group’s recommendations from 2014 will be implemented if it becomes law.

**Two striking weaknesses** The NPM notes with approval that therapeutic centres are being established and that preventive measures will only be enforced in facilities specially designed for this purpose. However, two items in the draft do not meet the NPM’s expectations. The first relates to the assessment by which such measures will be imposed on persons. The second relates to the demand that such measures be imposed on juvenile criminal offenders only for a limited period of time, which was rejected. The experts of the working group have taken a clear position on these two items.

One of the goals of this draft is to increase the accuracy of the measures imposed. This objective cannot be reached solely by utilising an expert in clinical psychology in addition to an expert in psychiatry, “if necessary”. Obtaining expert opinions from clinical psychologists more frequently is also a demand of the working group. In Switzerland, panels of experts are used to determine whether or not to commit a person to an institution.

Expert opinions from different specialised areas

Therefore, examination by experts in psychiatry and clinical psychology should be mandatory. Only after an examination and diagnosis by both experts should the court impose measures. If the experts come to different conclusions, an additional assessment should be obtained from both specialised areas. The working group (in its recommendation No. 50) made explicit reference to the importance and expertise of clinical psychology experts.

Unfortunately, the authors of the draft did not follow the recommendation (No. 4 lit. c) to prohibit the commitment of juveniles to institutions for an indefinite period, which could include a life-long commitment.

Too little consideration given to juveniles

No further details are provided on how to handle juveniles and young adults who are not placed in Gerasdorf correctional institution. Their placement in the forensic wards of psychiatric clinics has long been shown to be highly problematic because the socio-therapeutic needs of young persons are often not properly met there. They cannot complete their school education or vocational training in a hospital. Moreover, they are often placed together with adults.

- ▶ *Mentally ill offenders should only be detained in specially designed therapeutic centres.*
- ▶ *The draft of the Detention of Mentally Ill Offenders Act should be revised with respect to the specific needs of juveniles and the accuracy of the decision to impose preventive measures.*

### 2.5.2.2 Observations and recommendations regarding facilities for the detention of mentally ill offenders

In addition to the considerations relating to the reorganisation of facilities for the detention of mentally ill offenders which were discussed above, the NPM also dealt with the living conditions of persons who are held in facilities for the detention of mentally ill offenders in the year under review.

As of 1 January 2018, 878 persons were being held in facilities for the detention of mentally ill offenders, of which 497 persons were being not accountable for their actions and therefore held pursuant to Section 21 (1) of the Austrian Criminal Code (*Strafgesetzbuch*). The rest was held pursuant to Section 21 (2) of the Austrian Criminal Code (i.e. because they were accountable for their

High occupancy pressure

actions). The increase in criminal offenders who are not accountable for their actions has been especially dramatic. Since 1 January 2017, there have been 78 new admissions, which equal an increase of 18.6 %.

**Need for investment unavoidable** In 2017, the NPM made nine visits to facilities for the detention of mentally ill offenders and after-care facilities. These visits again revealed striking deficiencies, which the competent Federal Minister cannot rectify without the approval of additional funds.

### **Material conditions - Göllersdorf correctional institution**

In May 2017, the NPM visited Göllersdorf correctional institution. The goal of the visit was to evaluate the extent to which this special institution meets the criteria for a therapeutic centre – or can meet these criteria in the future.

**Devastating criticism** The commission concluded that the material conditions at Göllersdorf correctional institution could not be improved to such an extent that the quality standards of a therapeutic centre could be achieved. A high quality therapeutic centre requires sufficient space and privacy for persons being held in detention to enable the creation of a therapeutic atmosphere conducive to healing. After inspection of all the wards of Göllersdorf correctional institution, it was concluded that these standards could not be met.

**The facility is already too large** In the view of the NPM, a facility with a capacity of 130 to 140 places is not longer up-to-date. On an international level, comparable facilities have 40 to 60 places. The standard for therapeutic facilities for mentally ill persons is a single or double bedroom with a 50:50 ratio and an attached sanitary area. The placement of three persons into a single room should generally be avoided.

A tour of the institution showed that there is often no opportunity to be alone in the living areas. The communal area is often just the corridor or a shabby, sad and very smoke-filled shared social room. Since the doors to the rooms are open, there is no opportunity to get away from other people for a short period of time, at least, and calm oneself down. For persons with a mental illness this is a substantial additional stress factor.

**The space situation is oppressive** There is no privacy if three or four persons occupy a room. In some rooms, beds are only one and one-half metres from each other. Such crowded space prevents treatment progress, particularly if the detention is of lengthy duration. Detention in this institution does not facilitate recovery, it makes it more difficult. Accordingly, some inmates still showed clear signs of hospitalisation.

**Doctors consider the situation intolerable** Many patients expressed a desire for privacy or the possibility to be alone. The doctors on duty also said that the occupancy of a room by three to four persons is intolerable. In addition, the length of detention at Göllersdorf correctional institution averages five to six years.

The Federal Ministry did not contest the NPM's observations but rather admitted that most of the inmate cells at Göllersdorf correctional institution are occupied by two to four persons. Single cells are only available occasionally, and are mainly occupied by inmates who are disruptive or in need of great care. It is uncontested that placement in a single room during the night is desirable, and this is also required in the draft of the Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*).

In addition, it was confirmed that structural conditions are "suboptimal" and "in many respects do not constitute a modern and adequate therapeutic setting". It was said that the level of care should compensate for the deficient material conditions and attempt to avoid hospitalisation and a deprivation syndrome.

Care cannot compensate for the deficiencies

The NPM does not deny that a therapeutic daily structure and therapy sessions held outside of the living areas are part of adequate treatment and care. However, these efforts cannot compensate for the deficient material conditions. In some inmate cells not every inmate has a chair. Some prisoners with mental health care needs store their belongings in suitcases under the bed. Lockable boxes are in the corridor. The inadequate living conditions are made worse by hygienic deficiencies. For example, one of the inmates in a cell for multiple inmates has a bucket beside his bed into which he spits frequently.

Living out of a suitcase

Not only are the sleeping and communal areas shabby and dirty, but the sanitary facilities are also inadequate. At one station, ten persons being held in detention shared one bathroom, which had four showers adjacent to each other with no partition. In another area, up to 19 inmates had to manage with one bathroom (consisting of two showers and three sinks). Extensive traces of old or inadequately treated fungal infestations can be seen in many places. There is a washing machine and a dryer in one small room with no natural fresh air supply. Even though the commission was shown a renovated ventilation system, the room was decidedly warm and humid on the day of the visit.

Mould in showers and baths

In general, the persons being held in detention are responsible for the daily cleaning of the living area. However, they need the support of the staff for this: the supervision and control of the cleaning work is the responsibility of the station staff. It is undeniable that they must often do a lot of motivational work to ensure reasonably proper cleaning.

Hygienic deficits

The outsourcing of cleaning work to an external company is opposed by the employee representatives. The NPM seriously doubts whether this makes economic sense. The question of outsourcing the cleaning work should be clarified within the context of a project. The NPM was assured that the local police station staff committees and the central committees will be included in the project.

Cigarette smoke in every room The NPM also discussed the lack of protection for non-smokers as a structural problem. The commission does not deny that very many persons being held in detention are smokers. For example, at stations 2D and 1C almost everyone (including staff) smokes. At station 2C, it is 15 detainees out of 22.

A new concept is indispensable There is a prohibition on smoking in the residential rooms, but smoking is permitted in the communal rooms and corridors. Since the doors are open all day, the smoke penetrates into the rooms. Therefore, the NPM demands that Göllersdorf correctional institution develop a new concept for a better way to separate smokers from non-smokers.

New buildings required In view of these serious deficiencies, the NPM asked the Federal Ministry to disclose what additional ideas it has regarding Göllersdorf correctional institution. The response was that the grounds of Göllersdorf correctional institution are large enough to be suitable for the construction of an annexe. The NPM was not satisfied with the response because there are still no specific plans for this, and asked what ideas the Federal Ministry has for creating modern conditions for a facility for the detention of mentally ill offenders in the foreseeable future. Such conditions should not significantly fall below the conditions in the penal system from a material, spatial and structural standpoint – if the Federal Ministry intends to remain at that location.

The Federal Ministry did not dispute that there is sufficient space for an annexe on the grounds of Göllersdorf correctional institution. However, before constructing an annexe or seeking competitive bids for the project, budgetary coverage must be ensured (which is currently not available). Since such coverage has not been ensured, realisation of this project cannot be promised.

Funds should be approved quickly The NPM can only inform legislators of the completely inadequate conditions at Göllersdorf correctional institution. Appropriate funding should be quickly provided to ensure that there are modern facilities for the detention of mentally ill offenders at this site.

- ▶ *The prison administration should provide appropriate funding to construct modern facilities for the detention of mentally ill offenders.*
- ▶ *Conditions at facilities for the detention of mentally ill offenders should contribute to the recovery of persons with mental illnesses held there.*
- ▶ *Adequate measures should be taken to remedy the, at times, completely inadequate material conditions and the, at times, inhumane living conditions of persons being held in detention (e.g. at Göllersdorf correctional institution).*

## Infrastructural fixtures and fittings and dealing with demotivated persons held in detention - Floridsdorf satellite facility at Mittersteig correctional institution

In November 2016, the glaring deficiencies in the therapy rooms of Floridsdorf satellite facility at Mittersteig correctional institution again came to the attention of the NPM. On the day of the visit, therapy was being conducted in the only free rooms: the offices of the deputy prison warden and the ergo therapist. However, these rooms are equipped as offices and lack a therapeutic environment. The meetings of the day-release prisoners' group are held in the visiting room. The group participants sit there in two rows. The room is completely filled.

Lack of therapeutic climate

Many assessments are made at Mittersteig correctional institution. Inmates complained that such assessments were conducted in rooms directly adjacent to the visiting room. Therefore, conversations could not be kept confidential.

Therefore, the NPM suggested that a spatial concept be developed for Floridsdorf satellite facility. If it is not possible to use additional rooms in the adjacent court building, a reduction in the number of inmate cells and their replacement with therapy rooms should be considered.

Spacial concept requested

The actual reason for the visit was not to determine the deficiencies in terms of space, which were already known. Rather, the NPM wished to address the matter of treating demotivated, therapy-resistant persons in detention. For this purpose, the commission inspected files, questioned inmates and discussed individual problem cases with caregivers. The commission suggested that stronger measures be taken to motivate persons in detention who refuse therapies. The NPM is aware of the difficulty of establishing a relationship with a person who refuses to participate in any (therapeutic) meetings. Special training sessions in conducting therapy sessions with unmotivated inmates could be of assistance to the staff of specialised services.

Therapy-resistant persons in detention

In this regard, the Federal Ministry stated that the current focus of social workers and psychologists in caring for detainees who reject therapy is on their lack of motivation. In addition, the topic or problem of unmotivated inmates is the subject of psychological supervision.

Irrespective of this, the prison administration is aware of the existence of this problem. Therefore, a special training course ("Motivational Interviewing" based on Miller & Rollnick) has been included in the seminar programme for 2018.

Additional course offered

- ▶ *In terms of the treatment and care of persons held in detention, individualised therapy offerings are as important as appropriate room accommodations.*
- ▶ *Efforts should always be made to induce unmotivated detainees to participate in therapy.*
- ▶ *Special training courses should be offered to assist staff in coping with the challenges of dealing with unmotivated detainees.*

### Therapy brought to a standstill by transfer of prisoners with mental health care needs – Schwarzau correctional institution; Asten Centre for Forensic Science

Prototype of best practice

The draft of the new Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) provides that prisoners with mental health care needs should only be placed and treated in forensic therapeutic centres. The first such centre was opened in Asten in the spring of 2010. It is located on the grounds of Asten satellite facility at Linz correctional institution and is headed by a psychologist.

In the opinion of the NPM, the Asten Centre for Forensic Science – particularly after completion of the annexe in 2015 – meets the spatial requirements for adequate care and for preparing prisoners with mental health care needs for life after detention (see NPM Report 2015, p. 118 et seq.). It is a particularly positive development that the entrance area no longer has gate guards, but a reception desk. The presence of uniformed police officers is avoided to the extent possible. Prison guards are only responsible for exterior security at the facility.

Women have been discriminated against for years

Until 2017, only male prisoners with mental health care needs were admitted to Asten Centre for Forensic Science. Female prisoners with mental health care needs who could be held accountable for their actions were placed in Schwarzau correctional institution. The NPM considered the conditions there to be completely inadequate and demanded that women be provided with modern accommodations which met standards (see NPM Report 2015, p. 119).

Creation of a women's ward in Asten

During a visit to Schwarzau correctional institution in the autumn of 2016, the NPM learned of plans to transfer all prisoners with mental health care needs at Schwarzau correctional institution to a specially designed residential group at the Asten Centre for Forensic Science.

Therapy at a standstill before transfer

The NPM heartily welcomes this step. However, it is worthy of criticism that the therapy offered to the female patients was greatly scaled back after the planned transfer was announced. As early as mid-2016, no new psychotherapies were

initiated in some instances. Many female patients remained without treatment for months.

When confronted with this, the Federal Ministry stated that no therapies were terminated due to the planned transfer. However, it conceded that therapies that were indicated were temporarily not commenced. The NPM reminded the Federal Ministry that prisoners with mental health care needs urgently need therapeutic treatment. Planned organisational changes may not be used as an excuse.

The ward for the detention of mentally ill offenders who are accountable for their actions at Schwarzau correctional institution was closed in February 2017. All female patients were transferred to Asten Centre for Forensic Science. The newly established residential group has a capacity of 14 and ensures adequate accommodation and appropriate therapeutic care.

Ward closed at Schwarzau correctional institution

- ▶ *Prisoners with mental health care needs must receive therapeutic care.*
- ▶ *Therapy for prisoners with mental health care needs must commence promptly after admission. A standstill which lasts for months is unacceptable.*

### Forensic ward - Graz Süd-West Regional Hospital

In addition to the deficiencies found in correctional institutions, the NPM also found a need for improvement in many hospitals. In October 2016, the NPM visited the forensic ward at Graz Süd-West Regional Hospital. This is a closed ward for persons who committed crimes while mentally ill but were not criminally liable at the time of the crime. The ward has 18 treatment places.

In this hospital as well, patients suffer due to crowded rooms. The patients are placed in six- or seven-bed rooms – often for lengthy periods of time. The attempt to place screens next to the beds does not resolve the problem of a lack of privacy. The agitation and snoring of fellow patients during the night are serious disruptive elements and scarcely permit a restful sleep.

No privacy due to the crowded situation

As a result of the crowded rooms, the NPM found violations of the rule requiring separation of persons being held in provisional detention under Section 429 of the Austrian Code of Civil Procedure (*Strafprozessordnung*) and sentenced persons being held in detention under Section 21 (1) of the Austrian Criminal Code (*Strafgesetzbuch*).

Violation of the separation rule

This criticism was not rebutted. If admitted, detainees are transferred from the closed detention station to the successor open station. Only in exceptional cases, especially if there are security concerns, do persons being held in

detention pursuant to Section 21 (1) of the Austrian Criminal Code remain in the closed detention station until matters are stabilised. Contact with persons held in provisional detention at this station cannot be completely excluded, even if the treatments may be different. The type of placement is based on the psychiatric condition and the risk.

Less favourable treatment as compared to correctional institution

The NPM notes the effort to take the separation rule into account, when possible. It is true that the penal law provisions regarding pre-trial detention (Sections 182 et seq. of the Austrian Code of Civil Procedure) only apply to inmates held in institutions for mentally ill criminal offenders. However, for reasons of equal treatment, detainees who are held in public psychiatric hospitals provisionally should be entitled to the same conditions as persons in correctional institutions.

Overcrowded *Inquisitenzimmer*

There was also no response to the criticism that the room for inmates in need of acute psychiatric care (*Inquisitenzimmer*) was occupied by three persons on the day of the visit. This special room is generally occupied by a maximum of two persons. Only in individual cases, when further detention in a correctional institution does not make sense from a medical and psychiatric perspective due to the severity of the psychiatric disease, can the room be occupied by three persons on a temporary basis. In this case, there should be an immediate attempt to find another solution – in agreement with the medical superintendent. To the extent that the condition of the patient's health permits, the patient should be transferred as quickly as possible to a correctional institution which guarantees around-the-clock medical and psychiatric care.

Security straps visible

The NPM also recommended a series of improvements, some of which could be implemented with little expense. For example, the security straps on strap beds can be covered without great effort, so that they are no longer visible to patients. The implementation of this measure should be monitored regularly. In addition, consideration should be given to whether it is really necessary for all patients to post a security deposit for the keys to their lockable boxes.

Nursing service personnel were instructed to ensure that smoking rooms are ventilated more frequently. The existing exhaust system was subjected to a technical inspection. The extent to which additional structural measures can be taken based on security considerations is being evaluated.

Visits by adolescents prohibited

The NPM's criticism of a general restriction on visits by children under the age of 14 was also heeded. Instead of a general prohibition, there will be a case-by-case review in the future (e.g. when there are serious security concerns) of whether a restriction on visits by minors is absolutely necessary. In this case, a discussion with the patient and the relatives will be sought.

- ▶ *Based on the presumption of innocence, detainees held in provisional detention should be separated from court-sentenced prisoners with mental health care needs.*
- ▶ *The straps on strap beds should always be covered so they are not visible to patients.*
- ▶ *Until a smoking ban is implemented, smoking rooms should be regularly ventilated.*
- ▶ *Whether a restriction on visits by minors is necessary should be examined on a case-by-case basis.*

### Legal protection in instances of restraint or isolation – forensic ward at Hall Regional Hospital

Presently there is no legal protection that meets the requirements of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) for persons held in custody or in facilities for the detention of mentally ill offenders who are restrained or placed in isolation. The Hospitalisation of Mentally Ill Persons Act provides that a person affected by restrictions on his or her freedom should be represented by the patient advocate. During a visit to the forensic ward of Hall Regional Hospital in Tyrol on 19 May 2016, this nationwide deficiency was again evident.

Lack of legal protection

The Federal Ministry shared these concerns and promised that this deficiency would be eliminated by the Detention of Mentally Ill Offenders Act. This law will provide the same legal protection for persons placed in therapeutic centres as for persons placed in medical facilities. The NPM is generally pleased that patient advocates will also be responsible for prisoners with mental health care needs in the future. However, it is unfortunate that the legal protection provided under the draft of the Detention of Mentally Ill Offenders Act is not as extensive as under the Hospitalisation of Mentally Ill Persons Act.

Plans to hire patient advocates

Under the draft of the Detention of Mentally Ill Offenders Act, the institutions need not notify the patient advocate of all restrictions. However, the patient advocate can only represent a person and assist him or her in making objections if the patient advocate knows of the restriction. Therefore, legal protection under the Detention of Mentally Ill Offenders Act is illusory in these cases and falls below the legal protection afforded by Section 38a of the Hospitalisation of Mentally Ill Persons Act. In general, the authority of the patient advocate is vague.

New threat of unequal treatment

- ▶ *All persons who are restrained or isolated against their will in a public medical facility should have the opportunity to be represented.*
- ▶ *Detainees in facilities for the detention of mentally ill offenders should have the same legal protection that is provided under the Hospitalisation of Mentally Ill Persons Act.*

## Communicating with patients who speak foreign languages – Hall Regional Hospital, Graz Süd-West Regional Hospital

Hall Regional Hospital During a visit to the forensic ward of Hall Regional Hospital in November 2016, the NPM addressed the problem of communicating with patients who speak foreign languages, among other problems. During an attempt to converse with a detainee in the forensic ward, the commission learned that the patient could not speak German or English.

No ability to communicate The on-duty nursing staff also could not communicate with the patient. The caregivers confirmed that an interpreter is available in principle. However, it is not possible to call in the interpreter before every nursing activity, since he is not present around the clock.

Both *Tiroler Kliniken GmbH* and the Federal Ministry pointed out that it is solely within the medical responsibility and competence of the clinic to decide whether and how the clinic staff communicate with a patient before, during and after placing him or her in restraint. There is no requirement that verbal communications should be in the affected person's mother tongue. A close relationship can also result from relationship-oriented non-verbal communication, such as sign language, facial expressions or gestures. In the hospital's view, the constant presence of interpreters constitutes a significant security risk since they are not sufficiently familiar with the situation in a forensic ward and with the patients.

Image folder and video interpreting However, the NPM's criticism was taken into account since the nursing staff made a folder with pictograms. It contains symbols and pictures of everyday items and situations with the corresponding German word or phrase. Moreover, an additional video interpreter account was ordered for the relevant ward. Video interpreter is available within a short period of time, as was demonstrated during a follow-up visit.

Forensic ward at Graz Süd-West Regional Hospital During a visit to the forensic ward at Graz Süd-West Regional Hospital, it was also made clear that psychiatric treatment and therapy require a common understanding of a language. Graz-West Regional Hospital promised to intensify its efforts to utilise interpreters on a permanent basis.

The NPM made reference to the video interpreting system, which has become established throughout Austria in the medical areas of all correctional institutions. The NPM recommended that Styrian Hospitals Limited Liability Company (*Steiermärkische Krankenanstaltengesellschaft*) considers the adoption of this system.

- ▶ *A video interpreting system should be established in public hospitals.*
- ▶ *If it is not possible to communicate with a patient due to a language barrier, an interpreter should be called in or pictogrammes should be used.*

### 2.5.2.3 After-care and follow-up facilities

In the year under review, the NPM again visited socio-therapeutic residential facilities where persons are placed after being held in detention for mentally ill offenders (so-called after-care or follow-up care facilities). These facilities provide housing to persons after their detention has ended and prepare them for life in the outside world. Persons placed there also receive support in searching for apartments and work. Conditionally released persons are also assisted in complying with court-ordered instructions and avoiding future criminal offences.

Goal and tasks

The NPM has repeatedly criticised the shortage of after-care facilities. Recommendation for release from experts are often subject to the availability of a place at a suitable socio-therapeutic residential facility. In practice, this results in excessively long detentions. However, in the year under review the NPM became aware of a paradoxical situation: on one hand, inmates and their care personnel complain of the lack of places. On the other hand, the managers of after-care facilities say they are not full to capacity.

Needs-based assignment

The lack of such care facilities for juveniles and persons with multiple disabilities is particularly distressing. During a visit to the forensic ward at Hall Regional Hospital in mid-May 2016, the NPM found that one sixth of the assigned patients were only being held in the hospital because there was no suitable follow-up care place available.

Lack of residential places

- ▶ *There must be more follow-up-care places throughout Austria.*
- ▶ *The creation of follow-up-care places for juveniles and persons with multiple diagnoses must be a priority, particularly in the western Laender.*
- ▶ *To better match up supply and demand, allocation management must be optimised with respect to after-care facilities.*

#### Ability to lodge complaint and crisis intervention plans - *Neuland Salzburg* after-care facility

In early February 2017, the NPM visited the *Neuland Salzburg* after-care facility. The shared accommodation made a good impression in terms of its quality of care and treatment of residents. But the NPM criticised the lack of ability to lodge complaints anonymously. In addition, there were no individualised crisis intervention plans for residents.

Open atmosphere

Both recommendations were implemented. A complaint box was set up in the entrance area of the residential building, far away from the charge office

Complaint box required

and the other offices and rooms to ensure anonymous use. The residents are notified of their ability to file complaints anonymously when they move into the house and at regular intervals, e.g. during house meetings. Management empties the box regularly. Moreover, the contact data for the Salzburg patient representatives is posted on every floor.

**Training in conflict and crisis management** The suggestion to prepare crisis intervention plans was also followed: the *Neuland* team participated in seminars on conflict and crisis management at social services facilities which were specifically aimed at their clientele. This included suicide prevention and de-escalation seminars, among others. Appropriate crisis and emergency plans were derived and developed based on these seminars. They provide guidance to all employees to enable a rapid, unified response and ensure the protection of all parties, if required.

**Good practice** The crisis plans are reviewed on an ongoing basis and appropriately supplemented when additional information is obtained (e.g. from additional seminars or practical experience gained from applying the plans). The preparation and implementation of needs-based crisis intervention plans is considered to be good practice.

**Preventive measures for employees** In addition, management is concerned about the mental and physical health of the employees. Permanent measures were implemented to improve their well-being while at the workplace. These include exercise activities, mental hygiene and team-building measures.

- ▶ *Risks must be recognised at an early stage to take appropriate measures to protect all parties.*
- ▶ *Individualised crisis intervention plans should include instructions for de-escalating situations.*

### Interface management upon final release - *SeneCura* social centre in Pölfing-Brunn

**Where to go after final release?** During its visit to the *SeneCura* social centre in Pölfing-Brunn, the NPM dealt with the question of how to ensure effective release management. A special challenge is presented by persons who are finally released from detention but cannot return to an independent lifestyle for reasons of age or poor health. The NPM investigated whether the Federal Ministry had sufficient contacts at facilities that can offer such people care and a place to live.

**Long-term planning by after-care facilities** The Federal Ministry stated that offerings related to the transition to full freedom are solely the responsibility of the respective facility, which can collaborate with the responsible public or independent agencies. The justice

administration's follow-up care management need only arrange for a suitable facility at the time of conditional release. The Federal Ministry informs the facility operator that the facility bears full responsibility, and the necessary long-term planning for the transition to freedom is considered to be part of the follow-up care concept.

In this regard, the NPM states: if conditional release is not revoked, it must be declared final. This ends any connection with the justice administration that may still exist. If persons cannot return to an independent lifestyle for reasons of age or poor health, it is the task of the *Laender* to offer them appropriate facilities where they can live and receive a certain level of care.

*Laender* responsibility

As part of effective interface management, it is the task of the facility in which the persons live until their conditional release. They need to contact the operators of social services facilities after obtaining the consent of the persons in question and facilities should then be proposed to the affected persons where they can live in the future and receive care.

Offerings for released persons

► *The Laender should offer supervised housing to persons who cannot return to an independent lifestyle due to age or poor health.*

## 2.5.3 Prison inmates with psychological ideosyncrasies

### 2.5.3.1 Specialised care and therapy - Stein correctional institution; Garsten correctional institution

During visits to Stein correctional institution in February 2016 and Garsten correctional institution in June 2015, the NPM found that prison inmates who were classified as persons with psychological ideosyncrasies were not receiving adequate specialised care and therapy. Moreover, Stein correctional institution did not ensure that they were housed separately from other prison inmates.

Blatantly underserved

Prison inmates who are not suited for imprisonment with the general prison population due to their psychological ideosyncrasies (Section 129 of the Penitentiary System Act) must receive special therapeutic care for their condition. In addition, this group has a subjective right to be housed separately from other prison inmates under public law.

Observations made by the NPM revealed a structural problem with respect to the care and housing of this group. The NPM emphasised that these persons need intensive care provided by specialised personnel. If they do not receive this treatment, their health is jeopardised, and therefore their right to health.

Structural weakness

Moreover, it was worthy of criticism that there were no standards of care and no criteria for classifying inmates who are not suited for imprisonment with the general population due to psychological idiosyncrasies.

**Standards must be created** Therefore, the NPM recommended that these persons receive particularly intensive and specialised care and therapy. National standards must be established for the care of inmates who suffer from mental impairment. Moreover, classification criteria must be developed. Likewise, it was recommended that consideration be given to how and where to best house such inmates who need intensive care.

**Supervisory review initiated** The NPM's criticism led to a supervisory review of the living conditions of these inmates. A working group for this purpose was established at the Federal Ministry.

This working group developed care guidelines for prison inmates who are not suited for housing with the general prison population due to psychological idiosyncrasies. This was in line with the NPM's recommendation to establish standards for the treatment and care of these inmates. In addition, criteria were defined as guidelines for the classification of these persons.

In the future, the correctional institution should document special treatment and care requirements and the reasons for initiating, maintaining and terminating this form of detention.

**Accurate detection** *De facto*, the review of living conditions led to a significant reduction in the number of prison inmates held in accordance with Section 129 of the Penitentiary System Act nationwide. By mid-2017, it was fewer than ten persons.

**The term „psychological idiosyncrasy“ is not precisely defined** The NPM also pointed out that the term “psychological idiosyncrasy” (“*psychische Besonderheit*”) used in Section 129 of the Penitentiary System Act is imprecise. This vagueness raises constitutional law concerns.

The Federal Ministry promised that the working group would evaluate the statutory provision. There were still no results at the time of completing this report.

- ▶ ***Prison inmates with mental idiosyncrasies who are unsuited for housing with the general prison population must receive adequate specialised care and therapy.***
- ▶ ***Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from the other prison inmates.***
- ▶ ***Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification.***

## 2.5.4 Women in prison

### 2.5.4.1 Implementation of minimum standards for female prisoners - Vienna-Josefstadt correctional institution

In February 2016, the Federal Ministry issued the “Minimum standards for women in Austrian correctional institutions” (*Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten*) which established standards for the placement and care of female detainees awaiting trial and female inmates. The individual correctional institutions were then called upon to develop appropriate proposals on how to implement these minimum standards locally (see NPM Report 2016, pp. 120 et seq.). The minimum standard was to be implemented by 30 December 2016 at the latest.

Even though steps towards implementation were taken, the NPM found, for example, that the minimum standards had not yet been fully implemented in Vienna-Josefstadt correctional institution by the end of 2017.

Implementation period has expired

According to the minimum standards, female prisoners are generally to be housed in residential groups. Of the three wards in the women’s department at Vienna-Josefstadt correctional institution, only one ward was run as a residential group during the past year (and that one only partially). The situation should improve when there will be a structural separation of the areas for open residential groups on the wards for prisoners and persons awaiting trial. However, even after these partitions are completed, comparatively few women will profit from being housed in residential groups due to limited capacity.

Another weakness is that there is no social pedagogue in the women’s ward for adult inmates. A social pedagogue position to work 40 hours per week, which was requested by the head of the female prison, had not been approved at the time of completing this report.

Lack of care

Another negative observation by the NPM is that there are still no special further training offerings for employees of the female prison, even though this is mandated by the minimum standards. The Federal Ministry promised to provide training and information on the topic of female prisons. When this will be done remains to be seen.

No further training opportunities

- ▶ *The minimum standards for women in Austrian correctional institutions must be implemented as soon as possible.*
- ▶ *In addition to adequate accommodation, female inmates must also be assured adequate care.*

## 2.5.5 Health care

### 2.5.5.1 Tobacco consumption and protection of non-smokers

Tobacco consumption in facilities of the penitentiary system and facilities for the detention of mentally ill offenders and the lack of protection for non-smokers constitute a national problem. There is an above-average number of heavy smokers in facilities for the detention of mentally ill offenders and others. Moreover, the majority of inmate cells in correctional institutions are cells for smokers, and some are severely polluted by nicotine. The NPM also frequently found that smoking and non-smoking inmates were held together in cells for multiple inmates.

**Acute health risk** The negative health consequences of active and passive tobacco smoking are generally acknowledged. It is common knowledge that inhaling tobacco smoke hanging in the air is referred to as “passive smoking”. Passive smokers suffer the same acute and chronic illnesses as active smokers – only such illnesses are less extensive and less frequent. Tobacco smoke that is inhaled through passive smoking contains the same poisonous and carcinogenic substances as the smoke inhaled by smokers. Therefore, passive smoking also causes numerous illnesses, some of which are serious.

**Around-the-clock exposure to nicotine** A special health risk exists when persons who suffer from a pre-existing illness, which is worsened by smoke, are housed together with smokers. Except for an hour of outdoor exercise, inmates remain in cells polluted by nicotine for up to 23 hours per day. In some cases, the ventilation is very limited.

The prison administration is responsible for the inmates’ health. The Federal Ministry assured the NPM that facility management has consistently attempted to separate smokers and non-smokers, unless the affected persons were opposed to this.

At the same time, the Federal Ministry conceded that separation cannot always be guaranteed. This is explained by the high occupancy of many correctional institutions in conjunction with the shortage of space. In addition, there are the restrictions that accompany different forms of detention (such as first-time imprisonment or pre-release) and the requirement to separate accomplices in court prisons. Inmates often have other interests – such as placement based on nationality – which are taken into account, when possible. However, these interests are secondary in the case of a pre-existing medical illness.

**Not to be held in the same cell** Although it is understandable that smoking plays a different role in detention than in free society and providing separate accommodations can pose a challenge, the protection of non-smokers may not be disregarded. Therefore, the NPM recommends that non-smokers not be held together with smokers in cells for multiple inmates. Persons who do not smoke should be protected from

the health hazards of tobacco smoke. Adequate measures must be taken to implement this as soon as possible.

The duty of care, which applies in the penal system, also extends to a child living in detention. Small children must not be exposed to passive smoke. A total ban on smoking in the mother-child area should go without saying.

Children have a special need for protection

This recommendation is based on a visit to Graz-Jakomini correctional institution. The NPM noticed a seating arrangement there, which was located immediately in front of a mother-child inmate cell and was used as a smoker's corner. The mothers and children had to pass through this area, and the small children were constantly exposed to smoke. Immediately after the NPM's visit, this smoker's corner was removed so that children are no longer endangered by passive smoking.

The NPM also emphasises that employers and police station management must take suitable technical or organisational measures to ensure that personnel are protected from the effects of tobacco smoke in the workplace, in communal rooms and stand-by rooms. In addition, the Maternity Protection Act foresees employment limitations and restrictions in order to protect the health of the mother-to-be and the child.

Staff must also be protected

The Federal Ministry assured the NPM that the facility management would be informed that smoking is prohibited in the corridors, the charge offices, rooms where the inmates work, communal rooms and stand-by rooms. However, smoking areas can be set up at the correctional institutions.

In most correctional institutions, smoking is permitted out-of-doors, in inmate cells and in the specially marked smoking rooms. According to the Federal Ministry, the space inside the locked area is not a public space. Therefore, the ban on smoking does not apply there.

However, at the same time, the Federal Ministry generally acknowledges that it must seek improvement in the area of tobacco control. An information campaign directed at staff and inmates is under consideration. The campaign will point out the harmfulness of nicotine and its consequences, and provide information on various means to stop smoking. The Federal Ministry is convinced that more can be achieved by providing information than by prohibitions.

Convince rather than punish

The Federal Ministry plans to set up an interdisciplinary working group to improve tobacco control. In addition to persons engaged in correctional practice, experts on basic rights and medicine will be included in this working group. The results obtained by the working group will be used as the basis for formulating a comprehensive strategy to protect non-smokers in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. The working group will have its first meeting in early 2018.

Interdisciplinary working group

- ▶ *In line with non-smokers protection, it must be ensured that they are protected against the health-endangering effects of tobacco smoke as far as possible.*
- ▶ *Smoking and non-smoking inmates must be housed separately from each other.*
- ▶ *Under no circumstances may small children be exposed to smoke.*

### 2.5.5.2 Persons with substance use disorders

**Far-reaching judgment of the ECHR** The question of how to properly treat and deal with delinquent addicts is not limited to Austria. The European Court of Human Rights (ECHR) has also addressed this problem (Wolfgang Adam Wenner against the Federal Republic of Germany, case No. 62303/13). The complainant claimed that he was denied drug substitution treatment during his imprisonment. In its decision of 1 September 2016, the ECHR found that the prison administration was required to offer drug substitution treatment to the inmate. The court ruled that this failure constituted a violation of Article 3 of the European Convention on Human Rights (prohibition on inhuman and degrading treatment).

**Therapy during imprisonment** It is generally recognised that addiction and dependency should be considered illnesses. Substance use and substance addiction are diagnosable, treatable chronic psychiatric diseases, which require long-term therapeutic treatment. Therefore, affected inmates have a right to adequate treatment, care and counselling during the period of detention. Effective therapy for a substance use disorder is an essential prerequisite for successful resocialisation and for the prevention of addiction-related criminality.

**Assistance even after release** Inmates with a substance use disorder often express an urgent desire for more high-quality therapy to permanently overcome their disease of addiction. These persons frequently complain to the NPM that they do not receive help, but rather are stigmatised and discriminated against. After imprisonment, many return to the same environment that made them addicts. Therefore, the NPM believes that it is necessary not only to address the question of what therapies are appropriate for addictive persons during the time of deprivation of liberty, but also to address adequate management of their transition, which must begin before release from imprisonment.

In November 2016, the NPM made a visit to the Innsbruck correctional institution, which was targeted at the topic of addicted inmates. The focus of the visit was the ward for drug offenders who require treatment (“forensic ward”). The ward had ten places in all and held only men.

This ward admits criminal offenders with a substance use disorder who are committed by the court pursuant to Section 22 of the Austrian Criminal Code (*Strafgesetzbuch*). The purpose of placement under Section 22 of the Austrian Criminal Code is to free criminal offenders from their addictions.

The emphasis is on curing them and improving their lives. The requirements for ordering measures under Section 22 of the Austrian Criminal Code include a connection between the person's dependency and the crime committed and a positive risk assessment.

Placements pursuant to Section 22 of the Austrian Criminal Code are primarily made in the specialised Vienna-Favoriten correctional institution. In addition, there are special wards for drug offenders who require treatment in some correctional institutions, such as Innsbruck correctional institution. However, these wards are often not reserved for persons placed pursuant to Section 22 of the Austrian Criminal Code. The majority of the detainees in such wards requested admission and therapy there voluntarily under Section 68a of the Penitentiary System Act (*Strafvollzugsgesetz*). This is also the case for Innsbruck correctional institution.

The ward for drug offenders who require treatment is on the ground floor of Innsbruck correctional institution in a section that is separated from the main building. It is operated as a residential group. The annexe was constructed in 2005. Its furnishings meet the requirements of a modern penal system. The ten single cells are bright, have large windows and furnishings that meet current standards. Likewise, the communal rooms, kitchen and eating areas have large windows or French doors. Another positive factor is that the ward is connected to an exercise yard, which is open until 10 p.m. The outdoor installation is green and well cared for. In the spring, the inmates plant vegetables in raised bed gardening.

Good setting

A multidisciplinary team is responsible for the care of the detainees. It consists of personnel from the psychological and social services, a prison guard and a psychotherapist.

The NPM gave positive feedback regarding the concept and the therapeutic offerings. However, the ward unfortunately has a very limited capacity. Most of the addicted persons are held in the main building and do not receive comparably intensive therapeutic treatment.

Ward is too small

It is also worthy of criticism that women and juveniles are in a significantly disadvantaged position. There is no institutionalised treatment concept for either group. The forensic ward at Innsbruck correctional institution is only open to male adults. Addicted female and juvenile persons cannot be admitted there.

Discrimination against women and juveniles

Work and employment are a significant part of the daily structure of addicted inmates. This includes participation in educational and training offerings. Operational structures must be oriented towards the special needs of addicted persons.

Discrimination in access to work

The NPM observed with approval that all persons on the ward for drug offenders who require treatment are assigned work. In addition to the therapeutic aspect,

this also reduces the preconception that persons with a substance use disorder are unfit for work. Unfortunately, addicted persons who are not placed in the forensic ward are still assigned very little work. This is especially true if they are receiving substitution treatment.

The NPM recommended that additional measures be taken to grant inmates with a substance use disorder greater access to work. Addicted persons should not experience discrimination in access to work or educational opportunities due to their illness. The principle of equal treatment must be applied.

Annexe would be desirable

In summary, the NPM concluded that Innsbruck correctional institution needs additional inmate cells to take into account the special treatment, care and counselling needs of addicted persons and prison inmates who require addiction treatment. Women and juveniles must have the same therapeutic offerings as male adults housed in the ward for drug offenders who require treatment.

Equalisation sought

It is unfortunate that the Federal Ministry did not agree to establish an additional ward or create additional inmate cells. However, the NPM notes with approval that the Federal Ministry addressed the topic of addicted inmates and discussed with Innsbruck correctional institution the possibility of expanding its care concept and creating additional work opportunities for addicted inmates outside of the “forensic ward”. The first discussion took place in mid-2017.

In the course of this meeting, the topic of creating a so-called “area without illegal drugs” was discussed. Addicted inmates who are voluntarily housed in this area will be offered more employment and therapeutic interventions with concomitant controls. The primary target group will be persons participating in a drug substitution programme. At the time of completing this report, the NPM had not yet made a conclusive assessment of the concept, which must include the organisational, substantive and spatial implementation of such an area. According to the Federal Ministry, occupation of such a ward could begin no sooner than the spring of 2019.

- ▶ *Inmates with a substance use disorder have a right to have their special treatment, care and counselling needs taken into account.*
- ▶ *There may be no discrimination against addicted persons with respect to their access to work and educational offerings due to their illness.*

### 2.5.5.3 Determining the need for medical and nursing staff

The lack of medical and nursing staff is a national problem. The NPM has repeatedly criticised the lack of specialists in psychiatry and the delays in filling general practitioner positions (see NPM Report 2016, p. 109).

Structural weakness

The health service in a correctional institution should be able to provide medical and nursing treatment under conditions comparable to those for patients who are at liberty [CPT/Inf/E(2002) 1 – rev. 2010, German, p. 33]. There must be an adequate number of medical personnel to meet this requirement.

The NPM raised the questions of which parameters should be used to calculate the need for personnel and what staffing level is needed to provide nursing and medical care to inmates. It became clear that the basis for the decisions and the key figures are lacking. At the end of 2017, the key figures for use in calculating requirements in the medical area were again the subject of intensive internal discussions within the Federal Ministry. According to the Ministry's own information, it has been working on this question since 2015.

Lack of key figures

Only the key figures for the deployment of nursing staff have been determined thus far. Three variables were identified for calculating the necessary number of permanent positions in the nursing service for each correctional institution. These three parameters are: "basic care", "assistance at doctor's appointments" and "substitution".

Relevant parameters

The amount of time the nursing service spends per inmate per year is determined for the parameter "basic care". For the parameter "assistance at doctor's appointments", the average time expended to assist an inmate during doctor's appointments, including the time used for preparation and follow-up, is calculated. The parameter "substitution" covers the time it takes to administer substitution medications.

For each correctional institution, the net time expended for general medical and psychiatric care was surveyed using these three factors. The necessary number of permanent positions was determined on this basis. The results of the calculation show how many full-time equivalents are needed in each correctional institution to cover the tasks performed by the nursing staff there.

Need is based on time expended

In determining the necessary number of full-time positions, it was also taken into account that the staffing capacity is based on the average annual working hours of an employee who works 42 calendar weeks per year. This is to avoid a situation where absences (e.g. due to vacation) result in personnel shortages.

Based on the results of these calculations, it was determined that seven of the 24 correctional institutions have a need for additional nursing staff. This need for additional staff was reported to the recruiting agency for justice supporting staff for 2018.

Objective need for nursing staff

The Göllersdorf, Stein and Vienna-Josefstadt correctional institutions and the Asten Centre for Forensic Science were excluded from this calculation procedure due to their special status. The staffing levels there will continue to be determined on an individual basis in the future.

Regular adjustments Staff requirement calculations will be evaluated once each year. The NPM will pay additional attention to whether the number of full-time permanent positions based on these calculations is actually sufficient to ensure adequate nursing care in the correctional institutions.

- ▶ *There must be an adequate number of medical and nursing staff to provide medical and nursing treatment under conditions that are comparable to those of patients who are at liberty.*
- ▶ *The key figures in the medical area, which have been lacking for years, must be determined as soon as possible.*
- ▶ *The need for nursing staff must be regularly assessed and adjusted.*

#### 2.5.5.4 Time and space of health examination upon arrival

Final assessment In previous years, the NPM has addressed the central question of when the obligatory health examination at the start of imprisonment should take place and what the examination should entail (see NPM Report 2016, pp. 102 et seq.). All inmates admitted to a correctional institution must undergo an initial examination by the institution's doctor. This obligation exists upon arrival or the start of imprisonment and upon transfer to another correctional institution (e.g. due to a transfer to a different prison or classification).

Standard established The NPM recommended that the Federal Ministry ensures that a uniform national health examination is conducted upon arrival in prison. This recommendation resulted in the issuance of a decree in August 2016 (BMJ-GD42708/0002-II 3/2016). According to this decree, the examination is to be conducted in a uniform manner with the assistance of an examination form, which can be accessed through the Electronic Patient Record Module. This standard medical history form is based on the general examination forms used for admission to a hospital.

Two additional supplements required The NPM supports the introduction of a national standard. However, the decree needs to be adapted in the following two ways: before the examination, prisoners should be expressly informed of the possibility of a blood test. The examination itself should be a full-body examination, including disrobement.

Blood test is in the inmate's own interest According to the explanatory remarks made by the Federal Ministry, a blood test is generally not required before imprisonment. Rather, a blood test is only ordered if it appears to be medically indicated in an individual case. Moreover,

a blood test is only permissible on a voluntary basis with the prior consent of the imprisoned person.

The NPM believes that it is necessary to adapt the decree so that prisoners are expressly informed that they can undergo a blood test in the course of the health examination upon arrival – which is in their own interest for the purpose of fully understanding their health condition. The NPM also recommends that any refusal by the inmate be documented in the Electronic Patient Record Module.

At the present time, disrobement is not a mandatory part of the health examination upon arrival. However, in the opinion of the NPM, the health examination upon arrival must consist of a full-body examination, including disrobement. Therefore, the NPM believes it is necessary to include this in the standardised examination catalogue for the health examination upon arrival.

Disrobement necessary

The purpose of the health examination upon arrival is to determine the condition of the person's health before he or she is placed in government custody. A second purpose of the health examination upon arrival is to discover any signs of mistreatment and to have them medically investigated.

It is not sufficient to leave it to the medical staff to determine, whether disrobement is necessary in the individual case after taking the medical history. Infectious diseases, rashes and possible allergies could be overlooked by the doctor or remain hidden. Therefore, the imprisoned person must be physically examined to effectively prevent the spread of communicable diseases and ensure that he or she receives adequate medical care.

In addition, disrobement is necessary to discover any injuries or signs of mistreatment. Moreover, the guidelines of the UN Istanbul Protocol require an examination and a detailed description of any injuries as standard documentation. The UN Istanbul Protocol is a manual for effective examination and documentation of torture and other cruel, inhuman or degrading treatment or punishment.

International standards

The NPM notes with regret that no adaptation of the decree has been promised.

With regard to the timing of the health examination upon arrival, the NPM emphasised last year that newly admitted prisoners should be subjected to a medical examination at the earliest possible time after admission.

New admissions

In the opinion of the NPM, even in the case of a transfer, the health examination upon arrival should be conducted on the day of arrival or within 24 hours. This is because the condition of a person's health can change.

Transfers

The NPM's recommendations in this matter were followed. It was ordered that newly admitted inmates must be automatically included on the doctor's appointment list in the Electronic Patient Record Module for the health examination upon arrival. The NPM also recommended that a note be placed

in the Module stating that the medical examination is to be conducted at the earliest possible time (within 24 hours). No such note is currently contained in the Module. The NPM recommends that the justice administration create the technical prerequisites for this.

- ▶ *A health examination upon arrival must consist of a full-body examination, including disrobing.*
- ▶ *At the health examination upon arrival, inmates should be expressly informed of the option of a blood test. The refusal by an inmate to undergo a blood test should be documented in the Electronic Patient Record Module.*
- ▶ *In the case of a transfer (e.g. due to a transfer to a different prison or a classification), a medical examination must also be performed within 24 hours.*
- ▶ *The automatic inclusion of newly admitted inmates on the doctor's appointment list in the Electronic Patient Record Module should also contain a note that the medical examination should be performed within 24 hours.*

### 2.5.5.5 Presence of prison guards during medical examinations

The question of which persons should be present in the doctor's office during a medical treatment or examination is closely linked to the question of the scope and timing of the health examination upon arrival.

NPM made a recommendation in early 2017

The NPM made a recommendation to the Federal Minister on this matter in early 2017 (see NPM Report 2016, pp. 99 et seq.), which demanded that only trained medical and nursing staff should be utilised in the infirmaries and doctor's offices of correctional institutions. These persons may not perform any supervisory functions with respect to inmates. The presence of prison guards during a medical examination or treatment should be the absolute exception and only at the request of the doctor. Even in these cases, confidentiality must be protected to the maximum extent through technical or structural precautions (e.g. screens, glass partitions, headphones).

Thus far, this recommendation has not been followed. According to the Federal Ministry, there is a need for additional permanent positions in the nursing service. In addition, the Federal Ministry believes that the confidentiality of examinations has been adequately guaranteed because prison guards are subject to official confidentiality.

International criticism

The NPM cannot agree with this argument. An atmosphere of trust is a necessary component of the "doctor-patient relationship". Respect for privacy and confidentiality are fundamental rights of every patient. This means that discussions with doctors, examinations and treatments should not be conducted in the presence of third parties. In the course of its visits, the CPT has already criticised the inadequacy or total lack of confidentiality during

medical consultations (CPT visit to Austria in the autumn of 2014, CPT/Inf (2015) 34, German, p. 39).

With respect to the security concerns that have been raised, it should be noted that the security rights of medical and nursing staff are protected because prison employees can be called in at any time at the request of the doctor. The presence of prison guards should be limited to such cases.

Moreover, all examination rooms and infirmaries have emergency call systems. In addition to triggering alarms with touch-sensitive alarm buttons or alarm switches, an emergency call can be made at any time using a portable emergency call system, such as a DECT phone, radio or portable security alarm device.

Emergency call systems provide additional security

During its visits, the NPM also questioned the staff at the infirmaries, who confirmed that not every prisoner requires the presence of prison guards at medical examinations and treatments. The staff are generally open to the NPM's recommendation to protect the doctor-patient-treatment relationship.

A survey of the staff supports the recommendations

The persons questioned by the NPM considered it to be a practical solution to limit the use of prison guards to cases where their use is required based on a risk assessment or their use requested by the doctor on security grounds.

Unfortunately, in everyday prison life, at least one prison guard is usually still present during medical treatments or examinations. The NPM adheres to its earlier recommendations (see the NPM's recommendations in chapter 3.5).

### 2.5.5.6 Tags to identify names or functions for doctor's office personnel

During its visits, the NPM was often unsure of the roles played by various persons in the vicinity of the doctor's office, since people did not wear any tags to identify their functions. In the infirmaries of numerous correctional institutions, the medical and nursing staff and the law enforcement personnel all wear white clothing. Therefore, the person's outer appearance is not a reliable indicator of his or her profession or function.

In early 2017, the NPM recommended that prison guards wear easily legible name tags on their uniforms (see NPM Report 2016, p. 112 et seq.). If there are special security concerns, a number can be used on the tag instead of a name. In the view of the NPM, wearing clearly visible name tags is a suitable means of increasing trust in prison employees. Making persons identifiable helps to create greater transparency and avoid violence, and enables full and effective investigations of any potential misconduct. If the identity of the employee is unknown, this can be an obstacle to making an effective complaint.

Education and function are not identifiable

The NPM is of the opinion that the wearing of visible tags by infirmary personnel to identify their name or function (e.g. doctors, qualified nursing

Identification eliminates uncertainty

staff) provides better orientation. This contributes to strengthening the relationship of trust, which is necessary for treatment in the medical area. The identification of employees by name – or at least by function – helps to create a communication- and relationship-oriented organisational structure, which is preferable to “anonymity” from a human rights perspective. It is part of the relationship culture between the inmates and the employees of the institution.

NPM’s recommendation not implemented

Unfortunately, the Federal Ministry did not follow the recommendation to obtain visible tags for medical staff or the recommendation that prison guards wear name tags.

► *Infirmery staff should wear a clearly visible tag stating their name or function.*

## 2.5.6 Right to privacy

The following chapter provides an overview of cases during the past year in which the NPM voiced criticism in connection with the basic right to protection of privacy.

### 2.5.6.1 Presence of media during raid - Stein and Graz-Karlau correctional institutions

Police raid In early 2016, the general directorate for prisons and detention ordered a nationwide raid (targeted campaign). In the course of the raid, inmate cells, workshops and workplaces were inspected, and body searches were conducted on inmates (with full disrobing).

Presence of reporters and photographers The NPM found that representatives of two of the print media, including photographers, were present during a raid on the Stein and Graz-Karlau correctional institutions. At the Stein correctional institution, they photographed workshops and inmate cells while the officers searched them. Items seized were photographed. At the Graz-Karlau correctional institution, photos were taken of the inmate cells and common areas of the institution (e.g. corridors, inmate cell doors, windows).

Inappropriate infringement on right to privacy The NPM complained that the inmates’ right to privacy was infringed because official actions, such as searches of inmate cells and body searches, were observed and photographed by third parties. The public’s need to know is satisfied if the prison administration informs representatives of the media of the results of the official action and the items found. It is not permissible

to invite media representatives to participate in a search. Such procedures should be rejected due to the inappropriate infringement of the inmates' right to privacy.

With respect to Graz-Karlau correctional institution, the Federal Ministry stated that representatives of the media were given precise instructions before the start of the police raid regarding how they were to act and emphasising that the privacy of inmates and employees must be protected. It also stated that photographing the correctional institution was not permitted until after request and prior review and only in the presence of an employee of the directorate for prisons and detention. The NPM was assured that representatives of the media only took staged photos of the inmate cells at Graz-Karlau correctional institution and were not present during the "actual" official action.

The NPM also determined that representatives of the media were present at the Stein correctional institution when inmates were led from their inmate cells for body searches.

Infringement of basic rights

Searches of inmate cells and body searches are (non-public) official actions taken in the exercise of public power prerogatives. It is well known that searches of inmate cells and body searches necessarily involve infringements of the inmates' right to privacy. The infringement of privacy rights is only justified if it is sanctioned by law, pursues one or more of the goals set forth in Article 8 (2) of the European Convention on Human Rights (ECHR), and is necessary. Under the principle of proportionality, infringements of privacy rights must be kept at a minimum.

In the view of the NPM, the presence of representatives of the media at searches of inmate cells and body searches is incompatible with these clear constitutional requirements. The presence of representatives of the media during searches of inmate cells and body searches should clearly be avoided as a precautionary measure – regardless of whether any infringement of inmates' privacy is discernible in a specific case.

Incidents may not be repeated

- ▶ *Measures must be taken to ensure that no media representatives are present during searches of inmate cells and body searches.*

### 2.5.6.2 Body searches in the presence of third parties - Vienna-Josefstadt correctional institution

Body searches with full disrobement intimately involve the basic right of privacy.

Inmates are subject to mandatory searches in rooms provided for this purpose upon transfer or other admission to a correctional institution. The same applies in the case of release. This is a body search involving disrobement, which every inmate must undergo. A body search with disrobement shall also be carried out upon placement in a specially secured inmate cell if a prisoner is a danger to himself or others.

Full disrobement in presence of fellow prisoner

During a visit to Vienna-Josefstadt correctional institution in January 2017, the NPM found that a fully disrobed inmate was subjected to a body search in the presence of a second inmate. Both inmates had to remove their clothing in the same inmate cell, each in a different corner with their backs turned to each other. Then their possessions were searched, and they were subjected to body searches.

Law disregarded

This procedure violates statutory requirements stating that a body search with disrobement is to be carried out in the presence of two employees of the same gender as the prison inmate and in the absence of fellow prisoners and persons of the opposite sex.

Sense of shame infringed

Body searches must always be conducted with respect for the inmate's sense of honour and human dignity. Conducting a search with a second inmate in the room infringes the dignity of the affected person, even if each stands in a corner with his back to the other. Such a procedure is likely to infringe the affected person's sense of shame and human dignity. The prohibition of inhumane and degrading treatment under Article 3 ECHR guarantees absolute protection. Such a procedure cannot be justified by staffing or logistical reasons.

No complete disrobement

The NPM also criticises the fact that inmates must fully disrobe for body searches (at Vienna-Josefstadt correctional institution). In the opinion of the NPM, complete disrobement of inmates for body searches is contrary to human rights standards. Therefore, body searches should generally be conducted in a way that the person being subjected to the search only bares one part of the body at a time (see NPM Report 2015, p. 115).

Unfortunately, full disrobement was still included in the Federal Ministry's new training document on search practice. The NPM adheres to its criticism and recommendation and suggests that the training document be changed. It shall state that disrobement for body searches should take place in two stages – regardless of gender.

Detailed documentation

The NPM further recommends that body searches that are accompanied by disrobement be documented in writing due to the intensity of the infringement.

The purpose and specific circumstances of the search must be recorded to ensure subsequent reviewability and to preclude abuse. General statements are not sufficient. It must always be stated why disrobement was required as part of the body search under certain circumstances.

Currently the conduct of a body search is only documented and reported to the prison warden if there is a suspicion that an administrative offence has been committed, and a report must be made in this regard. Additional documentation on its own form, as proposed by the NPM, is not required under prison law in the opinion of the Federal Ministry.

Recommendation  
rejected

- ▶ *All body searches must be conducted with respect for the inmate's sense of honour and human dignity.*
- ▶ *Body searches involving disrobement must not be carried out in the presence of fellow inmates.*
- ▶ *Body searches involving disrobement must be carried out in two stages so that the person being searched need not be fully disrobed.*
- ▶ *The cause and nature of a body search involving disrobement must be documented in writing.*

### 2.5.6.3 Health-related data posted on inmate cell doors Vienna-Josefstadt and Klagenfurt correctional institution

Posting health-related inmate data on inmate cell doors constitutes an impermissible infringement of the basic right to the protection of privacy, which is guaranteed in Article 8 ECHR and which includes a right to keep personal data secret. This includes health-related data. Such data is considered particularly worthy of protection under the Austrian Data Protection Act (*Datenschutzgesetz*).

Vienna-Josefstadt  
correctional institution

During a visit to Vienna-Josefstadt correctional institution in August 2016, the NPM noticed that medical data was listed next to the inmate's cell doors, right below the name of the inmate. The NPM stressed that posting such notices on inmate cell doors infringes the prisoner's legitimate right to confidentiality.

Sensitive data disclosed

Moreover, posting health-related data can be considered degrading treatment of the affected person because it informs third parties of the condition of the inmate's health without his or her consent. This can lead to ostracism and stigmatisation. The NPM recommended that health-related data no longer be posted on inmate cell doors in the future.

Threat of stigmatisation

The Federal Ministry assured the NPM that the ward commandant was notified that this procedure is impermissible in any form. It promised to monitor compliance.

Klagenfurt correctional institution      The NPM made comparable observations at Klagenfurt correctional institution. The NPM has repeatedly complained that the infirmary name tags, which also contain medical data, are not covered there. The tags are provided with hinged covers which are all open on the day of the visit. Therefore, anyone in the doctor's office can easily see who was housed in an infirmary inmate cell and for what reason.

- ▶ *It must be ensured that health-related data of inmates is not posted on the inmates' cell doors.*
- ▶ *The inmates' right to keep their personal data, particularly health data, secret, must be protected.*

#### **2.5.6.4 Confidentiality of medical consultations - Feldkirch correctional institution**

Infringement of the right to privacy      If the doors to the doctor's office are open during an examination or medical consultation, this is an inappropriate infringement of the inmate's right of privacy.

In August 2016, the NPM found that the doors of the doctor's examination room were frequently open or ajar during an examination or medical consultation at Feldkirch correctional institution. The NPM gave a reminder that the confidentiality of medical consultations in prisons must be ensured to the same extent as in the outside world and recommended that the doors to the doctor's office remain closed during consultations and examinations. Privacy and confidentiality must be protected.

- ▶ *The doors of the doctor's office must be kept closed during medical consultations and examinations to ensure privacy and confidentiality.*
- ▶ *Medical confidentiality must be ensured in prisons to the same extent as in the outside world.*

## 2.5.7 Personnel

### 2.5.7.1 Psychological supervision for prison employees

Regular psychological supervision is important to ensure the health of personnel and the maintenance and improvement of their working capability. Psychological supervision is a recognised instrument of psychological hygiene for the prevention of burnout, mobbing and violence. Verbal processing of experiences provides relief, especially in cases of excessive stress or after particularly difficult operations.

Purpose and meaning

The NPM has emphasised in the past that it is the facility management's task to motivate employees to avail themselves of psychological supervision. There is often ignorance or prejudice on the part of employees regarding what psychological supervision can effect. Overcoming these reservations should be a concern of superiors.

Existing reservations

During its visits last year, the NPM repeatedly observed that prison guards make very little use of psychological supervision. To reconcile and empirically prove these observations, the Federal Ministry was asked to provide the figures on psychological supervision for police officers and care providers at correctional institutions for 2016.

The result was that fewer than 10% of all prison guards nationwide availed themselves of psychological supervision in 2016. By contrast, in the same period about half of all care providers availed themselves of psychological supervision.

Non-law enforcement personnel are much more open-minded

It can generally be assumed that both care providers and police officers are subject to high stress in their daily work. Prison guards are generally the first responders when there are suicide attempts or suicides at the institution and must take appropriate defensive, first aid and resuscitation measures. These are especially stressful situations. Another core task of prison guards is to maintain order and security in the institution: police officers must intervene in conflicts between inmates and during attacks on employees. This is especially true for members of the task force.

High stress in all occupational groups

The low number of prison guards who avail themselves of psychological supervision is also alarming since numerous police officers complain of increasing psychological pressure during day-to-day work. This subjective feeling alone can create high stress during the care work that must be done on a daily basis. Therefore, it is all the more important to seek psychological supervision.

In late June 2017, a circular letter was sent to all correctional institutions in which the Federal Ministry noted that few prison guards nationwide avail themselves of psychological supervision. All facility managers were asked to motivate police officers, above all, to participate in psychological supervision

New decree

and to convince them that psychological supervision can keep a person healthy and enable him or her to better cope with the profession.

► *Law enforcement officers must be encouraged to regularly utilise psychological supervision.*

## 2.5.8 Access to information

### 2.5.8.1 Video interpreting

In previous years, the NPM has reported on the special challenge of language diversity and the successful pilot project “Video interpreting in correctional institutions” (see NPM Report 2015, pp. 97 et seq., and NPM Report 2016, p. 124 et seq.).

Intended expansion

In late August 2017, the one-year pilot project entitled “Video interpreting in the area of administrative penalty proceedings and the juvenile section of Vienna-Josefstadt correctional institution” came to a close. The Federal Ministry reported that both employees and inmates were highly satisfied. The pilot project in the care area of Gerasdorf correctional institution will end in the spring of 2018. A nationwide roll-out of video interpreting in administrative penalty proceedings and in the care area is scheduled for mid-2018.

The national roll-out of video interpreting in the medical area was completed in April 2017. At least one video interpreting system is available in the medical area of every Austrian correctional institution. In all, there are currently 34 systems in use nationwide. Therefore, for the first time, professional video interpreting services can be accessed in all prison infirmaries.

However, during a visit to Salzburg-Puch correctional institution, the NPM noted that, despite the installation of the video interpreting system in the infirmary and the training of its employees, fellow prisoners were still being utilised to provide interpreting services when needed.

System needs to be used

The Federal Ministry reminded both the law enforcement officers in the infirmary and the nursing staff to only use the video interpreting system installed in the infirmary when assistance in translation is needed due to difficulties in communication. Moreover, at training sessions, the office of the medical superintendent will reiterate that the system must be used.

- ▶ *Video interpreting systems should be obtained for all specialised services, for the admission area and the administrative penalty unit.*
- ▶ *When there are communication problems, trained interpreters should be utilised. Inmates should not be used as interpreters.*
- ▶ *The video interpreting systems should be made available in all infirmaries and used without exception.*

## 2.5.9 Living conditions

The NPM's observations regarding the living conditions of inmates are many and diverse. Some examples are provided below.

### 2.5.9.1 Lock-up times and work and employment opportunities

Since commencing its activities in July 2012, the NPM has tirelessly called attention to the nationwide structural problems at penal institutions due to excessive lock-up times and inadequate work and employment opportunities for inmates (see NPM Report 2012, p. 24 et seq.; NPM Report 2013, pp. 54 et seq.; NPM Report 2014, pp. 83 et seq.; NPM Report 2015, pp. 106 et seq.; NPM Report 2016, pp. 117 et seq.).

Structural weakness

In 2017, the NPM was once again confronted with inadequate employment opportunities and rigid lock-up times. For example, it found numerous days on which companies providing occupational opportunities at Graz-Jakomini and Vienna-Josefstadt correctional institutions shut down their operations. The lock-up times and employment situation for inmates at Krems correctional institution were also worthy of criticism.

Criticism remains the same

While the employment situation for juveniles at Gerasdorf correctional institution is very encouraging most of the time, many companies close during the summer months at this facility, too.

Unfortunately, the establishment of a well-balanced employment regime for detainees awaiting trial in prisons operated by the regional courts continues to be a special problem.

Less favourable treatment of detainees awaiting trial

The NPM reiterates its recommendations on these matters from past years (see the NPM's recommendations in chapter 3.5). Employment and activity programmes must be expanded, and lock-up times must be reduced.

- ▶ *It must be ensured that companies providing occupational opportunities at correctional institutions keep those continuously open. The inmate employment rate should be increased – either by optimising personnel resources or – if this is not possible – by adding personnel.*
- ▶ *Work opportunities for detainees awaiting trial must be expanded.*

### 2.5.9.2 Outdoor exercise and alternative opportunities to exercise - Vienna-Josefstadt correctional institution

Required minimum time not reached	Opportunities for outdoor exercise are especially important to the health of persons who have been deprived of their liberty. Legislators have granted inmates a subjective right vis-à-vis public authorities to one hour per day of time spent outdoors (two hours for juveniles), if weather permits and if they do not work outdoors. International guidelines also require an inmate to spend a daily minimum of one hour outdoors.
Repeated complaints	During a visit to Vienna-Josefstadt correctional institution in January 2017, prisoners repeatedly complained that outdoor exercise lasts for less than the required 60 minutes. Moreover, outdoor exercise is often cancelled when it drizzles, with the justification that this constitutes “bad weather”. The Federal Ministry has assured the NPM that the daily schedule of Vienna-Josefstadt correctional institution includes one hour of time spent outdoors. However, at the same time, it pointed out that compliance with this requirement depends on the cooperation of the inmates. If there is no cooperation, delays are unavoidable.
Delays must be taken into account	It is understandable that the requirement of daily time spent outdoors presents an organisational challenge in a large facility and that there can be delays. However, the time spent leading inmates to the outdoor area and bringing them back cannot be included in calculating time spent outdoors. The NPM emphasises that it is not sufficient to merely schedule a minimum time spend outdoors. Rather, it must be ensured that inmates actually spend the required minimum period of time outdoors in practice. In addition, the NPM recommends that alternative opportunities to exercise be offered when there is bad weather.

- ▶ *The required minimum daily period of outdoor exercise must be provided. This must be a net period available to inmates. The time spent leading inmates to and from the outdoor area may not be included in calculating time spent outdoors.*
- ▶ *If daily time spent outdoors is cancelled due to bad weather, alternative opportunities for exercise should be offered (e.g. in a gymnasium).*

### 2.5.9.3 Too little individual living space - Dornbirn satellite facility of Feldkirch correctional institution

In the year under review, the NPM again observed that some inmates have too little individual living space available to them in their inmate cells. The situation is exacerbated by overcrowding. Last year, the conditions at Suben and Feldkirch correctional institutions were used as an example (see NPM Report 2016, p. 119). In the past year, the NPM recommended that some two-person inmate cells at Dornbirn satellite facility of Feldkirch correctional institution only be occupied by one person.

The case law of the European Court of Human Rights does not establish a minimum size for an inmate cell, since this depends on various factors, e.g. the duration of detention, the opportunities for outdoor exercise and the constitution of the affected person. However, the court refers to the standards set by the CPT, which include minimum inmate cell sizes (e.g. CPT standards: Living space per prisoner in prison establishments; CPT/Inf [2015] 44).

Small inmate cells and confined spaces place enormous psychological stress on inmates. In principle, the usual level of suffering that is inherent in a prison sentence should not be exceeded. Conditions of imprisonment reach a degrading level when they cause feelings of anxiety, trepidation and inferiority in the affected persons.

Negative factors

For example, the windows in the inmate cells at Feldkirch satellite facility are so high up that only the rising mountain slopes and the sky are visible. In confined spaces, this factor can lead to a strong feeling of trepidation and intensify the conditions of imprisonment.

If overcrowding is added to these negative conditions, the prison climate is worsened exponentially. If there are more inmates than planned, there is an adverse impact on all services and activities at the correctional institution due to this additional burden. The quality of life for inmates and the working conditions of employees at the facility can significantly deteriorate. Irritability and dissatisfaction are the breeding ground for verbal and physical assault.

Overcrowding as an additional stress factor

Overcrowding can lead to a violation of Article 3 ECHR. Therefore, adequate preventive measures must be taken.

- ▶ *Inmate cells must be situated and furnished in such a way that prisoners are housed humanely and health hazards are avoided.*
- ▶ *Therefore, it must be ensured that inmates have adequate individual living space in their cells.*

#### 2.5.9.4 Separation of detainees awaiting trial from convicted prisoners - Feldkirch correctional institution

Statutory requirement Due to the high occupancy rate at Feldkirch correctional institution, the required separation between detainees awaiting trial and convicted prisoners was sometimes not maintained. Accused persons should not be housed together with prison inmates. The NPM recommends that sufficient inmate cells be created so that the statutory requirement to separate detainees awaiting trial from prison inmates can be met.

► *Detainees awaiting trial should be held separately from convicted prisoners.*

#### 2.5.9.5 Occupancy limit - Oberfucha satellite facility of Stein correctional institution

From the NPM's first visit, the Oberfucha satellite facility made a positive impression, which was reinforced during follow-up visits in July 2017. It became clear that smaller units often achieve better results in resocialisation work than larger ones. Particularly impressive was the empathetic demeanour of the employees, who have a positive attitude towards their profession and convey this attitude to the inmates.

Number of occupants should be reduced However, the NPM concluded that living conditions at the facility would suffer greatly if the facility were at full capacity. At the time of the visit, there were 21 persons being held at the satellite facility, which has a maximum capacity of 32. Neither the staff level nor the physical capacity of the facility would bear occupancy by 32 persons. To prevent crowded conditions of detention, the NPM recommended a review of the maximum occupancy level at Oberfucha satellite facility of Stein correctional institution.

At first, it was promised that the occupancy limit for Oberfucha satellite facility would be reduced from the current 32 inmates to 24. However, the Federal Ministry ultimately announced that the original occupancy limit of 32 persons would remain.

► *To prevent crowded conditions of detention, the maximum occupancy limit at correctional institutions must be reviewed from time to time and reduced, if necessary.*

## 2.5.10 Infrastructural fixtures and fittings

### 2.5.10.1 Rooms for visits by children - Vienna-Josefstadt correctional institution

During a visit to Vienna-Josefstadt correctional institution in August 2016, the NPM recommended that a family visiting room be set up, especially for mothers with children. To facilitate the preservation of family bonds during detention, appropriate space is required in addition to flexible visiting rules. This should permit a certain freedom of movement and family intimacy and guarantee a child-friendly atmosphere. Visits should leave positive memories for children and motivate them to return.

Child-unfriendly environment

Visits make an important contribution to the preservation of family ties. In turn, the preservation of family bonds plays an important role in avoiding recidivism and facilitating social reintegration. A series of factors, such as inflexible visiting hours and an uninviting atmosphere, can result in a rupture of family bonds and a loss of contact with children. Therefore, an environment should be created that meets security requirements but is conducive to good family contacts.

Atmosphere should be inviting

In general, the structural condition of Vienna-Josefstadt correctional institution is out of date. It prevents the implementation of a modern penal system. The NPM has repeatedly demanded that the Vienna-Josefstadt correctional institution be renovated as soon as possible.

The Federal Ministry promised a general renovation of the correctional institution, with the start of construction scheduled for early 2019. It promised that the renovation would include family visiting rooms and suitable visiting rooms for mothers with children.

General renovation to commence in early 2019

- ▶ *Suitable visiting rooms must be ensured for visits with children.*
- ▶ *Visits that include children should take place in a friendly atmosphere.*

### 2.5.10.2 Partitioning of the toilet facilities – satellite facility of Innsbruck correctional institution at Innsbruck Regional Court; Dornbirn satellite facility of Feldkirch correctional institution

The satellite facility of Innsbruck correctional institution on the basement floor of the Innsbruck Regional Court consists of eleven (holding) cells and one specially secured (holding) cell. During the first visit in June 2015, the NPM voiced criticism of the lack of structural partitioning of the toilet in any of the inmate cells even though there were multiple persons in these cells. The NPM also criticised the fact that the sanitary area was visible through the spy hole

Innsbruck Regional Court

and the tray slot. The NPM recommended that the toilet be separated from the rest of the inmate cell to ensure that inmates can take care of their bodily needs with a modicum of decency (see NPM Report 2015, p. 111 et seq.).

**Dornbirn satellite facility** In August 2016, the NPM also criticised the lack of structural partitioning of the toilet facilities in cells with multiple inmates at the Dornbirn satellite facility of Feldkirch correctional institution. Inmate cells were equipped with a bunk bed for two prisoners, and the toilets were only partitioned off by a shower curtain. There was no protection against bad odours.

Assurances were given that the necessary renovations would be carried out before 1 January 2017. On that day, a statutory amendment took effect, which requires structurally partitioned toilet facilities in cells for multiple inmates and separated toilets (curtain, barrier) in single cells.

**Promise not kept** However, the follow-up visits made in November 2016 and July 2017 showed that there was no implementation of any structural or other separation of the toilet facilities from the rest of the holding cell at the satellite facility at the Innsbruck Regional Court. Some of the inmate cells held more than one person. This is a clear violation of the statutory provision in force since 1 January 2017.

**Renovation still unrealised** The NPM does not understand why no solution has been found after two and a half years. It remains to be seen when the construction work to separate the toilet facilities from the rest of the inmate cell and the installation of a ventilation system, which was promised by the Federal Ministry, will be implemented.

**Conversion into single cells** The Dornbirn satellite facility of Feldkirch correctional institution did not provide a structural partition of the toilet facilities from the rest of the inmate cell due to budgetary constraints. However, to ensure that the placement of inmates is in accordance with the law, the affected inmate cells may now only be occupied by a single prison inmate.

- ▶ ***Inmate cells (including single cells) must have toilet facilities that are separated from the rest of the inmate cell.***
- ▶ ***Inmate cells that house more than one person must have structurally partitioned toilet facilities.***
- ▶ ***Sanitary facilities must be hygienic and designed so that prison inmates can take care of their bodily needs at any time with a modicum of decency.***

## 2.5.11 Positive observations

### 2.5.11.1 Successful resocialisation model - Mautern satellite facility of Stein correctional institution

The commission had a positive impression on its visit to Mautern satellite facility. The employees of the satellite facility demonstrate a high degree of commitment and independent initiative. Due to the manageable size of the facility, individualised, relationship-based work is possible. It was especially gratifying that the prison guards are socially involved and assist with the work. This avoids the use of force and ensures good results in resocialisation. It was also positive that there are joint activities during leisure time, such as a bicycling group, conversation roundtables and dart games.

Committed personnel

The NPM also found a clear, transparent and fair system for loosening prison rules on outings and opportunities for contact. The focus of the facility is on training and employment. The individualised planning for the prisoner's stay and the everyday care contribute to resocialisation.

The NPM also had a very positive image of the ward for inmates with relaxed sentences at Stein correctional institution. The ward is located in the building that houses the Krems correctional institution. The structural fixtures and fittings are modern and functional. Most inmates are in single cells. They live in residential groups and cook for themselves. Every residential group has its own sanitary facilities, which were found to be in very good and clean condition.

Ward for inmates with relaxed sentences at Stein correctional institution

All inmates are employed or in training. They have mobile phones and do not misuse them. After their work is completed, the inmates are not required to return to the ward immediately but are allotted a certain amount of time for shopping and leisure activities. The time frames are established.

The commission gained the impression that the pre-release programme at Stein correctional institution is a successful model for humane imprisonment. The task of resocialisation is being implemented. There was no criticism from a human rights perspective.

- ▶ *Small facilities and working together promote trust between inmates and employees.*
- ▶ *A positive attitude put into practice makes a significant contribution to resocialisation.*
- ▶ *A well-established pre-release programme prepares inmates for life in the outside world. It is an important part of resocialisation.*

### **2.5.11.2 Reduced lock-up times - Dornbirn satellite facility of Feldkirch correctional institution**

New locking device on inmate cell doors

The NPM recommended that the Dornbirn satellite facility of Feldkirch correctional institution expand the hours during which inmate cells are open for persons serving relaxed sentences, and do so as soon as possible. Encouragingly, the recommendation was implemented. In addition, new locking devices were installed on the doors of the inmate cells to enable inmates to lock the doors after they leave the inmate cell to protect their property. In addition, floor separations with latticed doors were installed. Since this work was completed, opening times were extended until 5:30 p.m. on workdays – i.e. beyond the end of the day shift, which regularly ends at 3 p.m. On Saturdays, Sundays and holidays, the inmate cells are kept open until 12 p.m.

## **2.6 Police detention centres**

### **2.6.1 Introduction**

21 visits to police detention centres

In 2017, the commissions made 21 visits to police detention centres, Vordernberg detention centre, the Eisenstadt competence centre and the Zinnergasse family shelter.

The Federal Ministry of the Interior quickly implemented several of the NPM's proposals. However, in some cases, there were delays in resolving some of the problems that had been identified, since the Federal Ministry of the Interior needed a lengthy period of time to conduct its internal investigations. This also applied to cases where the NPM had proposed serious measures, such as structural changes or adjustments to organisational requirements.

### **2.6.2 Working group on conditions of detention in police detention centres**

Single cells, detention pending forced return, visits

In the NPM Report 2016 (pp. 133 et seq.), the NPM reported on the measures to implement the NPM's recommendations of May 2016 which had been announced by the Federal Ministry of the Interior. These recommendations were based on the framework conditions for three matters formulated by the working group: detention in single cells, including specially secured cells, the practice of detention pending forced return in the form of open detention and improvements to visiting hours and visiting rules.

The Federal Ministry of the Interior gave assurances that it wished to realise the agreed-upon standards as soon as possible through decrees or physical

measures. However, the NPM found that the recommendations of May 2016 had not yet been fully implemented in the year under review.

As stated in the NPM Report 2016 (p. 134), the Directive on Workplaces should be adjusted so that the standards for detention in single cells and specially secured cells as well as visiting hours and visiting rules can be implemented. In October 2017, the Federal Ministry of the Interior stated that a draft had been developed. The standards could be included in a decree after internal review by the relevant departments. The Federal Ministry of the Interior promised to issue this decree in the 1st quarter of 2018.

Adjustments to the  
Directive on Workplaces

The NPM's Report 2016 (p. 135 et seq.) deals with the extension of lock-up times for persons in detention pending forced return at Hernalser Gürtel police detention centre. The NPM not only criticised the action, which was in violation of the decree, but also the lack of prior notice from the Federal Ministry of the Interior.

Extension of  
lock-up times

The Federal Ministry regretted this and announced that it would include the requirement to notify the NPM in the decree and republish it. This requirement to notify the NPM is intended to ensure the reporting of lengthy deviations from the agreed-upon standard of open detention. However, no such notification was given during the year under review, and the criticised extension of lock-up times at Hernalser Gürtel police detention centre continued in effect.

Under the standards for designing single cells and specially secured cells (see NPM Report 2014, p. 119), over the long term, security cells in all police detention centres are to be subject to video monitoring with infra-red cameras, which operate independently of any light source. These standards are being implemented very slowly in the view of the NPM. However, the NPM recognises that the Federal Ministry has stated to the working group that it also wants to equip detention rooms in police stations with infra-red cameras in the future.

Infra-red camera in  
security cell in police  
stations

In 2017, the working group again devoted itself to developing standards for employment and leisure-time opportunities in police detention centres. It came to the same conclusions already expressed in the NPM Report 2016 (see NPM Report 2016, p. 136 et seq.). Only Thera bands were rejected due to security concerns. The NPM recommended that the Federal Ministry of the Interior implement the standards for employment and leisure-time opportunities and access to information regarding the outside world as quickly as possible.

Employment  
opportunities

At the same time, the NPM recommended that the Federal Ministry of the Interior also quickly implement the hygiene standards for detention in police detention centres which the working group formulated in 2017. Based on the goals already reported in the NPM Report 2016 (p. 137 et seq.), these standards encompass the following basic conditions:

Hygiene standards

Generally, inmate cells have to be kept in hygienic condition. Detainees should have access to sanitary facilities (toilets, showers) which are hygienic

and ensure privacy. Therefore, shower facilities (for multiple persons) should be separated by privacy screens. Alternatively, individual use should be facilitated.

The toilets in cells for multiple inmates should, in any case, be completely physically separated from the rest of the inmate cell. This serves to protect privacy while using the toilet and avoids unpleasant smells and noises for fellow prisoners.

The working group agreed that detainees should be able to take frequent showers, at least twice per week. In the future, the opportunity to take daily showers should be available during periods of extreme heat, for maintenance workers, on a doctor's instructions, on the day before a planned forced return and for women during menstruation and menopause. Detainees must be informed of their opportunities to take showers.

Detainees should have access to hygiene articles. Indigent detainees should be provided with hygiene articles, and female prisoners should be provided with hygiene articles, such as sanitary towels and tampons.

In the past, the NPM often complained about the hygienic condition of the textiles distributed to the inmates of Hernalser Gürtel police detention centre, primarily the mattresses, pillows, blankets and sheets. The working group agreed on the following to ensure uniform furnishings for all detainees nationwide: in the future, each detained person is to be issued a blanket, a pillow, either a sheet and a bedspread or two sheets, and a pillowcase. In addition, they are to be given one large and one small towel and a dish cloth, if necessary. The bedding must be changed once per week in the future.

If a bedspread is used, the blankets should be changed every eight weeks; otherwise every four weeks. Textiles should be immediately replaced if they are very dirty or damaged. Protective covers should be used to avoid soiling the mattresses, which – like the bedding – must be cleaned and disinfected. Used mattresses must always be replaced if there is a hygienic need.

The NPM will monitor and report on the implementation of these standards.

Telephone contact with  
the outside world

In its Report 2016 (p. 136 et seq.), the NPM reported on the preliminary results of its work on standards for telephone contact with the outside world. The working group completed work on the formulation of these standards in 2017.

The working group agreed that detainees should be afforded barrier-free access to a telephone by providing them with mobile service telephones, as needed. It was further agreed that detainees with sensory impairments could use their own technical aids when making phone calls. The NPM intends to make a recommendation on this matter.

Documenting special  
security measures

During a visit to Hernalser Gürtel police detention centre in November 2016, the commission inspected the specially secured cells. In one cell, it encountered

an unclothed detainee who showed signs of dehydration. The man was completely immobilised, being shackled with restraining straps around his waist as well as hand and foot shackles. In addition, his lower body remained unclothed during questioning by the Federal Office for Immigration and Asylum.

The NPM ascertained that the detainee had refused the food and beverages offered to him. He had also refused to put on the disposable clothing offered to him instead of his own clothing when he was placed in the cell. He had previously been deprived of his clothing for security reasons.

However, the NPM found deficiencies in the documentation of these occurrences and the fact that the detainee was shackled, which is why the working group addressed this case. Based on the existing requirements, the working group was able to agree on the formulation of more precise standards with respect to special security measures.

Accordingly, in the future, the reason for placement in a specially secured cell, the commencement, course and conclusion of this measure and the involvement of a doctor must be documented. Any decision to deviate from a medical recommendation regarding the continuance of special security measures must be documented and supported by facts.

If affected persons must be deprived of their clothing, they should be offered disposable clothing when disrobed. The time and place the offer was made, and any rejection of the disposable clothing must be documented. If prisoners spend time outside of the cell, their private parts should be covered with disposable clothing or a blanket.

Offer of disposable clothing

During the execution of any special security measures, detainees should be offered adequate nourishment – including warm food at least once per day – and offered liquids at least three times within a twelve-hour period during the daytime. The times of these offers, the administration of food and any refusals by the detained person should be documented.

The shackling of inmates in padded, specially secured cells should be undertaken with restraint and ended, as necessary, to avoid impairments of health to the extent possible. The effects of such measures must be checked regularly. This is to ensure that shackles are used in exceptional cases and with special consideration of the vulnerable situation of persons held in detention under Section 5b (2) (4) of the Detention Regulation (*Anhalteordnung*).

It should be mentioned that the Federal Ministry of the Interior always stressed that the case of the unclothed inmate at Hernalser Gürtel police detention centre was an isolated incident. However, observations made by the NPM during a visit to the Innsbruck police detention centre indicated that this was more than just an isolated incident.

Two naked persons in same security cell

In the course of this visit, the commission reviewed documentation of the detention of persons in padded security cells. This revealed that several persons were either completely naked or only wearing underwear during their detention in the cells. There was no proof that they had been offered and refused replacement clothing. Moreover, the commission found that two naked persons were held in a padded cell together for more than six hours.

The NPM pointed out to the Federal Ministry that the detention of two (unclothed) persons in one security cell was contrary to the objectives of Section 5b (2) (4) of the Detention Regulation. According to this rule, a persons may only be held in isolation in a security cell when there is a risk they might harm themselves. It was not possible to make a definitive assessment in this regard at the time of completing this report.

Inadequate documentation of outdoor exercise

During several targeted visits to Hernalser Gürtel police detention centre, the NPM checked whether detainees held in single cells or specially secured (tiled cells included) were offered daily outdoor exercise (one hour of outdoor exercise) as well. However, the commission could not clarify this matter on site based on the current documentation form. The documentation only provided very general reasons for the lack of outdoor exercise (e.g. “not willing to go for a walk”). Therefore, when there were complaints that outdoor exercise was not being offered or provided, the commission frequently could not determine whether the detainees’ reproaches were justified.

Therefore, the working group saw a need to make the current form of documentation more specific. The Federal Ministry gave its assurance that outdoor exercise is being offered to all detainees except for persons in specially secured, padded cells. This exception is understandable since the affected persons are being held in specially secured cells (padded walls or floors) to prevent them from harming themselves or others. Allowing these persons to move about in an unsecured yard would be contrary to the purpose of their detention in such cells. Apart from that, this form of detention may only continue for the period of time that is absolutely necessary.

Therefore, the working group formulated the following requirement for inclusion in the standards for special security measures: in the future, the rejection of outdoor exercise by detainees in level 2 security cells (e.g. tiled cells) must be documented.

Lockable boxes or containers

During visits to Innsbruck, Klagenfurt and St. Pölten police detention centres in 2016, the NPM found that detainees had no possibility to store personal items or clothing in lockable boxes. Due to this criticism by the NPM, the working group found it necessary to develop a uniform solution.

It was of particular importance to the NPM that detainees be provided with lockable boxes or containers to ensure a minimum level of privacy. This

enables detainees to store items in a way that prevents unauthorised access by other persons.

The discussion, which was still ongoing at the time of completing this report, revealed that in some police detention centres, it was not possible to install lockable boxes due to lack of space. The Federal Ministry of the Interior finally promised to examine the technical alternative of smaller lockable containers to determine their feasibility. The NPM will monitor progress and report on this matter.

It should be noted in this regard that the Federal Ministry of the Interior initially stated that it had ordered the installation of boxes in the cells at Innsbruck police detention centre. However, in July 2017, the Federal Ministry revised this intention since the cells lacked the space needed for the boxes that had been delivered. During a follow-up visit, the NPM confirmed this fact and criticised the incomprehensible procedure for obtaining the boxes.

Towards the end of the year under review, the working group addressed the protection of non-smokers as well as smoking during detention (cf. Section 14 of the Detention Regulation). The working group concluded that an absolute prohibition on smoking in police detention centres was not desirable. There was agreement that the measures to protect non-smokers should differ depending on the form of detention (open or closed detention):

Protection of non-smokers

According to the results of the discussions so far, corridors and common rooms in the open detention stations of all police detention centres should be non-smoking zones in the future. Smoking should only be allowed in cells used by prisoners who smoke. The unlocked doors of these cells should be kept closed due to smoke emission.

In the closed detention stations of the police detention centres, there should be a ban on smoking except in cells used by smokers. Such a prohibition is also intended for the visiting rooms of all police detention centres. For both forms of detention, it should be ensured that non-smoking prisoners are only held in detention with other non-smokers, if desired. The NPM will monitor and report on the progress of this discussion.

The standards developed by the working group thus far should be implemented by the Federal Ministry of the Interior as quickly as possible in the form of decrees, amendments to internal guidelines or to the Detention Regulation or by taking physical measures (e.g. structural adaptations).

- ▶ *All police detention centres must have a sufficient number of inmate cells that are suitable for single detention in accordance with Section 5 or 5b (2) (4) of the Detention Regulation.*
- ▶ *The initial medical examination of prisoners held in specially secured cells must be conducted as soon as possible.*
- ▶ *Specially secured cells should allow the entrance of natural light, and all single cells must have natural and mechanical ventilation.*
- ▶ *All single cells must have an alarm button, which can be activated at the inmate cell.*
- ▶ *Single cells under Section 5 of the Detention Regulation must be equipped with a sink, a supply of hot and cold water, a sit-down toilet, a bed and a table with seating.*
- ▶ *Tiled security cells must have a (squat) toilet with flushing function, a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating).*
- ▶ *The technical surveillance of specially secured inmate cells should be carried out using video surveillance that is independent of any light source and protects the prisoner's privacy.*
- ▶ *Padded or rubberised inmate cells should be subject to constant personal surveillance, tiled security cells should be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance.*
- ▶ *The reason, commencement and end of detention in a single cell and the attendance of a doctor during detention in a specially secured cell must be documented.*
- ▶ *Persons in detention pending forced return must be transferred to the open detention station at the police detention centre within 48 hours of admission. There should only be exceptions to open detention in cases agreed upon with the NPM. The cell doors in open detention should be continuously open from 8 a.m. to 9 p.m.*
- ▶ *Hunger-strikers in detention pending forced return should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention station.*
- ▶ *Section 5a of the Detention Regulation should be amended to codify and clarify the principles for detention pending forced return in open detention stations.*
- ▶ *The Federal Ministry of the Interior must ensure that all detainees can receive 30-minute visits at least twice per week. Weekend visits should also be made possible.*
- ▶ *Unless there are certain security concerns or unless prisoners in court custody are involved, visits with detainees should be in the form of table visits. Measures should be taken to ensure that table visits are not disturbed – including by structural conditions.*
- ▶ *Detainees should be permitted physical contact with visitors in the form of non-sexual touching. A separate room with a table should be provided for visits with relatives who are minors.*
- ▶ *All detainees should be granted access to the outside world by providing radios and TV sets in communal rooms and offering (foreign-language) print media.*
- ▶ *Except for detainees in specially secured cells, detained persons should be able to use their own personal radio and TV set in their cells.*

- ▶ *It should be ensured that detainees are offered at least one hour of daily outdoor exercise. The interior and exterior areas of the police detention centre should be equipped for this purpose.*
- ▶ *An adequate supply of functioning (sports) equipment and board games should be provided, and detainees should be allowed to use leisure-time opportunities offered externally.*
- ▶ *It must be ensured that detainees have access to hygienic sanitary facilities. Privacy must be ensured through structural or organisational measures.*
- ▶ *Toilets in cells for multiple inmates must be designed so that they are completely separate from the rest of the inmate cell. The mattresses and textiles issued to detainees must be clean.*
- ▶ *Detainees should be able to shower at least twice per week – and to shower daily under special circumstances. Detainees must be informed of their opportunity to shower.*
- ▶ *All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation.*

### 2.6.3 Working group on suicide prevention

In 2017, the working group continued to formulate specific standards for suicide prevention in police detention. In its Report 2016 (p. 139 et seq.), the NPM reported on results with respect to the following matters: training of staff, recognising when there is a risk of suicide and actions to take when there is a risk of suicide.

Experts from the Federal Ministry of the Interior's psychological service participated in two of the five meetings held to date. Options for the staff of the Federal Ministry in terms of mental hygiene and reflection (e.g. through peer support or psychological supervision) and the effectiveness of these measures were discussed in detail at these meetings.

With special consideration of the CPT guidelines on dealing with suicide-prone persons [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 38], the working group devoted itself to the formulation of basic conditions in the following areas during the year under review:

The working group agreed that, after a suicide (attempt), staff should initiate life-saving emergency measures and the rest of the rescue chain (emergency call, first aid). Fellow inmates should be relocated as quickly as possible. Relocation to a single detention cell should be avoided since the suicide (attempt) may have shocked or traumatised the persons affected by it. Fellow inmates and witnesses to the incident must be promptly treated in accordance with crisis intervention criteria. All persons, including police officers, should immediately be offered counselling.

Procedure after a  
suicide (attempt)

If there is a death, the place where the body was found should be immediately closed off and left unaltered. The police and the public prosecutors' office should be informed right away, and the police should secure the place where the body was found until the coroner's commission arrives.

**On-site reflection** After a suicide attempt or suicide, an internal reflection with experts (from outside the police station) must be quickly initiated. Police officers and medical staff who were affected by the suicide should be invited to the reflection.

**Case analysis** In the future, the police department's Office of Quality and Knowledge Management must make a case analysis after every suicide or (thwarted) suicide attempt. This analysis should examine the medical, psychological and organisational aspects of the case in a standardised manner. The employees of the affected police station should be involved as should outside experts, if necessary. The goal of the analysis is to obtain a learning experience to optimise future prevention work.

The final item in the standards for suicide prevention formulated by the working group was a guideline for documenting indicators of suicide risk. Accordingly, information that raises the suspicion that a person presents a danger to himself/herself must be suitably documented. It is irrelevant whether this information comes from internal or external sources.

In the future, every police officer should be required to document this information and pass it on. The police officer will also be required to ensure that the necessary (emergency) measures are initiated. This includes a medical assessment of the suspected suicide risk, suitable surveillance and the prevention of access to dangerous objects.

The working group agreed to attach a multi-page "list of indicators", which was prepared by an NPM psychiatric expert, to the text of the adopted standards as an appendix. The list contains illness-related, personal and situational factors for suicidal tendencies in detainees. The knowledge of these factors should aid in identifying the danger of suicide.

The NPM will recommend that the Federal Ministry of the Interior implements the suicide prevention standards it has developed as quickly as possible.

**Flow of information among Ministries** The working group also addressed possible measures to ensure the flow of information between the Federal Ministry of Justice (now the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice) and the Federal Ministry of the Interior. The working group agreed that information should be exchanged through a standardised, electronic process in the future. The working group will formulate an appropriate recommendation to avoid gaps in the information on suicide-prone detainees.

In addition, the working group will address the following matters: medical evaluation of threatened suicides, NPM suggestions to change the form

entitled “Police doctor’s assessment of the detainee’s soundness of mind” (“Zurechnungsfähigkeit Polizeiamtsärztliches Gutachten”), dealing with substance-impaired persons and the discussion of fitness to undergo detention.

- ▶ *All police officers should be trained to recognise suicidal behaviour and risk factors at an early stage and take suicide prevention measures.*
- ▶ *If a detained person is suspected of being suicide-prone, this should be documented. Information should be provided to decision-makers, and an assessment should be quickly made by a (specialised) doctor.*
- ▶ *If a danger of suicide is identified, organisational measures should be taken to prevent access by the detained person to dangerous objects.*
- ▶ *After a suicide (attempt), life-saving emergency measures should be taken and the rest of the rescue chain should be initiated. Crisis intervention measures should be carried out quickly with fellow prisoners.*
- ▶ *After a suicide (attempt), there should be reflection on the events within a short period of time within the facility, and police and medical personnel should be invited.*
- ▶ *Organisational guidelines should be issued to ensure that a standardised case analysis is made after every suicide or (thwarted) suicide attempt, to optimise prevention work.*

#### 2.6.4 Fire prevention in police detention

As the result of a deadly fire at Villach police detention centre in 2015, the NPM saw a need to establish uniform nationwide requirements for fire safety systems in police detention centres (see NPM Report 2015, p. 134 et seq.). In 2016, the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) at the Federal Ministry of the Interior decided to establish a technical group to discuss measures to improve preventive and protective fire safety (see NPM Report 2016, p. 142). This technical group began operating in April 2017 and formulated a recommendation paper in the course of three meetings.

The technical group stressed the need to ensure that fire prevention at police detention centres is at the highest possible level and at the current state of the art. This includes both preventive fire safety (organisational, technical and structural fire prevention) and protective fire safety (fire extinguishing aids, staff behaviour). To this end, the scope of the Technical Guidelines for Fire Prevention N 160/11 on “Structural and technical fire protection in correctional institutions” should be extended to include police detention rooms. Long-term improvement of fire safety should be achieved through new construction or renovation.

Optimisation of fire prevention

Before discussing specific recommendations, the technical group found that about 120 of the approximately 370 inmate cells within the Federal Ministry of the Interior's area of responsibility are located in detention centres or district or city police lock-ups. Only these inmate cells are intended for the long-term detention of persons. Detentions in the other rooms are only for the short term. This includes the detention rooms in police stations and the rooms in police stations where asylum seekers are detained in accordance with the Procedures Act of the Federal Office for Immigration and Asylum (*BFA-Verfahrensgesetz*); i.e. special units for incoming refugees.

It was agreed that a high degree of observation and enhanced organisational and personnel-related fire prevention measures shall be ensured in police stations and in special units for incoming refugees. In addition, smoking is prohibited in these detention rooms. Therefore, the technical group refrained from recommending measures to improve technical or structural fire prevention in these short-term detention places. As a consequence, the future Technical Guidelines for Fire Prevention should only relate to police detention centres and district or city police lock-ups.

After the adapted version of the Technical Guidelines for Fire Prevention takes effect, the Workplace Guidelines of the Federal Ministry of the Interior should be appropriately supplemented. Decrees and guidelines relating to the prison system should provide that long-term detention in rooms that do not comply with the recommended supplement to the Technical Guidelines for Fire Prevention should be avoided.

Overall strategy for organisational fire prevention

The technical group formulated several proposals to improve organisational and protective fire safety – which relate to all detention rooms. The technical group recommended that the Federal Ministry of the Interior develop an overall fire prevention strategy with target agreements and skills profiles for personnel.

Training of personnel

Training should enable police officers to recognise suicidal behaviour and take steps to de-escalate the situation if there is aggressive behaviour. In addition, fire prevention officers should receive basic theoretical training in fire prevention, and the other staff should participate in a fire-fighting drill at least once per year in the future. Detention rooms should be regularly inspected by the fire department, and there should be training in the area of body searches. The technical group also proposed that, in the future, respirators and exploration equipment should only be used in conjunction with appropriate training and preliminary medical examinations. This is to prevent staff from gaining the false impression that the use of this equipment is without risk.

The technical group also discussed the options for timely, reliable reporting of fire and for extinguishing fire in inmate cells. It was noted that the use of fire alarms in inmate cells was unsuccessful in the past due to frequent attempts at manipulating them on the part of detained persons. The installation of

fire alarms in smoking rooms also turned out to be unsuitable in practice. For these reasons, the technical group did not recommend the installation of fire alarms in all inmate cells.

However, the technical group recommended the installation of heat detectors in smoking rooms in the future if there is a need for detection systems despite the observation of these rooms by the staff. This recommendation seeks the greatest possible degree of risk minimisation.

Heat detectors in smoking rooms

The technical group recommended that the Federal Ministry of the Interior look for suitable fire alarm systems (smoke or heat detectors), which correspond to the current state of the art. If new systems are found, they should first be used in rooms for long-term detention and then in all detention rooms – with due consideration to the financial aspects. If this product research does not obtain any usable results, the Federal Ministry should initiate a scientific research project to obtain progress in this area. A glance over the border could be worthwhile: the German NPM indicated that fire prevention is not a problem in police detention centres in Germany since fire alarms have been installed in the ventilation systems, or vandalism-resistant fire prevention systems have been installed on the ceiling.

Moreover, in the future, all detention rooms operated by the Federal Ministry of the Interior will only be equipped with fire-retardant mattresses/bedding of the best possible standard.

In view of the high cost of retrofitting, the technical group refrained from recommending the use of permanently installed smoke extraction equipments. However, the technical group pointed out that the Technical Guidelines for Fire Prevention require the installation of exhaust systems in corridors and stairwells. In addition, the technical group recommended that mobile smoke extraction equipment or pressure aerators only be used in organisational areas where there are properly trained fire prevention groups.

(Mobile) smoke extraction equipment

The technical group submitted its recommendation paper to the Dialogue Committee on Civil Society at the Federal Ministry of the Interior in autumn 2017. In response to an inquiry from the NPM, the Federal Ministry stated that it has already ordered the relevant unit to implement these recommendations. The NPM will monitor further progress.

- ▶ *The level of fire prevention in police detention must be adjusted to at least meet the standards for correctional institutions.*
- ▶ *The Federal Ministry of the Interior should develop an overall strategy for a uniform national design for preventive and protective fire safety and issue appropriate standards.*

### 2.6.5 Deficits at Vordernberg detention centre

The NPM found numerous deficiencies when it visited Vordernberg detention centre in July 2016. As already stated in the NPM Report 2016 (p. 145 et seq.), the NPM confronted the Federal Ministry of the Interior with the deficiencies it found. The Federal Ministry required over six months to respond despite regular reminders from the NPM. Since the response had not been received, the planned follow-up visit to the detention centre was delayed.

**Deficiencies still exist** The Federal Ministry of the Interior could not rebut all the NPM's points of criticism. One such criticism related to holding a detainee in a specially secured cell: the Federal Ministry justified this measure by the risk that the detainee would abscond but denied that there was any risk of self-inflicted injury. The NPM referred the Federal Ministry to the requirements for such measures under Section 5b (2) (4) of the Detention Regulation (*Anhalteordnung*). In another statement, the Federal Ministry conceded that it lacked a more benign option for holding the prisoner in secure detention in May 2016. The primary concern was that the doors of normal single cells were not sufficiently escape-proof.

The Federal Ministry of the Interior promised improvements to eliminate the deficiencies. The Federal Ministry intends to expand the very limited employment opportunities and change daily structure. In addition, the Federal Ministry announced the introduction of electronic patient documentation. Moreover, the Ministry said that an expansion of the outpatient areas was planned, so it would be possible to administer medications in the living areas. However, the Federal Ministry saw no need to allocate greater space in which to hold repatriation counselling sessions. It justified this by stating that these sessions took place in the living area.

**Follow-up visit in September 2017** The commission visited the detention centre again in September 2017 to verify that the announced measures had been implemented. It determined that neither daily structure nor employment opportunities had improved. The commission again determined that there was a need for more space to hold repatriation counselling sessions. It was found that the visiting room of the detention centre is being used for these counselling sessions. Therefore, the room cannot be used for visits from relatives at these times.

The spatial concept in the outpatient area of the detention centre and the medical and psychiatric care of prisoners were again problematical. The qualified nursing staff still seemed to be working under intense time pressure and had deficits in the knowledge of foreign languages. Contrary to the announcement of the Federal Ministry of the Interior, electronic patient documentation had not been established in the outpatient clinic. As with the last visit, there were qualitative deficiencies with respect to medical treatment. This primarily related to the administration of unsuitable compounds to substance-impaired (opioid-dependent) persons or the temporary discontinuation of medications.

The commission reviewed the detention of persons in a detention area at the closed detention station established in May 2017 and found problems as well: apparently, prisoners were primarily transferred to this area for disciplinary purposes. In addition, every hunger-striking detainee was held in this area for a certain period. The NPM asked the Federal Ministry of the Interior to issue a statement regarding this follow-up visit. It had not been received at the time of completing this report.

New area for closed detention

During another follow-up visit in November 2017, the commission primarily observed deficiencies in the medical care of substance-impaired detainees. The NPM asked the Federal Ministry of the Interior to announce measures to ensure adequate medical care to the affected persons. The NPM again recommended that patient documentation be maintained in electronic form. It was found that there were gaps and incorrect information in the handwritten documentation. For example, the staff did not notice that the results of more than 20 chest X-rays for diagnosing tuberculosis were missing.

Follow-up visit in November 2017

In addition to other organisational deficiencies, the NPM criticised the fact that guards were present at all medical examinations. Criticism was also directed at the small food portions and the continued lack of employment opportunities. Moreover, the NPM again expressed its concerns regarding the handling of closed detention at the detention centre. The Federal Ministry of the Interior also failed to make a statement with respect to this follow-up visit to date.

In its Report 2016 (p. 146), the NPM reported on the visit to Vordernberg detention centre by the Committee on Migration, Refugees and Disabled Persons of the Parliamentary Assembly of the Council of Europe (PACE) in November 2016. The PACE delegation saw a need to increase the number of guards and improve access to information on the reasons for detention. This mainly related to the detainees' right to legal counselling. The delegation proposed that the design of the start screen on the information terminal, which is currently only in two languages, be changed.

Visit to Vordernberg detention centre by PACE and APT

In March 2017, the Federal Ministry of the Interior stated that it had ordered the transfer of ten additional police officers to the detention centre and also ordered technical improvements to the information terminal. The Federal Ministry rejected the criticism that information on legal counselling opportunities was unclear. It also explained that detainees receive a comprehensive informational brochure regarding their rights at admission. The NPM verified that legal counselling services are described in detail in that brochure. The PACE delegation was erroneously provided with a document that differed from this brochure.

- ▶ *The Federal Ministry of the Interior must ensure that all persons held in detention centres receive an adequate level of curative medical treatment based on state-of-the-art science.*
- ▶ *The medical and nursing staff of the detention centre must be able to access psychiatric expertise at any time.*
- ▶ *The existing spatial and staffing concept in the outpatient area of the detention centre should be adapted. Patient documentation in the outpatient area should be maintained in electronic form.*
- ▶ *The private organisations utilised in the detention centre should be furnished with sufficiently large rooms to provide their services without being disturbed.*
- ▶ *The detainees at the detention centre should have more varied employment opportunities.*
- ▶ *Detainees at the detention centre must not be held in security cells longer than necessary, and such detention must be in accordance with the principle of proportionality.*
- ▶ *Persons in detention pending forced return should only be held in the closed detention station of the detention centre in the cases agreed upon with the NPM.*
- ▶ *Hunger-strikers should only be held in isolation on the advice of a doctor and only for legitimate security and health reasons.*

### 2.6.6 Holding asylum seekers in closed detention

Unsuitable place for family accommodation

During a visit to Wels police detention centre in May 2016, the commission encountered eleven asylum seekers (some of whom were minors) in three locked cells. The members of a seven-person family were assigned to two adjacent cells. Another four-person family, which was held in the same cell, had only three beds. The doors to these cells were locked 23 hours per day. There was no active offer of a shower. The children, some of whom were very young, had no toys or other items which were suitable for children to keep them occupied.

The NPM took these observations as cause to point out to the Federal Ministry of the Interior that the human dignity of prisoners must be respected and that they should be detained as benignly as possible. The NPM gave special emphasis to the fact that all asylum seekers were not being held in freely accessible, spatially separated areas of the police detention centre.

In February 2017, the Federal Ministry of the Interior stated that the police detention centre building would have to be expanded to detain foreign nationals in conformity with the respective legal requirements (see Section 40 (2) of the Procedures Act for the Federal Office for Immigration and Asylum). Therefore, to ensure the most benign form of detention possible, the affected persons were assigned to adjacent cells. Moreover, the affected persons could

communicate with each other through the open tray slots in the cell doors. The relevant police department has ordered measures to be taken to sensitise police detention centre personnel to the situation.

In March 2017, the Federal Ministry of the Interior notified the NPM that in the future, it intends to use Wels police detention centre exclusively for the detention of asylum seekers after the relevant adaptations have been made.

- ▶ *Asylum seekers should be detained in open detention stations at police detention centres under the most benign conditions possible in accordance with Section 5a of the Detention Regulation.*
- ▶ *Families of asylum seekers must always be held in detention together. Children must be provided with suitable toys and items to occupy themselves.*
- ▶ *Detained asylum seekers must be actively offered showers upon admission to the police detention centre.*

## 2.6.7 Inadequate documentation of detentions

During a visit to Steyr police detention centre, the NPM found deficiencies in the documentation of detentions. For the most part, the electronic documentation lacked notes regarding detention in padded security cells. In addition, the form entitled “Detention log II” (“*Anhalteprotokoll II*”) had no entries and no signature of the detainee. The purpose of the form is to inform detainees of their rights and confirm that they have been informed of their rights by their signatures. Therefore, the NPM asked the Federal Ministry of the Interior to deal with these deficiencies in documentation.

No proof that detainees were informed of their rights

The Federal Ministry conceded that an incorrect cell assignment had inadvertently been entered in the electronic documentation. The Ministry’s explanation for the blank Detention log II was that the prisoner had been uncooperative and aggressive when admitted. However, the Federal Ministry admitted that this fact should have been documented on the form. Therefore, an appropriate police station training session was conducted.

During a visit to Hernalser Gürtel police detention centre, a detainee complained that he did not know why he had been transferred to a single cell. The commission was unable to derive any clear information regarding the transfer from the accompanying document. It only contained notes regarding the cell assignment, which had been revised by hand, and a crossed-out date. The NPM asked the Federal Ministry of the Interior to inform personnel as to the necessary care in documenting transfers.

Ambiguous documentation regarding transfers

The Federal Ministry of the Interior stated that the desired transfer to single detention has been properly registered in the electronic documentation. However, the Federal Ministry took the NPM's criticism of the content of the accompanying document as a reason to provide focused training to police detention centre personnel.

► *Detentions in police detention centres must be fully and comprehensibly documented.*

### 2.6.8 Positive observation

Bludenz police  
detention centre

One example of best practice is the conduct of the commander of Bludenz police detention centre with respect to his subordinates: during a fire caused by a detainee, an officer rescued the severely injured prisoner. The commander feared that the officer had suffered psychological trauma and asked peer support to contact the affected person. Since unprocessed traumatic events can interfere with a person's ability to work, the rapid initiation of psychological assistance counters this danger. This can avoid negative effects from interactions between personnel and detainees.

Vienna police  
detention centre

The NPM can also report two positive observations at Hernalser Gürtel police detention centre: one relates to the efforts of the police officers to survey the wishes of detainees. Persons in detention pending forced return can deposit their written wishes into a mailbox. However, many of them are illiterate. In view of the staff's workload, it is encouraging that the staff endeavour to assist detainees in filling out their wish lists on a daily basis.

Second, during a meeting with the commission at the end of November 2017, the Police Department of Vienna promised to change its personnel structure at the management level. As part of a new, centralised management structure, a group of commanders should be established by June 2018. These employees, who are to be entrusted with all matters, should also be available on the weekends. The primary goal of the structural changes is to improve the traceability of the security measures taken and counter the deficiencies in the documentation of such measures found by the NPM in 2017.

## 2.7 Police stations

### 2.7.1 Introduction

The commissions visited 63 police stations in the year under review. As in previous years, the focus of the visiting delegation was on the proper documentation of measures that restrict freedom as well as on the structure and furnishings of the stations and departments.

The NPM paid more attention to adequate staffing at police stations in the year under review. The main points of criticism were the low proportion of women law enforcement officers and the general understaffing of police stations and departments.

In August 2017, the NPM recommended the Federal Ministry of the Interior to install light switches in police station detention rooms (see chapter 2.7.2). In 2016, the NPM already addressed the issue of the lack of discretion during examinations by public health officers in police stations and the permissibility of locating detention rooms in the basement of police stations (see NPM Report 2016, p. 148 and pp. 153 et seq.). Recommendations on both topics were sent to the Federal Ministry of the Interior (see chapter 2.7.3 and 2.7.4).

Structural  
recommendation  
by NPM

On the question of whether police stations have to provide customer sanitary facilities, the NPM requested an assessment from the Human Rights Advisory Council in November 2017 (see chapter 2.7.5). There was no concluding statement by the Human Rights Advisory Council available at the time of completing this report.

As in previous years, the commissions observed that detained persons have to wait a considerable length of time in police stations before being examined. The NPM will continue to track which measures will be taken by the Federal Ministry of the Interior (see NPM Report 2016, pp. 149 et seq.). The Federal Ministry named Vorarlberg and Burgenland as good examples for providing support in rural areas. Through an agreement with the office of the regional government of Burgenland, the Police Department of Burgenland can conclude contracts with doctors also in those regions in which the police department itself is not the first instance security authority. In this way, a service is also available at night and at the weekends. The Federal Ministry has instructed the Police Departments of Lower Austria, Upper Austria, Styria, Carinthia, Salzburg and Tyrol to approach the respective offices of the regional governments. The Federal Ministry does, however, not expect a nationwide solution in the short term due to the legal separation of competencies.

Long waiting times for  
examination by (public)  
health officers

Vienna was less problematic to date due to the larger number of public health officers. Towards the end of the year, one commission detected deficiencies after visiting a police station. The NPM will follow up on this.

## 2.7.2 Light switches in detention rooms at police stations

During several monitoring and control visits in police stations, the NPM observed that detention rooms did not dispose of light switches that can be reached by the detainees. They thus have no control over the lighting – even though they can be detained for up to 48 hours in these cells. They have to rely on the law enforcement officers to fulfil their needs.

In principle, the NPM assumes that the competent police officers make an effort to fulfil the needs of the detained persons. However, the NPM believes that it must also be considered that the control of the light implies the possibility of abusing power.

Worse treatment than  
prison inmates

Prison inmates are entitled to reading lamps that can be switched on and off. For this reason, the NPM has difficulty to understand, from a human rights points of view, why detainees who are merely suspected of having committed a punishable deed are subjected to greater restriction during detention. The CPT standards [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 15, margin No. 47] also recommend the appropriate lighting of police cells that is bright enough to be able to read, outside of sleeping times.

The Human Rights Advisory Council, which is involved in the monitoring proceedings, made a statement recommending the provision of individual reading lamps in addition to the general room lighting.

The NPM recommended the Federal Ministry of the Interior to install light switches that the detainees can operate from inside the detention rooms as a standard. However, as those affected can be agitated after being arrested and taken to a police station, it should also be possible to deactivate the light switches from the outside in emergency situations.

Federal Ministry rejects  
implementation

In a statement, the Federal Ministry of the Interior rejected this recommendation. The Ministry argued that the existing regulations suffice to guarantee adequate lighting. Furthermore, the Federal Ministry holds the view that not only the short duration of the detention in a police station is an argument against implementing the recommendation, but also suicide prevention (increased risk potential through power outlets).

The NPM regrets the stance taken by the Federal Ministry, but needless to say stands by its recommendation.

► ***Detention rooms in police stations must be equipped with light switches that can be operated from the inside, but can also be deactivated from the outside for safety reasons. The Directive on Workplaces must be altered accordingly.***

### 2.7.3 Lack of discretion during examinations by (public) health officers

During visits to several police stations in Vienna, the NPM observed that examinations of detained persons by public health officers mostly took place in the presence of law enforcement officers. The privacy of the persons being examined was thus not protected.

When confronted with this criticism, the Federal Ministry of the Interior informed the NPM that examinations of detainees are conducted in anterooms to the detention area or in cells that cannot be looked into from the outside or are not publicly accessible. The absence of law enforcement officers is thus guaranteed. The involvement of police officers in examinations is only permitted for safety reasons.

The NPM stipulates – in accordance with the regulations of the CPT [CPT/Inf/E (2002) 1 – rev. 2010, German, p. 13, margin No. 42] – that all medical examinations and treatments of persons in police custody must take place without law enforcement officers as a matter of principle. Safety aspects can, however, require the presence of a law enforcement officer during a medical examination or treatment in isolated cases.

The Human Rights Advisory Council made a statement in June 2017. Every suitable separate room can be used for an examination according to the position of the Human Rights Advisory Council. If there is no room available, a mobile privacy screen will suffice. The Human Rights Advisory Council endorsed the position of the NPM that the presence of a law enforcement officer during an examination has to be documented in the detention log.

The NPM recommended the Federal Ministry of the Interior to adjust the applicable guidelines for the medical services of police doctors: medical examinations and treatments of persons in police custody must be conducted alone with the doctor as a matter of principle. Law enforcement officers may only be called in for safety reasons. Those affected should only be presented to the doctor of the law enforcement body that carried out the arrest in exceptional cases. In the case of indecent exposure, the called in law enforcement officer must be of the same gender as the detained person. Law enforcement officers called in for safety reasons must remain out of earshot and, if possible, out of sight.

Police involvement only for safety reasons

The NPM also recommended the Federal Ministry of the Interior to provide separate examination rooms where possible, but in any case to take technical measures to guarantee a discreet medical examination (e.g. headphones, privacy screen). Where police stations are being built or converted, examination rooms with an emergency call system should be set up. The basis for the detention documentation has to be enhanced: the presence of a law enforcement officer during the medical examination and treatment, the name

Enhancement of detention documentation

and the reason for the presence of the called in law enforcement officer, as well as the information on the measures taken to protect the privacy of the detained person should be documented.

Federal Ministry will implement most recommendations

The Federal Ministry of the Interior promised to revise the guidelines for police medical service as recommended by the NPM. With regard to law enforcement officers called in for safety reasons, the Federal Ministry believes that these should remain close to the doctor. The Federal Ministry refused dedicated examination rooms for efficiency reasons but agreed to all of the necessary measures to protect privacy and discretion. The Federal Ministry will ensure that, in future, the involvement of a law enforcement officer during an examination is documented in a comprehensible manner. The Federal Ministry only rejected the recommendation of proof of whether the involvement was requested by a medical professional or on the initiative of the police force.

- ▶ *Medical examinations and treatments of persons in police custody must be carried out alone with the doctor as a matter of principle.*
- ▶ *Law enforcement officers may only be called in to medical examinations in police custody for safety reasons, and they should not have made the arrest.*
- ▶ *In the case of indecent exposure during medical examinations in police custody, the law enforcement officer called in must be of the same gender as the detained person.*
- ▶ *In any case, law enforcement officers that are called in for safety reasons in police custody have to remain out of earshot and, if possible, out of sight.*
- ▶ *Insofar as possible, separate examination rooms should be provided for police custody. In any case, technical measures must be taken to guarantee a discreet medical examination.*
- ▶ *When police stations are being built or converted, examination rooms with an emergency call system should be set up.*
- ▶ *In police custody, the presence of a law enforcement officer during the medical examination and treatment, the name and the reason for the presence of the called in law enforcement officer as well as information on which measures were taken to protect privacy must be documented in the detention log.*

#### 2.7.4 Basement detention rooms at police stations

As stated in last year's report, the NPM approached the Human Rights Advisory Council to clarify whether police detention rooms in basements are permissible (see NPM Report 2016, p. 153 et seq.)

Basement detention rooms as phase-out model only under certain conditions

In its statement, the Human Rights Advisory Council stipulated that the location of a detention room in the basement of a police station alone is not critical. It is far more important that attention is paid to complying with all

human rights standards: sufficient lighting and ventilation, compliance with fire safety regulations as well as the ability to make direct contact and quick reaction in the event of an incident. The Human Rights Advisory Council agreed with the NPM that detention rooms should not be located in the basement of new and converted police stations.

The Human Rights Advisory Council endorsed the view of the NPM that basement detention rooms located outside of the police station or department (e.g. in an adjacent building or separated by a floor that does not belong to the police station) do not comply with the applicable regulations.

Basement detention rooms must be directly linked to police station

A follow-up visit revealed that 26 detention rooms in basements did not comply with the human rights criteria. The Federal Ministry of the Interior conceded in its statement that only one impermissible detention room had been closed.

The NPM requested the Federal Ministry of the Interior to examine compliance with the organisational fire safety regulations within three months. The Federal Ministry was also asked to communicate where the impermissible basement detention rooms are located and to present a schedule for their closure. At the time of completing this report there was no definitive result.

- ▶ *Existing basement detention rooms in police stations must have sufficient lighting and ventilation, be compliant with the fire safety regulations and guarantee the ability to make direct contact and a quick reaction in the event of an incident.*
- ▶ *Existing detention rooms in the basement of police stations have to be directly linked to the police station or department.*
- ▶ *Detention rooms should not be located in the basement of new and converted detention rooms.*

## 2.7.5 Barrier-free sanitary facilities for visitors

During several visits, one commission criticised the lack of barrier-free toilets for visitors in police stations. This is exacerbated by the fact that there are often no other buildings (local authorities, restaurants) with barrier-free toilets in close proximity to police stations in exposed locations or rural areas.

With respect to the visit by the commission to Neustift in Stubaital police station in January 2017, the Federal Ministry of the Interior stated that it is not possible to provide a separate “guest toilet” due to the construction of the police station. The Federal Ministry of the Interior additionally pointed out on the occasion of the visit to Wattens police station in April 2017 that the Directive on Workplaces does not stipulate a binding obligation to build sanitary facilities for visitors in police stations. Item 3.1.2. of the directive

No obligation to have a „guest toilet“

merely stipulates that customer sanitary facilities must be adapted to the needs of persons with disabilities.

Police stations are often highly frequented places (e.g. when pressing charges, during interrogation and questioning) in which those affected can expect to wait for some time. In the view of the NPM, practical experience shows that problems arise in police stations with low staffing levels where there is often only one toilet available and it is not barrier-free.

Engagement of Human Rights Advisory Council

The NPM approached the Human Rights Advisory Council with the question as to whether there must be a barrier-free toilet available to third parties in police stations. A statement from the Human Rights Advisory Council was not available at the time of completing this report.

### 2.7.6 Inadequate documentation of detentions

During their visits, the commissions routinely examine the detention books and detention logs at the particular police station. Deprivations of liberty are serious interventions and must be fully documented. The commissions noted deficiencies in this reporting year too.

Comprehensible information on rights

As in previous years (see most recently NPM Report 2016, p. 150), the NPM once again points out this year that detained persons have certain information and notification rights. If these rights are not protected, their constitutionally guaranteed right to personal freedom is violated. Public security officers have to inform detainees of their rights and document this. By signing the detention log, the detained person confirms the receipt, invocation or waiver of these information and notification rights. If a person refuses to sign, the police officer has to note this in the log.

Special measures, such as handcuffing a detainee and removing the handcuffs, must be fully documented in a comprehensible manner, e.g. if the detainee is handcuffed for a lengthy period of time.

In 2017, the commissions again found deficiencies in the documentation of detentions and informed the heads of the police stations and departments of the same. The NPM criticised the inadequate documentation of removing handcuffs and handing out information sheets. Appearances prior to interrogation were not properly documented. The Federal Ministry of the Interior arranged training and awareness measures in the criticised cases.

Complete documentation in main file at police station handling the case

One commission initially assumed that detention logs were inadequately written in several police stations. Their observations were based on folders that they had inspected at the police stations. The Federal Ministry of the Interior clarified that the complete documentation of a detention is always kept in the main file of the department handling the case and can be inspected there.

Master folders provide a summary of all detentions in a police station. These also contain logs of temporary detentions – by no means exhaustive – from other police stations or departments. Detentions outside of the normally responsible police station or department are necessary if these do not have their own detention room. As complete documentation is maintained in the main folder in the police station or department handling the case, the NPM does not see this simplification of administration critically.

In 2016, the Federal Ministry of the Interior already promised a new edition of the “*Verwahrungsbuch*” (“detention book”) form (see NPM Report 2016, p. 151). A decree was issued in July 2017 according to which all police stations with usable detention rooms are obliged to maintain the detention book. The entries that have to be made in the detention book were also clarified with the decree.

Uniform detention book implemented

► *Detentions in police stations must be fully documented in a comprehensible manner.*

### 2.7.7 Inadequate personnel levels at police stations

In the previous reporting period, the NPM already criticised the observed shortage of personnel at police stations and the resultant workload for the law enforcement officers through overtime and night shifts (see NPM 2016, p. 151 et seq.)

The NPM criticised that a quarter of the permanent positions at the Bludenz motorway police station were not filled and that there was no promise on the part of the Federal Ministry of the Interior to fill them. At Wattens police station, a fifth of the permanent positions remained vacant for a period of three months. Two permanent positions were subsequently filled. Fortunately, the Federal Ministry followed the recommendation of the NPM to ease the pressure for the personnel at Kirchberg police station by adding an alpine law enforcement officer.

Personnel shortages result in high workload

It is understandable to the NPM that sick days, assignments, training sessions, transfers and retirements can lead to a level of personnel that is temporarily below the level organisationally required for the individual police station. However, excessive overtime figures at individual police stations should be avoided through organisational measures, since stress and heavy workloads can also have a negative effect on the detained persons. The Federal Ministry of the Interior rejected the recommended cover for persons on leave with the argument that the permanent position system of the Federal Government does not indicate any excess human resource capacity.

Information on the shortage of personnel in the police force is to be collected in all *Laender* within the framework of a structural analysis. A result is not yet available. Currently available knowledge, however, indicates that the Federal Ministry of the Interior is making efforts to increase the number of public security officers.

**Low number of policewomen** The commissions also recorded the number of women law enforcement officers in the police stations and departments visited in 2017. In so doing, they observed that, for example, no policewomen were employed at Sillian police station. At other police stations, in particular in exposed rural areas, the number of women law enforcement officers was low. The Federal Ministry of the Interior assured that, if required, policewomen from the nearest police stations or departments are called in.

Increasing the proportion of women working in law enforcement is a matter of concern to the NPM for two reasons. If a policewoman has to be called to another police station because a woman is being detained there, this extends the detention time. A gender balance in the police force is also desirable with a view to protecting the victim in cases of domestic violence.

**Proportion of women in law enforcement should increase** The Federal Ministry of the Interior conceded in its statement that the proportion of women law enforcement officers in Austria is currently around 14%. It also stated, however, that work is being done to increase the proportion of women. Due to its lecturing activities in the police force, the NPM can confirm that the proportion of women attendees in police school classes is between 30% and 50%.

- ▶ *The actual number of law enforcement officers working at the police stations should be equal to the planned number. Understaffing results in stress and overload, both of which also have a negative impact on the detainees.*
- ▶ *There should be a gender balance between women and men law enforcement officers at police stations. The proportion of women working in law enforcement should be increased.*

### 2.7.8 Inadequate equipment at police stations

Inadequate furnishings and equipment observed by the commissions during their visits is usually discussed with the head of the station during a final meeting. Improvements are often implemented on site without delay. Only if a solution cannot be reached in this way does the NPM approach the Federal Ministry of the Interior.

In a detention room at Nickelsdorf police station, a shower consisting of a metal frame and Plexiglas screens was a safety hazard. In 2017 the NPM criticised

that fact, but the detention room was not refurbished immediately in spite of the fact that there has already been a suicide. At first, the Federal Ministry of the Interior did not see a safety hazard, however, then it promised to close the detention room. At Pappenheimgasse police station, the NPM criticised that the emergency call bell was concealed behind the padding in the secure detention room. This deficiency was rectified immediately by adding a label.

The NPM also criticised missing or inadequate barrier-free toilets, the hygienic conditions in the secure area of a police station, the lack of a standby room, an unsecured window that can be reached from the detention room, inadequately stored service weapons, an insufficiently lit detention room in the basement of a police station, a missing security checkpoint as well as defective call bells in detention rooms. Fortunately, the Federal Ministry of the Interior rectified the deficiencies without delay.

Many equipment-related deficits

In contrast, the lack of barrier-free accessibility is a criticism that generally cannot be rectified quickly or at all. The Federal Ministry of the Interior drew up a staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities (*Bundes-Behindertengleichstellungsgesetz*) indicating by when which police station should have barrier-free furnishings and equipment. In around 300 police stations, which are not included in the staged plan, barrier-free accessibility is technically infeasible. These stations will have to be moved if no alternative solution can be found by the end of 2019. The NPM insists again that the police stations are equipped and furnished to barrier-free standards as quickly as possible.

In one case, a commission observed that a police station was erroneously labelled as barrier-free. The Federal Ministry of the Interior inspected the staged plan and promised to have a ramp built to make the building more easily accessible. In another case, the Federal Ministry promised to remove a threshold that was too high in the entrance area of a police station.

NPM recommendations were taken up

- ▶ *Detention rooms must be equipped and furnished in a way that they cannot be vandalised. Fittings and components that can cause injury or be used as fixing points for strangulation must be avoided.*
- ▶ *Alarm buttons in detention rooms must be sufficiently marked so that detained persons can contact the guards.*
- ▶ *Police stations must be hygienic and have personnel safety systems. Detention rooms must be sufficiently lit.*
- ▶ *Police stations should be barrier-free. The existing staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities must be complied with. Barriers must be removed immediately in urgent cases.*

### 2.7.9 Calling in a biased interpreter

During a visit to Fieberbrunn police station, the commission observed that from the beginning of February 2016 to the beginning of May 2016 six restraining orders were issued to residents of the federal support facility Tyrol close by. The same employee of the Bürglkopf support facility acted as an interpreter every time. In one case, this employee was not only used to help in translating but was also questioned as a witness. The deputy local police commander stated that this employee was only asked for assistance for low threshold offences and mere restraining orders. A sworn interpreter is called in for interrogation in relation to criminal offences.

Support staff  
not impartial

The NPM considers it problematic from a human rights point of view when the staff of a support facility are called in to assist in translating an official act. Support staff in federal support facilities are often confidants of the refugees. In violent incidents in the facilities, they are often questioned as witnesses, may have pressed charges or were even a victim themselves. For this reason, this person's impartiality is questionable. The NPM recommends using professional interpreters in future regardless of the purpose of the official act.

The Federal Ministry of the Interior stated that support staff who can speak the relevant language are only deployed for police work when there is imminent danger. The Federal Ministry took the criticism as an opportunity to inform the staff in the support facilities in the Laender of the possible impartiality. From the NPM's point of view, the use of a video interpreting system in police stations could be of help.

Expansion of video  
interpreting system  
desirable

In another case, the commission proposed introducing a video interpreting system for detained persons from other countries in police stations. It must be mentioned first that a video interpreting system is currently being tested for medical examinations at selected police detention centres. The Federal Ministry of the Interior informed the NPM that it sees the proposal positively but that

nothing can be decided until after the test operation has been evaluated. The NPM will continue to follow up on this topic.

- ▶ *Law enforcement officers should not call in the support staff of federal support facilities as interpreters to official acts. If required, professional interpreters must be deployed.*

### 2.7.10 Misuse of detention room as smoking area

During a visit to Enns police station, the commission observed that a detention room of the station was used as a smoking room for the staff. The NPM notes that this is not conducive to ensuring the non-smoker protection of the detained persons.

Protection of non-smokers must be observed

In a statement, the Federal Ministry of the Interior explained that the inappropriate use of the detention room was stopped immediately after the visit.

- ▶ *Non-smoker protection must be complied with in all police stations. Detention rooms may not be used as smoking rooms for staff.*

### 2.7.11 Positive observations

The commissions document their observations after every visit in a visit report. They regularly perceive improvements and positive aspects and communicate these at the concluding meetings. It was important to the NPM to inform the Federal Ministry of the Interior as the supreme body about positive impressions in some cases. The Federal Ministry and the affected police stations appreciated this kind of constructive cooperation.

Hollabrunn police station stood out in a very positive way during a visit by a commission in May 2017. Specially trained law enforcement officers offer all of those involved in violent incidents opportunities to talk and information. The detention rooms are clean and very well equipped. The detention book is maintained correctly and in a comprehensible manner.

Dialogue in cases of violence in the family

On its visit to Wagramer Strasse police station in January 2017, the commission praised the good cooperation and competence of the management team, having a woman as head, as well as comprehensible and correct detention documentation, the acceptance of peer support through the staff and the factual way in which restraining orders are issued.

**Good cooperation** The commissions observed good cooperation with the NPM on many visits in this year under review. The law enforcement officers of Mittersill police station who despite having their hands full on a major operation still received the commission in a friendly manner and were eager to provide information.

**Harmonious working atmosphere** On some visits, the harmonious working atmosphere, well equipped and clean detention rooms, pleasantly designed police stations and the complete documentation of detentions made a positive impression on the commissions.

During the visit to Hermann-Bahr-Strasse police station, the commission praised the practice of quickly separating the arrested person from the law enforcement officers who had arrested them. One commission acknowledged during the visit to Garsten police station that the COBRA special unit was called in to a potentially dangerous official act. One commission also deemed as positive that Hohenbergstrasse police station has its own examination rooms for examinations performed by public health officers.

## **2.8 Coercive acts**

### **2.8.1 Introduction**

**44 observations** In the year under review 2017, the commissions observed a total of 44 acts of direct administrative power and coercive measures. These included ten (forced) returns and 34 demonstrations, football matches, raids, events, inspections regarding basic reception conditions and other major police operations.

As in previous years, there was scarcely any criticism of police operations at football matches and targeted campaigns. This development has been continuing for years and is seen positively by the NPM.

In 2017, demonstrations were less frequently grounds for criticism than in previous years. This is largely attributable to the fact that the police relied more on de-escalation measures. In particular, the demonstrations against the Vienna Academics Ball 2017 went smoothly. However, police announcements during a demonstration were still barely audible.

Contact meetings prior to (forced) returns have also been successful in most cases. However, forced returns of children gave grounds for criticism.

**Obligation to notify NPM** In several cases, the NPM was not informed of upcoming operations even though there was an obligation to do so. The NPM clarified these cases with the Federal Ministry of the Interior and made reference to the regulations set forth in the notification decree of the Ministry. The NPM expressed the wish

that the Federal Ministry inform the NPM in future of all operations governed by the notification decree without exception.

### 2.8.2 NPM participates in returns by air

In 2017, members of the commissions participated in forced returns by air once again. On 2 March, members of the commissions accompanied a forced return to Moscow and on 10 May 2017 to Lagos in Nigeria.

No problems during forced returns by air

The forced return by air went smoothly in both cases. The cooperation between the NPM and the Federal Office for Immigration and Asylum as well as the Schwechat city police squad was also very good.

### 2.8.3 No notice of police actions to NPM

Despite a decree enacted by the Federal Ministry of the Interior that regulates the obligation of the Ministry to inform the NPM (“notification decree”), the same was not duly notified in several cases.

The NPM criticised that the commission only learned that the football game between WSG Wattens and Wacker Innsbruck on 21 April 2017 was a high-risk game after taking the initiative and asking. The Federal Ministry of the Interior justified its action by claiming that it only learned of a planned fan march just before the kick-off. The risk potential thus only became evident later on. This is why the NPM was not notified.

No notification about Tyrolean football derby

The NPM observed that due to the emotional nature of a Tyrolean derby football game, these events are always risk games. As a consequence, the Federal Ministry of the Interior took measures to improve the awareness of those responsible and other organisational measures to avoid deficiencies such as these in the future.

In another case, the Federal Ministry of the Interior apologised for missing to give notification of the clearing of the demonstration camp at the river Mur on 3 July 2017. This was justified with the workload required for a major event that was running in parallel.

Clearance of the Mur camp

There were different interpretations of the term “notification decree” regarding the police operation at the *Narzissenfest*, a large and well-known flower festival held in Bad Aussee on 28 May 2017.

*Narzissenfest* in Bad Aussee

A NPM delegation observed this event without the Federal Ministry of the Interior notifying the NPM of the police operation in advance. In doing so, the commission witnessed that anti-terror units were called in and anti-terror measures implemented.

According to the Federal Ministry of the Interior, there was no notification because the event was classified as peaceful by the police. The anti-terror units and anti-terror measures were necessary due to the violent incidences that had taken place recently at comparable peaceful events in neighbouring countries.

This argument was inconsistent for the NPM because no event can be classified as peaceful if riots or acts of terror, even if only in an abstract sense, can be expected. For this reason, the NPM suggested that in future with regard to the notification of the NPM less the occasion of an event or its meaning, and more a possible threat should be considered.

- *The Federal Ministry of the Interior should take greater care to ensure and, where necessary, make those responsible in the Laender police departments aware that the obligation to notify about police operations is complied with. In this way, the NPM can fulfil its legal mandate.*

#### 2.8.4 Observations of demonstrations

No alternative area in the event of escalation

The “People over Borders” demonstration took place at the Brenner Pass on 24 April 2017. The police operation was praised by and large; however, the NPM criticised that there were no alternative or overflow areas. This meant that there would have been major problems in the event of an escalation, as it would not have been possible for the demonstrators to evacuate. The NPM is fully aware of the difficult geographical and infrastructural situation at the Brenner Pass, which is why it could understand the difficulty in planning and executing this operation.

Police announcement inaudible

At the “Borders for a Safe Europe” demonstration and the counterdemonstration which took place in Vienna on 11 June 2016, the NPM criticised as in previous years (see NPM Report 2014, p. 143; NPM Report 2016, p. 160 et seq.) that the police announcements during the demonstration were barely audible.

In this case too, the NPM was fully aware that the police operation posed a considerable challenge because demonstrators actively sought confrontations both with other demonstrators and the police. The observing members of the commissions were unable to hear police announcements requesting the demonstrators to leave a location. The consequence was a very intrusive use of pepper spray because many of the demonstrators were not able to withdraw quickly enough.

- *The police force should be provided with technical equipment that enables announcements to be heard and understood by demonstrators. It should thus be possible for the demonstrators to follow orders by the police.*

### 2.8.5 (Forced) returns

As in previous years (see NPM Report 2015, p. 146), the NPM criticised that insufficient consideration is given to the wellbeing of children when determining the time of (forced) returns.

Negative impact on children's wellbeing

The NPM therefore criticised a return to Poland that was carried out at 1:30 a.m. The group of persons to be returned included several minors, some of whom were small children and babies. The Federal Ministry of the Interior explained that the Polish authorities had requested the arrival in Poland between 9 a.m. and 10 a.m. The NPM emphasised that in this case the Federal Ministry should have agreed a later transfer of those being returned.

For several years now the NPM has been criticising that the separation of families is accepted during (forced) returns (see NPM Report 2015, p. 146 et seq.; NPM Report 2014, p. 139).

It became evident in one case that children were to be separated from their mother. The mother could not be deported to Armenia on the planned official date due to health reasons. The authorities subsequently deported the two minor children accompanied by their father. The forced return of the mother took place three days later after she had recovered. The NPM criticised that the authorities did not wait for the mother to recover and the family was thus separated unnecessarily.

Separation of families

Moreover, the mother was the sole legal guardian of the children meaning that they were deported to Armenia with their father who had no parental custody for them. The NPM criticised this course of action. In the opinion of the NPM, a breach of the custody regulation can represent a violation of the children's wellbeing. The authorities did not check the family background which meant that the children were exposed to potential danger.

Violation of parental custody rights

The NPM shares the view of the Federal Ministry of the Interior that every (forced) return must be subject to a case-by-case assessment. The wellbeing of the children and the effect on family life must always be taken into consideration at (forced) returns. In case of doubt, pursuant to Article 8 ECHR the protection of the children and family life is to be given priority over the interests of the state in bringing a family out of the country.

Video interpreter at examination by public health officers

While observing a contact meeting, the commission discovered that there was no interpreter present during the medical examination by public health officers to ascertain whether a woman was fit to fly. And this even though she apparently only knew a few words of German and the authorities were aware of a mental disorder. It was subsequently not possible to clarify whether it was actually necessary to call in an interpreter in this case.

The NPM emphasised that it is very important that people understand each other, in particular when dealing with persons who have mental issues or are suffering from post-traumatic disorders. It is usually very difficult for persons with mental disorders to speak about their illness or health condition. In case of doubt, an interpreter or – if this is not possible – a video interpreter should be deployed.

Video interpreting is an adequate means of ensuring that people understand each other even for examinations or interrogation that has been arranged at short notice.

- ▶ *The wellbeing and needs of children, especially small children, must be taken into consideration when setting the time for (forced) returns.*
- ▶ *It should not be allowed to return or deport children without the parent who is their legal guardian.*
- ▶ *Families should not be separated during (forced) returns even if one of the parents is not fit for travel or cannot be found. If one of the parents goes into hiding in order to evade the official act, the authorities should first wait and exhaust all possibilities of finding all of the members of the family.*

### 2.8.6 Targeted campaigns

The NPM criticised the lack of a legal basis for an inspection regarding basic reception conditions. A delegation of the NPM observed that a representative from the Federal Ministry of the Interior, but no representative from the *Land* took part in an inspection of refugee housing belonging to the *Land* Tyrol.

Inspections regarding basic reception conditions without legal basis

Section 9a of the Federal Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*) authorises the Federal Ministry of the Interior to only take part in such inspections inside the area of responsibility of the *Laender* if the *Land* authorities take action and the Federal Ministry of the Interior asks to be involved. In the case in question however, there was no inspection by the *Land* Tyrol as no representatives from the authorities took part. In this respect, the participation of a representative from the Federal Ministry of the Interior was not permissible.

The Police Department of Tyrol carried out targeted Aliens Police inspections in Innsbruck. These included checks on women in the area of sex work and prostitution. In two cases the NPM criticised that there were no policewomen in the operations team.

Lack of policewomen in targeted campaigns

The Federal Ministry of the Interior advised that prior to the official acts only postal deliveries and ID controls, but no body searches were planned. The NPM stated that in this case the Police Department of Tyrol quite obviously did plan official acts in the area of street prostitution.

In its Report 2015 (see NPM Report 2015, p. 150), the NPM already criticised that no policewomen took part in controls in the area of sex work and prostitution. Women in particular are affected in this area. They can be potential victims of human trafficking. It is easier for these women to trust policewomen, and these can better counter insecurity.

Potential victims of human trafficking

► *Policewomen should always be involved in police official acts in the area of sex work and prostitution.*

## 2.8.7 Positive observations

As in previous years, many police operations were positive in 2017.

The deployment of the police force at the Rolling Stones concert at the Red Bull Ring on 16 September 2017 was praised as a cautiously planned and correctly executed major operation. The NPM informed the Federal Ministry of the Interior about the poor planning on the part of the event organiser and the inadequacies of their security personnel which were the subject of discussion, and asked about the efficacy of the cooperation. In this respect, no failings on the part of the police were ascertainable. Private event organisers and their security personnel are not subject to the NPM mandate.

Professional operation at Rolling Stones concert

The “Joint action day” campaign in Graz on human trafficking on 18 May 2017 was also rated positively. This was a pan-European targeted campaign organised by the police on the topic of human trafficking.

In many cases the police force contributed to a smooth operation at demonstrations by applying de-escalating measures, e.g. by deploying an adequate number of officers, not wearing helmets, accompanying the demonstration in a loose formation or in the background.

De-escalation operations at demonstrations

The demonstration against the Vienna Academics Ball which resulted in riots and damage to property in 2014 went smoothly. The police behaved professionally and in a de-escalating manner.

The police demonstrated great flexibility at the Identitarian Movement demonstration at Kahlenberg on 9 September 2017. They escorted the public service bus from Kahlenberg into the city in order to enable uninvolved day-trippers to depart from Kahlenberg. A change of route at short notice prevented the Identitarian Movement from meeting counter-demonstrators.

In two cases, the NPM observed professionally executed Aliens Police inspections with relevance to basic reception conditions. The way in which the officers dealt with the affected persons was appreciative and respectful. They handed affected persons information sheets that explained the reason for the inspection in their respective native language.

Positive observations  
of forced returns

The NPM observed contact meetings within the framework of pending forced returns at the Zinnergasse family shelter. The meetings were held professionally. In one special case, the daily allowance from the authorities for a mother with two minor children was raised without hesitation.

At a football match in the Allianz Stadium in Vienna, the NPM found it problematic that the fan groups were not sufficiently separated both inside and outside the stadium. The Federal Ministry of the Interior informed that this perception was shared also by the forces on site. As a result, the local police and the person responsible for security with the event organiser discussed ways of increasing safety around the stadium.

Separation  
of fan groups

The NPM observed a strategic separation of fan groups at several subsequent football games. The NPM appreciated this development. All measures were taken to ensure a coordinated fan march before the game, during admission and after the end of the game. It could thus be avoided that the risk groups meet each other. The number of officers on site was also considered appropriate in most cases.

The NPM noticed structural defects in the building while observing a football game at the Allianz Stadium in Vienna. The NPM informed the Federal Ministry of the Interior; however, there is no connection with the mandate to observe coercive acts. Nonetheless, the security authorities should find suitable solutions together with the event organisers and the Municipal authority of Vienna.

The cooperation between the members of the commissions and the security forces continued to function well in 2017. Any questions that arose could be clarified during the operation or in a final meeting.

### 3 Recommendations of the Austrian National Preventive Mechanism (NPM)

#### 3.1 Retirement and nursing homes

##### Living Conditions

Retirement and nursing homes are not an adequate living environment for young persons with disabilities. (2013). Persons with mental illnesses must be cared for in compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD) in low-threshold and local care settings. Misplacements in nursing homes must be reversed and stopped. (2017)

Unusual mealtimes and early bedtimes are an expression of structural violence and should be avoided. Evening activities for residents with dementia who have insomnia and are restless are necessary. (2013, 2015)

The wishes of the residents should be taken into consideration when mealtimes are scheduled; nutritional recommendations should be followed. According to these recommendations, when meals are being provided to a residential community, three main meals and two snacks are ideal. The time between meals should not be longer than five hours, and the time between supper and breakfast should not be longer than twelve hours. (2013)

Access to the outdoors once a day must be ensured, in particular for residents with mobility impairments. (2015)

The right to privacy must be maintained, both when providing care-related assistance and when configuring rooms with multiple occupants (visual barriers by way of screens, etc.). (2013)

When safe and humane care cannot be guaranteed, the residents must be transferred to another facility. Supervisory authorities are called upon to act quickly. (2014)

In order to comply with their duty to protect persons with severe impairments under human rights law, supervisory authorities must investigate all evidence. They must prohibit treatment of persons with severe impairments in facilities that have not been officially approved. (2016)

##### Access to information within institutions and facilities

It must be guaranteed that residents are informed of their rights, and that relatives and trusted persons know these rights. (2017)

##### Complaint management

Professional complaint management is an important preventive mechanism for avoiding conflict. (2017)

Residents should be supported in submitting verbal, written or anonymous complaints. (2017)

Complaints should be followed up on without delay. Misunderstandings and unfulfilled wishes must be clarified, the lack of information rectified, and solvable problems should also be addressed quickly. (2017)

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#### Educational and occupational opportunities

The NPM calls for more activity and occupational offerings during the day as well as regular access to outdoor spaces in order to increase well-being and to avoid complications. (2015)

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#### Measures that restrict freedom

Care that is based on human dignity and human rights is unthinkable without the active protection of personal freedom. Therefore, this right to respect calls for institutions and facilities to rethink the use of measures that restrict freedom in their own practice and examine themselves self-critically on a regular basis. (2014)

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Measures that restrict freedom often become unnecessary after psychosocial interventions, personal attention and consideration of individual needs. (2014)

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Equipment with the necessary materials for care in accordance with current standards as an alternative to measures that restrict freedom (low-profile beds, beds equipped with split side guards, bed alarm systems, sensor mats, etc.) have to be ensured. (2014)

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Any coercive measure is excessive if a suitable and milder directive is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary as far as substance, space, time and personnel are concerned. (2014)

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In order to assess potential effects of psychotropic medication that may restrict freedom, it is necessary not only to follow medical recommendations precisely, but also to document explicitly the goal of the therapy or the target symptom being treated. (2016)

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Restrictions of freedom by way of medication are subject to control by the courts and must be reported by the facility management to residents' representatives as part of enforcement of the rights of the individual. (2014)

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It is recommended that restraints only be used along with the medicinal products authorised for that purpose. (2015)

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The NPM calls for the compulsory introduction of training in prevention of falls and care concepts for persons with dementia in order to avoid measures that restrict freedom. (2015, 2016)

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#### Health care

Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls. (2014)

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Residents' individual risk of falling must be recorded not only when they enter a facility but on a regular basis, particularly if the condition of their health or their medication change. (2015)

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Fall incidents must be carefully analysed, centrally documented and evaluated. (2015)

Doctors and professional nursing staff must always try to recognise the causes for restlessness, tendencies to run away and potential risks of falls and to remedy them without restraints if possible. (2015)

It must be ensured that persons in facilities for the elderly can freely choose their doctors. (2014)

Care by specialists must be ensured without restrictions. (2014)

Specialist medical and nursing care for persons suffering from gerontopsychiatric illnesses, who are mostly very elderly residents, must be guaranteed. Exchange about cases between specialist doctors and nursing staff must be arranged. (2016)

Specific needs-based care concepts must be established for treating of persons with chronic psychiatric diseases. Individual support measures that facilitate full reintegration should be part of the rehabilitative treatment concept. (2017)

Before medications are prescribed, the type, extent, implementation, expected consequences/side effects and risks of the medication treatment must be explained to the persons affected and their informed consent must be obtained. It is not admissible to administer medication unobtrusively with food without obtaining informed consent from the persons affected. (2014)

The starting point of strategies to avoid inappropriate polypharmacy for geriatric patients is often a complex and time-intensive medication anamnesis. The extent to which medication is suitable must be evaluated in each individual case and, if appropriate, an intervention in the form of a medication adjustment must be carried out. At the same time it should be remembered: evaluations and stocktaking must be carried out at regular intervals. (2015, 2017)

Administering medicines is fundamentally the job of doctors and can be delegated to qualified nursing staff, provided that the amount, dose, type and time of administration is noted in written form in the patients' charts by the doctors authorised to issue prescriptions. (2014)

The aim of medication-based treatment must in all cases be to achieve or increase well-being. Treatment with psychotropic medication may only be started if somatic, psycho-social and environmental causes of "problematic" behaviour can be excluded and non-medication-based nursing measures have been unsuccessful. Regular visits by specialist doctors are desirable. (2016)

In particular, prescribing benzodiazepines and antipsychotics without corresponding indication or without regular evaluation of whether another prescription is necessary should stop. (2017)

PRN medication is permitted in individual cases if the criteria for the assessment of timing and dose of the medication to be administered are unambiguous, beyond any doubt and verifiable according to the doctor's instructions and without the nursing staff making inadmissible diagnostic or therapeutic decisions at their own discretion that exceed their competence. (2014)

Regular attempts must be made to reduce doses and wean patients off the medication. The effects of sedatives must be evaluated regularly with reference to the target symptom. (2016)

Non-medication-based measures to minimise sleep disorders should be used systematically and documented. (2015)

Pain in elderly persons must be treated. Pain must not be accepted as simply part of old age. In order to ensure this, pain assessments need to be carried out. (2016)

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Pain assessments must be a part of every nursing management plan. (2016)

It is necessary to recognise and assess the pain felt by residents on a regular basis and to counter this by way of measures to alleviate pain. (2015)

Professional treatment of pain requires cooperation between nursing staff and doctors, with inclusion of the persons affected and their relatives. (2015)

Training of the entire nursing staff with regard to recognition and assessment of pain in cognitively impaired persons is absolutely necessary. (2015)

Research is needed with regard to drug safety for the very elderly both in and outside of long-term inpatient care. (2014)

Every seriously and terminally ill person has a right to the comprehensive medical, nursing, psychosocial and spiritual care and support that is commensurate with their individual life situation and hospice-palliative care needs. (2017)

The nationwide implementation of an equal access to hospice and palliative care in nursing homes has to be sensitive to the personal and cultural values, beliefs and rituals in order to facilitate dying with dignity. (2017)

Care dialogues should be established in all facilities. Residents and their trusted persons should be supported in making decisions that affect the final phase of their life. This requires space and time for passing on comprehensible information related to predictions as well as treatment and care options. (2017)

## Personnel

In order to guarantee a good quality of life for residents, good working conditions must be secured for staff, along with the necessary staff management skills on the part of managers. (2016)

High staff turnover should be perceived by home operators and supervisory authorities as an alarming indication of inadequate nursing. (2016)

Staff resources, especially during the night shift, must be adequate enough to guarantee the safety of the residents. Care personnel must be able to undertake unforeseen assistance and care promptly, recognise emergencies early on and hear calls for help. (2014)

An important task of management is to promote the acceptance of supervision by staff and to support reflection on work within the facility. (2016)

In order to maintain and improve the working capability of personnel, it is necessary to have professional psychological supervision that takes place during working hours with external supervisors who can select the care teams. This improves mental hygiene and helps to prevent burnout, bullying/harassment and violence. (2013)

Violence prevention concepts must be elaborated in all facilities. The commitment to care free of violence must be established in guidelines. (2016)

The operators of homes must raise staff awareness in order to ensure the reasonable usage of mechanical, electronic and medication-based restrictions of freedom. This requires appropriate training and cooperation with the representatives of the residents. (2016)

More specific education of doctors with regard to treatment of elderly patients with medication is necessary. (2014)

The ability of nursing staff to act with confidence must be guaranteed by regular nursing rounds and controls of nursing documentation along with targeted training in nursing processes. (2016)

Implementation of insights based on health care science and the application of important assessment instruments, including from the perspective of preventive and human rights monitoring – e.g. for risk assessment in connection with fall prevention, pain, hygiene, malnutrition, skin damage – requires a reorientation and professionalisation of care. (2014)

A changed morbidity spectrum requires the interlocking of primary medical and nursing care. The collaboration between the general practitioner's office and nursing specialists should comprise joint case planning, effective communication and mutual understanding. (2017)

### 3.2 Hospitals and psychiatric clinics

#### Location

Local care of the patients must be ensured as part of the regionalisation of psychiatry. (2017)

Time-consuming transports must be avoided by setting up decentralised accommodation areas for patients in acute situations. (2017)

Strengthening and the regionalisation of the structures for outpatient and day-care clinic child and adolescent psychiatry are urgently required. (2017)

#### Infrastructural fixtures and fittings

The configuration of the space and the organisational procedures in psychiatric institutions can contribute significantly to the prevention of violence and aggression. (2014)

Residential and rehabilitation possibilities for persons with chronic mental illnesses must be expanded in order to prevent effects that require hospitalisation. (2014)

The bed capacities in child and adolescent psychiatry must be increased quickly in order to facilitate adequate care for children and adolescents. (2016, 2017)

The architecture of health care institutions has an effect on the recovery process and on the occurrence of violence. Suitable architectural conditions must thus be provided to ensure treatment quality and avoid violence. (2016)

Suitable architectural conditions must be guaranteed in psychiatric wards in particular. It is unacceptable that the modernisation of psychiatric wards often has lower priority than the modernisation of other wards. (2016)

In the field of psychiatry, refurbishment measures and new construction are urgently required and must be initiated as soon as possible in order to guarantee contemporary care. (2017)

### Living conditions

Children and adolescents may not be housed and treated in adult psychiatric wards. According to the CPT. This is a violation of preventive human rights and professional standards. (2015)

Availability of psychiatric care must be planned in a forward-looking way and flexibly adjusted to the regional conditions. (2014)

Psychiatric care services must be aligned to the respective needs with as few restrictions for the individual as possible. Sufficient services meeting these criteria must be made available and further developed. (2016)

Non-residential facilities for taking care of persons with psychiatric diseases and for gerontopsychiatric patients must be increased in order to avoid hospital stays that are no longer medically indicated. (2015, 2017)

Protection of women and girls against exploitation, violence and abuse must be comprehensively guaranteed in accordance with the provisions of international law and Austrian regulations. (2015)

A comprehensive preventive concept is required in order to avoid sexual assault in medical facilities. (2017)

The ban on wearing private clothes is a violation of personal rights, and therefore the patients' representatives must be informed immediately. (2016)

Transfers of patients requiring placement must be avoided where possible and must be accompanied by psychiatrically trained personnel. (2016)

### Right to family and privacy

Therapeutic meetings should take place in designated rooms in the interest of protecting the personal space of the patients. (2017)

A designated single room must be set up for applying restraints. (2017)

### Measures that restrict freedom

Operators of hospitals and psychiatric institutions must ensure – as far as personnel, concept and organisation are concerned – that there be as many graduated response approaches with regard to intervention intensity as possible before coercive measures are used. (2014)

De-escalation management and work on the prevention of multi-dimensional violence and fall help to prevent measures that restrict freedom. (2014)

Consensus-based treatment agreements can reduce the frequency and duration of coercive measures. (2013)

Restraints and isolation are not therapeutic interventions but purely security measures that are used when a therapeutic approach is not possible. If their use appears to be unavoidable, it is necessary to maintain human dignity and guarantee legal certainty. Interventions must be kept as short and as non-intrusive as possible. (2014)

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Any coercive measure is excessive if a suitable and milder directive is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel. (2014)

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Measures that restrict freedom must be applied as gently as possible. This also includes holding follow-up meetings with the patients after the end of the measure. (2017)

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Closely meshed personal care with very frequent verbal contact and sufficient staffing must be provided in order to avoid or reduce the use of coercive measures. (2017)

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The application of measures that restrict freedom due to advance or reserve doctors' prescriptions must stop because this results in the illegal delegation of the relevant mandatory authority to write prescriptions to the nursing staff. (2017)

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The application of measures that restrict freedom must be fully documented in a comprehensible way. (2017)

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If restraints are used as a last resort, they may not be perceived by the persons affected as a threat, nor may the way that the restraint process was undertaken increase feelings of powerlessness and fear. (2013)

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Placement of patients in beds set up in hallways accompanied by the use of restraints is an unacceptable violation of their human dignity and their fundamental personal rights. Restraint of patients must take place out of sight of third parties. Restraints can be used only with constant and direct supervision in the form of a watch by an attendant. Restraining straps on beds may not be constantly visible. (2014)

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CPT recommendations from 2015 regarding permanent and direct supervision when patients are being restrained, beds in hallways and introduction of central registers in psychiatric facilities must be implemented. (2015)

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After they have been restrained, patients must be supervised 1:1 "constantly, directly and personally" as the CPT has been demanding for years. (2014)

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In implementation of a recommendation by the CPT, a central register must be set up in all psychiatric hospitals and wards to record the cases when measures to restrict freedom of movement were used in order to be able to evaluate their use and frequency without consulting patient records. (2014)

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Restraint persisting over several days is extremely alarming from a human rights perspective and should fundamentally be avoided. In special cases, seamless documentation and monitoring must be ensured. (2014)

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Locking ward doors must be considered a measure that restricts freedom and must not result in an inadmissible "*de facto* compulsory admission" of unaccompanied minors. (2015)

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Potentially overwhelming situations that can result from joint care of adolescents, some of whom are being treated under the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) and some of whom are being treated voluntarily, must be minimised. (2015)

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De-escalation can take place at various different levels. It begins with prevention of aggression, in a conversation that seeks to calm an agitated patient and then ranges from conflict resolution without losers to restraints, which must be used with the least invasive impact on the patient while maintaining the patient's dignity. (2014)

When the use of net beds is discontinued, alternatives to measures restricting freedom must be considered and realised. (2014)

The setting up of central registers to record measures that restrict freedom in psychiatric hospitals should be set down by law. (2016, 2017)

Medication-based restrictions of freedom can also be applied in psychiatric hospitals and must be reported pursuant to the Hospitalisation of Mentally Ill Persons Act. (2017)

The debriefing of experiences with severe measures that restrict freedom in the team and, above all, with the affected patients must be established as a standard in all psychiatric clinics. (2016)

Measures that restrict freedom must be submitted and confirmed immediately, including on public holidays and weekends. (2016)

Measures that restrict freedom must be carried out in a suitable environment and may, on no account, be carried out in the hallway or where they can be seen by other patients. (2016)

One-point restraints must be stopped due to the risk of strangulation. (2016)

#### Security measures

The deployment of a security company for the purposes of care must be avoided in general. (2016)

The area of activity of the staff of the security companies in medical facilities must be clearly regulated in guidelines. (2016)

The holding of mentally ill persons prior to the application of mechanical restraints is already part of psychiatric health care and nursing. This means that carrying out such actions is reserved exclusively to the nursing staff under the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*). Given the lack of any statutory basis, private security companies appointed by medical facilities are not allowed to implement nursing measures and to participate in the application of restraints. (2014)

#### Health care

Prevention of falls: When being admitted to hospital, all patients should be observed and questioned with regard to fall risk factors. There should be regular analyses in each ward with regard to frequent reasons for falls in order to minimise risks (damp or slippery floors, poor lighting, lack of grab bars, high steps, etc.). A multi-professional team should plan measures, distribute information and implement therapeutic interventions. (2014)

Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls. (2014)

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The intensive care of severely traumatised adolescents with high violence potential requires specialised institutions with substantial personnel resources and flexible, individually tuneable socio-educational concepts. (2016)

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The prescription of PRN medication must be precise and in accordance with the legal requirements. (2017)

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#### Personnel

Staff-related, organisational and patient-related strategies must be intertwined in violence protection. Security services should never be deployed in the border area to nursing and care. Preference should be given to alternative measures (e.g. crisis teams) in as far as possible. (2016, 2017)

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Inclusion and participation of private security personnel in patient care is inadmissible and may not occur. Concomitant arrangements are necessary to maintain patients' personal rights and to enable measures to ensure staff safety. (2014)

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When allegations are made against hospital staff, competent professional support for alleged victims must be guaranteed, while suspicions are being investigated as well as beyond that. (2015)

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The preservation of evidence by doctors in hospital must be carried out comprehensively and sensitively vis-à-vis the victim. (2015)

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The guiding criteria for professional action must be the principles of voluntary action, (assisted) self-determination, participative decision-making, intensive care and occupational activity – if necessary during acute crises at a ratio of 1:1. This requires resources, patience and personal attention, equal footing between staff and patient, respectful attitude vis-à-vis individual life patterns, as well as ongoing qualification of staff in dealing with crisis situations, violence and aggression. (2014)

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Aspects such as communication, information and transparency of action while maintaining privacy and self-determination are highly important, especially vis-à-vis people who are ill. Gender-specific issues and vulnerabilities always require particular attention. (2014)

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More training possibilities for specialists in the child and adolescent psychiatry speciality field are urgently needed. (2014)

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Austria-wide guidelines must be developed in accordance with the recommendations of the CPT by the Societies for Psychiatry and Psychotherapy and for Child and Adolescent Psychiatry. (2015)

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The NPM is convinced that implementation of the Istanbul Protocol in hospitals must be supported by way of education and training. (2015)

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Doctors in hospitals have a critical role in the investigation of assaults by police officers. They must therefore be trained in how the alleged consequences of injuries have to be documented for evidence purposes. (2016)

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A stronger sensitisation in relation to victims of human trafficking or psychic or physical violence (children, women or persons with disabilities) must be anchored in the training of all health care professions. This must also be made legally binding. (2016)

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Sexual harassment must be combatted with further education and training of the personnel on the topics of culture, tradition, closeness and distance. Patients should receive information material on possible contacts during admission to hospital. Easily accessible advisory services should be extended. (2016)

Video interpreting services should be expanded in hospitals in order to accommodate the intercultural care of patients. (2016)

Strengthening of the outpatient and day-care clinic structures as well as the creation of positions for medical specialists contracted by the public health insurance are urgently required. (2016)

The necessary increase in the services offered is to be supported by an increase and prompt filling of open training places in the area of child and adolescent psychiatry. (2016)

The group of doctors authorised to issue the necessary certificate for involuntary placement should be increased in order to limit the autonomous assessment made by public safety officers to exceptions. (2016)

Flexible personnel planning systems must be implemented in medical facilities in order to facilitate fast reaction to concrete conditions and existing requirements. (2017)

Attention must be given to an appreciative approach when caring for persons with mental illnesses in order to avoid a feeling of powerlessness and degradation. (2017)

Training capacity must be stepped up to meet increasing demand and in light of the expansion of services in the child and adolescent psychiatry area. (2017)

The number of office-based medical specialists for child and adolescent psychiatry who have a contract with public health insurance offices should be increased in all *Laender* in light of the rising nationwide demand. (2017)

The care mandate of the psychosomatic sections of paediatric wards should be clearly defined by separating it from treatment reserved for child and adolescent psychiatric wards (2017)

All staff of the medical facility with patient contact should take part in de-escalation training programmes in the interest of comprehensive violence protection. (2017)

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#### Returns and management of release

The authority of persons having powers of representation must be carefully examined as part of discharge management. (2017)

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### 3.3 Child and youth welfare facilities

#### Infrastructural fixtures and fittings

Facilities operated by child and youth welfare organisations must be fully accessible. (2014)

Lockable containers (boxes) for the private property of minors should be part of the minimum provisions in facilities in which children and adolescents live. (2015)

Individual privacy must be enabled for minors as well. While staff should be able to open doors, it should also be possible for minors to lock them from the inside. (2015)

#### Living conditions

The structures in homes hamper work in accordance with the current insights that social pedagogy provides. The effect of negative group dynamics can be much stronger than that of pedagogical and therapeutic social and conflict training or additional mechanisms that are supposed to support development of the personality, behavioural changes, as well as school and occupational integration. Smaller regional “family-style” care facilities should therefore replace large homes. (2014)

In all *Laender*, children and adolescents should not be cared for in large facilities, but rather in small, family-like residential groups. The number of crisis de-escalation places must be commensurate with the actual requirement. It is recommended that the maximum permitted group size be reduced to ten minors. (2016, 2017)

As competent authorities for child and youth welfare and protection, the *Laender* must ensure that restructuring processes do not come to a standstill before completion. (2017)

Changes need to be made to basic conditions of children and adolescents’ environment which create opportunities for sexual violence. (2015)

The differentiation between children and adolescents under full residential care both under and outside of reception conditions under the Basic Provision Agreement contradicts the UN Convention on the Rights of the Child and must therefore be rejected. Unaccompanied minor refugees are subject to the full protection of the operator of child and youth welfare organisations and are therefore also entitled to care that is appropriate to their needs and is based on the latest developments in pedagogy. Occupation and recreational opportunities in facilities for unaccompanied minor refugees must be expanded. More budget resources from funds provided under the reception conditions are needed to make psychosocial care and integration easier. Uniform minimum standards across Austria for the care of unaccompanied minor refugees are necessary. (2014)

The child’s wellbeing must be the main focus in supporting unaccompanied minor refugees. The financing of the care facilities for unaccompanied minor refugees and the standards of reception conditions under the Basic Provision Agreement must be aligned with those of the socio-pedagogic facilities. (2017)

Mass accommodation is unsuitable for unaccompanied minor refugees and asylum seekers. The NPM therefore recommends that they be housed appropriately in line with needs of young persons. (2015)

Unaccompanied minor refugees should be accommodated exclusively in residential groups. (2016)

Special care places for multiply and severely traumatised minor refugees must be created. (2016)

The NPM recommends that all unaccompanied minor refugees be promptly taken into custody at federal support facilities and transferred to *Land* accommodation which fulfils the reception conditions under the Basic Provision Agreement. (2015)

In the view of the NPM, follow-up care for young adults to ensure success in training courses is needed once the unaccompanied minor refugee has turned 18. (2015)

All *Laender* must fulfil their care responsibilities themselves by way of providing suitable facilities, in order to avoid breakdowns of relationships that do not support the welfare of the children. (2014)

Concepts which involve crisis management to avoid breaking relationships should be adopted. (2016)

Violence prevention concepts need to be developed and implemented at all child and youth welfare facilities. (2015)

Special crisis centres for children and adolescents with psychiatric diagnoses need to be set up. (2015)

The structures in homes hamper work in accordance with the insights that social pedagogy provides. The effect of negative group dynamics can be much stronger than that of pedagogical and therapeutic social and conflict training or additional mechanisms that are supposed to support development of the personality, behavioural changes, as well as school and occupational integration. Smaller regional “family-style” care facilities should replace large homes. (2014)

Compliance with official requirements must be closely monitored in problem facilities. (2016)

Further harmonisation of the *Laender* minimum standards in the socio-pedagogical care of children and adolescents should be pursued on a nationwide level. (2017)

The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors. (2017)

Violence prevention and sex education concepts should be a condition for granting permits for socio-pedagogical facilities in all *Laender*. The implementation of these concepts must be monitored by the technical supervision of the *Laender*. (2017)

The number of socio-therapeutic care places must be increased substantially. (2017)

Crisis de-escalation places must be expanded to meet the requirements. Crisis centres must be created for children and adolescents suffering from psychiatric or post-traumatic stress disorders. (2017)

Models with time-out shared accommodation must be developed. (2016)

#### Access to information within the family

House and group rules must be developed in a participatory process with the minors. (2014)

The NPM recommends “house councils”, children’s teams or children’s representatives as mechanisms to guarantee the participation of the children and adolescents within the framework of institutionalised care and to live this in practice. (2016, 2017)

Records must be made in these meetings, and decisions taken in a participatory manner must be implemented. (2016)

#### Measures that restrict freedom

Child and youth welfare facilities must deal with the conditions that the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) requires for the permissible restriction of freedom, and they should actively seek cooperation with the representatives of the residents. (2017)

#### Right to family and privacy

As competent authorities for child and youth welfare and protection, the *Laender* have to provide a needs-based expansion of the care structures. The proportion of out-of-home minors from other *Laender* must be kept as low as possible. (2017)

Placement of minors should be in close proximity to the parents' residence unless this is inadvisable for pedagogical reasons. Out-of-home placement at a great distance from the place of residence of the family of origin must be avoided. The aim is to protect the opportunity to visit and stay in contact in the interest of the children's wellbeing. (2014, 2017)

The NPM demands the expansion of outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors. (2017)

#### Educational and occupational opportunities

The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

Performance-related daily rates must be introduced and regularly adjusted. (2016)

Support for young adults must be provided for the entire duration of their education. (2016)

Care of refugees of legal age in training must be intensified. (2016)

An Austria-wide master plan is called for in order to ensure the extensive provision of offers for language learning, in particular for minor refugees. (2016)

The NPM demands a legal entitlement to support after reaching the legal age. (2017)

Measures for young adults should be approved for the entire duration of their education. (2017)

The training and education opportunities for minor asylum seekers who are no longer of school age should be improved throughout the country. (2017)

#### Signs of torture, mistreatment, abuse, neglect and degrading treatment

Upbringing that is free of violence must be fully ensured for all minors. (2014)

The imposition of group punishment is inadmissible. (2013)

Pedagogical consequences as a reaction to disruptive or abnormal behaviour may not be excessive or humiliating. (2013)

Degrading punishments as pedagogical measures in child and youth welfare facilities are prohibited pursuant to Article 3 of ECHR. (2015, 2017)

Responses to undesirable behaviour must be made immediately and must be directly connected to the behaviour. They further must be discussed with the minors in question. (2015)

Sanctions must be directly associated with the rule violation. (2017)

Rule violations must be handled individually. (2015)

Models for redress need to be established, as an alternative to sanction systems. (2015)

#### Health care

Particular caution is necessary with regard to medication being used off-label. (2014)

PRN medication may not be administered by pedagogic staff. (2014)

Documentation regarding administering of medications must be clear and comprehensive. (2015)

Doctors must provide concrete instructions and prescriptions. (2015)

When administering prescription medication such as psychotropic medication, close attention must be paid to side-effects and interactions. (2015)

#### Personnel

As competent authorities for child and youth welfare and protection, all *Laender* should create facilities for crisis periods with a higher personnel ratio and a lower number of children. (2016)

An improvement in working conditions must be implemented in order to fill all of the vacant positions. (2016)

Solutions for preventing high personnel fluctuation have to be found in order to avoid the frequent change in contact persons that is harmful for the children's well-being. Causes of fluctuation must be prevented. (2016, 2017)

The NPM demands that only well-trained staff should work in child and youth welfare facilities. (2017)

Uniform training standards and quality standards in child and youth welfare must be created for all of Austria. (2017)

Both laws governing occupations and professions and also the training of social pedagogues should be standardised Austria-wide (agreement under Section 15 a of the Austrian Federal Constitution). (2014, 2017)

In addition to basic training, socio-pedagogic staff must have special competences in dealing with violence in crisis situations. Mandatory training and continuing education on this subject, the inclusion of violence prevention in institutional models and codes of practice, as well as the appointment of a violence protection specialist are absolutely necessary measures to prevent violence. (2013)

Training in the legal requirements laid down in the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*) is required. (2017)

Assistance opportunities must be individualised, including within the framework of full residential care in facilities. (2014)

Scientifically-based plans by the Laender to assist children and adolescents must include care deficits and measures to remedy them. (2014)

Sex education and prevention of violence and sexual assault are indispensable. Effective prevention must teach the different types of boundary violations and encourage children and adolescents to get help, to insist on their right to physical and sexual self-determination and to critically question gender role stereotypes. (2014)

Sex education concepts must be devised and implemented in all child and youth welfare facilities. (2015)

The NPM calls for the adoption of a sex education concept as a condition for granting permits. (2016)

Recurring mandatory advanced training of the staff on the topic of sex education is necessary in all facilities. (2016, 2017)

The legal entitlement to assistance of young adults should be embedded in legislation and case management surrounding the termination of care should be improved. (2014)

Capacities for caring for children and adolescents with mental illnesses should be increased accordingly in line with regular needs assessments. The NPM calls for the organisation of advanced training for staff and workshops for children and adolescents as preventive measures. (2015)

Special attention must be given to the need to treat traumatisation and psycho-social knock-on effects in unaccompanied minor refugees. Qualified staff must be trained in recognising abnormalities and symptoms so that they can quickly initiate help measures. (2017)

### 3.4 Institutions and facilities for persons with disabilities

#### Infrastructural fixtures and fittings

Structural shortcomings and a lack of comprehensive barrier-free accessibility impair the social development of persons with disabilities and must therefore be avoided. (2014)

Cost cuts may not be allowed to result in persons with mental illness being moved to other institutions against their will. (2017)

#### Living conditions

The development of one's own potential is a human right and must therefore be guaranteed by the facilities. Concrete and quantifiable target and measure agreements are crucial here. (2016)

Needs and wishes of those affected must have priority. (2016)

Persons with disabilities have to be enabled to plan their everyday life according to their own personal needs and to participate in society. The concept of social space and community issues (*Sozialraumorientierung*) should be used. (2014)

For persons being cared for in institutions and facilities, self-advocacy must be ensured regardless of the kind of disability. Suitable support measures are necessary. Peer-to-peer sharing of information should be promoted. (2014)

It is recommended that communication possibilities adapted to individual needs be opened to persons who have no ability to speak or who have impaired speech by means of Augmentative and Alternative Communication (AAC). (2016)

If an operator organisation offers a residential place as well as daily structure, the individual in question *de facto* lives within a very narrow control system. This linkage between working and living spaces fosters power relations and unilateral dependency and should be avoided, also according to the UN CRPD. (2015)

The NPM calls for measures to enable persons with disabilities to live self-determined lives also at an advanced age. However, strict requirements regarding attendance at day workshops are an obstacle to this. (2015)

Rehabilitation (provision of assistance for persons with disabilities) must be enabled by sufficient resources in residential facilities for persons with psychiatric diagnoses and addictions. (2015)

The NPM repeats the recommendation that the scope of the Equal Opportunities Acts be extended to include the housing of persons with mental illnesses, but also of persons with substance use disorders. (2017)

Promotion of equal opportunities for participation by persons with mental illnesses or disabilities is particularly important nationwide. (2015)

After the official country review of Austria within the scope of the UN Convention on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities recommended that Austria should undertake additional measures to “protect women, men, girls and boys with disabilities against exploitation, violence and abuse”. The NPM also calls for this. (2014)

Augmentative and Alternative Communication contributes to prevention of violence. To guarantee this, knowledge of the methods, relevant training and sufficient resources are required. (2016)

Facilities must take special care that persons with disabilities or a mental illness are not exposed to degrading treatment. (2016)

Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner. (2015)

New, more flexible structures for elderly persons with disabilities will therefore be needed, particularly in terms of residential, occupational and leisure needs. (2015)

Dismantling large-scale institutions and a consistent reorientation towards aid in the form of personal assistance and offerings within the socio-spatial sphere is the core piece of disability policies that conform to human rights principles. (2014)

It is an intrinsic quality of large-scale institutions that the basic attitude to persons with disabilities is primarily protective rather than an attitude that is based on resources and strengths. But also personal contacts and supportive relationships that might be possible in the vicinity are made more difficult when residents are transferred to homes that are further away. (2014)

The NPM calls for the establishment of emergency plans for persons with disabilities among refugees as provided for under the UN CRPD. (2015)

The inclusion of persons with disabilities must be considered as a basic principle in all budget planning. (2017)

Examples of good practice should serve as models for the operators of institutions and facilities. (2017)

#### Right to family and privacy

Persons with disabilities must be guaranteed sufficient privacy in all institutions and facilities. (2017)

Sex concepts should be mandatorily created and implemented by all operators of institutions and facilities. Persons with disabilities should be guaranteed the right to receive sex education and information in accordance with the right to sexual self-determination. (2017)

#### Educational and occupational opportunities

Integration into normal jobs should be adequately promoted and wages in day-care centres/ occupational workshops must guarantee entitlements under social insurance law. (2014)

Employment of persons with disabilities in sheltered workshops in their current legal and factual configuration does not comply with the provisions of UN CRPD, especially with Section 27 “Work and employment”. This is specifically but not exclusively because the persons with disabilities who work in these workshops are – without exception – not considered employees under labour law by the Austrian legal system and are not covered by any social insurance from this employment (except for statutory accident insurance). The ability of all persons with disabilities, who are

currently employed in (sheltered) workshops, of earning a living should be guaranteed regardless of their individual performance capability and apart from the current social welfare or minimum benefit system. (2014)

In order to enable the affected persons to live a more independent life, they have to be prepared as well as possible and supported accordingly. (2017)

#### Measures that restrict freedom

Measures that restrict freedom, which are used to compensate a lack of barrier-free accessibility or space and personnel shortages, are without exception inadmissible and are an expression of structural violence. (2013)

Psychosocial interventions and individual care are always preferable to isolation and measures that restrict freedom. Measures that restrict freedom and that are ordered because patients are a threat to themselves or others must be both the least severe means of control and the last resort. (2014)

Minors with learning disabilities or who are mentally ill may not be subjected to any age-atypical measures that restrict freedom. Just like adults, they are entitled to a review of these measures by the court. (2014)

When measures that restrict freedom are used allegedly to protect patients against being a threat to themselves or others, particular care and a review of the alternatives is always necessary. (2014)

The use of time-out rooms may not be the result of inadequate care, insufficient medical or psychiatric care or unsuitable settings and presumes a crisis intervention plan and de-escalation training for the staff. It is solely for the temporary protection of the person in question or other persons in the event of acute aggression against third parties and it is not a permissible measure to discipline or sanction other abnormal behaviour. It should be as brief as possible, with constant observation and the opportunity for calming conversations. It must occur in an environment that is free of fear, stimulus-free and with no risk of injury. It must be documented and reported to the representative(s) of the residents as a measure to restrict freedom. It must be accompanied by observations and analyses of interaction that can show the interplay between the behaviour of the persons involved and actions/reactions of staff or other residents. (2014)

#### Signs of torture, mistreatment, abuse, neglect and degrading treatment

As a result of the size of the facilities, individual needs and wishes are addressed in a less optimal way. Increased efforts to drive de-institutionalisation forward are necessary. Comprehensive overall concepts are lacking and must be developed. (2014)

Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner. The authorities must draft quality standards for victim support in institutions and facilities. These should then serve the operators as guidelines for their work. (2015, 2017)

Clients with a high potential for violence should only be admitted to an institution if it is prepared for dealing with potential risks. (2017)

Regulations under Federal and *Laender* laws should stipulate a formulated de-escalation concept as the condition for granting permits for institutions and facilities for persons with disabilities. (2017)

#### Health care

Persons with disabilities are entitled to the very highest level of health. In the view of the NPM, inclusive access to medical care must be expanded. (2015)

Health promotion through therapy offers must be based on professionally recognised concepts, which allow the highest possible level of self-determination in all areas. (2016)

Assistive technologies (e.g. apps for communicating with doctors in sign language) should be developed further and made available Austria-wide. (2015)

Psychotropic medication therapies require comprehensible pedagogical, psychological and psychiatric diagnostics and reasoned indication. Facilities must take care that therapy objectives are explained and executed in a comprehensible way and are evaluated regularly. (2016)

Curative pedagogical processes must be designed in such a way that the pedagogical support is linked to the current development and action level, and daily routine is planned according to a multimodal therapy concept individually “suitable” to the needs. (2016)

More complex conditions and multiple disabilities often require specially optimised care. This must not be a question of resources. The development of the personality in children and adolescents with major mental or physical disabilities depends in large part on whether and how they are supported in perceiving their environment, grasping it in the truest sense of the word and being able to explore it themselves.

Knowledge about pain diagnoses and the treatment of persons with disabilities must be enhanced for both the care staff and the medical staff. (2017)

Stable relationships between the staff and the persons being cared for are necessary to be able to perceive when these are in pain. High fluctuation rates and staff shortages have thus to be avoided. (2017)

The use of supported communication when required is urgently necessary as communication barriers have to be removed, in particular in relation to the diagnosis of pain. (2017)

Those suffering from addiction must have free and quick access to treatment programmes. Needs-based, top quality treatment programmes based on scientific standards must thus be guaranteed in the inpatient and in outpatient sector. (2017)

Comorbid disorders and illnesses have to be an integrative component of such treatment programmes in after-care facilities. (2017)

Relapses must be seen as a part of substance use disorders that is inherent in crises and require an in-depth multidisciplinary therapeutic approach. (2017)

Professional action-oriented expertise on assessing and predicting suicidal tendencies must be applied before therapy is (involuntary) discontinued. Evidence must be provided that the affected person has been informed of the increased mortality risk caused by discontinuing therapy. (2017)

After-care facilities for persons suffering from addiction must implement standardised crisis and discharge management with functioning interfaces to better quality care services in hospitals. (2017)

## Personnel

Inadequate staffing during day or night shifts, poorly adjusted aids or insufficient advancement of mental or practical capabilities for persons with disabilities have the effect of hampering social development and are therefore circumstances that must be avoided. (2014)

The condition for effective violence prevention is the relevant training of the staff. This should be mandatory in institutions for persons with disabilities. (2017)

Operators of institutions should remove legal uncertainties on the part of staff in relation to the sexual self-determination of persons with disabilities through training and guidelines. (2017)

### 3.5 Correctional institutions

#### Infrastructural fixtures and fittings

Structural adaptations to ensure that correctional institutions are equipped to accommodate persons with disabilities should be carried out for the detention of mentally ill offenders. (2014, 2016)

Measures should be taken urgently to remedy the, at times, completely inadequate material conditions and the, at times, inhumane living conditions of persons being held in detention (e.g. at Göllersdorf correctional institution). Mentally ill offenders should only be detained in specially designed therapeutic centres. (2017)

All inmate cells, including also holding cells, for multiple persons must have a privacy screen and an odour barrier separating the sanitary facilities from the rest of the cell. They furthermore must have sufficient light for reading and let in daylight. (2015, 2017)

All cells for multiple inmates should be equipped with lockable lockers. (2014, 2016)

Specially secured cells must have suitable places to sit or recline. (2015) If they are not in use due to their equipment and furnishings, they must be removed from the cell layout plan. (2014)

The structure of a special medical facility must meet the standards for a regular medical facility. (2015)

Suitable visiting rooms must be ensured for visits with children, which should take place in a friendly atmosphere. (2017)

Furnishing a three-person inmate cell with two bunk beds should be avoided due to the possible overcrowding of the cell. (2014)

#### Living conditions

The possibility of daily time outdoors of at least one hour for adults and two hours for juveniles must be provided. (2014) This must be a net period available to inmates. The time spent leading inmates to and from the outdoor area may not be included in calculating time spent outdoors. If daily time spent outdoors is cancelled due to bad weather, alternative opportunities for exercise should be offered (e.g. in a gymnasium). (2017)

Detainees should be offered more time for activities outside the inmate cell, including on Fridays and weekends. The lock-up times must be shortened, particularly for unemployed prisoners. Lock-up times of up to 23 hours per day are intolerable. (2016) In order to avoid violent assaults among juvenile detainees, a structured and balanced daily routine must be established with the shortest possible lock-up times. (2015)

It should be ensured that inmates are provided with sufficient individual living space in their cells. To prevent crowded conditions of detention, the maximum capacity of inmate cells and of a correctional institution must be reviewed from time to time and reduced, if necessary. (2017)

Detainees awaiting trial should be held separately from convicted prisoners. (2017) Based on the presumption of innocence, provisional detainees held in provisional detention should be separated from court-sentenced prisoners with mental health care needs. (2017)

Every inmate must be permitted to meet the needs of his/her religious and spiritual life, particularly by attending worship services or gatherings at the correctional institution. (2016) To the extent possible, the religion of the inmates should be taken into consideration with regard to the selection of food. (2013)

The prices of consumer goods in the institution's supermarkets or kiosks must not be higher than those in the surrounding supermarkets. (2015)

In order to protect non-smokers, it must be ensured that non-smokers are protected against the health-endangering effects of tobacco smoke as far as possible. Smoking and non-smoking inmates must be housed separately from each other. Under no circumstances may small children be exposed to smoke. (2016, 2017)

The minimum standards for women in prisons set forth in a decree of the Federal Ministry for the Constitution, Reforms, Deregulation and Justice must be implemented as soon as possible. (2016)

The low number of female adolescents in custody cannot justify worse detention conditions. (2016) Female inmates may not be discriminated against based on gender. (2016)

Persons with mental impairments and detainees in need of care should receive professional support in cleaning their dining and living areas. (2016)

#### Right to family and privacy

Body searches involving disrobement must not be carried out in the presence of fellow inmates. They should be carried out in two stages so that the person being searched need not be fully disrobed. The cause and nature of a body search involving disrobement must be documented in writing. (2015, 2017)

Health-related data of inmates must not be posted on the inmate cell doors. (2017)

The doors of the doctor's office must be kept closed during medical consultations and examinations to ensure privacy and confidentiality. (2017) Medical confidentiality must be ensured in prisons to the same extent as in the outside world. (2017)

Measures must be taken to ensure that no media representatives are present during searches of inmate cells and body searches. (2017)

#### Contact with the outside

Visiting hours should be structured in such a way that working people can also make use of them. Visits should be possible in the afternoon or, in particular in juvenile sections, the early evening on at least one working day or on weekends. (2015, 2016)

The opportunity to use Internet telephony and video services for visits should be introduced nationwide as soon as possible. (2015, 2016)

Forensic ward/psychiatric institutions: Whether a restriction on visits by minors is necessary should be examined on a case-by-case basis. (2017)

### Educational and occupational opportunities

Every detainee should carry out useful work or participate in meaningful activities. The employment rate should be increased. (2015, 2016) Workshops must be expanded as soon as possible. (2015) Companies providing occupational opportunities at correctional institutions should be continuously open. Work opportunities should also be expanded for detainees awaiting trial. (2017)

In addition to education and occupational or other training, involvement in sports should also be an important part of the programme of activities for young inmates. (2016)

Inmates should not have to choose between work and the rights to which they are entitled, such as outdoor exercise. (2014)

The expansion of occupational opportunities for women must be promoted, including in court prisons. The possibility for the joint performance of work by women and men should be expanded. (2014, 2015)

In particular, women should not be financially disadvantaged by the lack of employment opportunities. (2014)

Women should have equal access to leisure-time activities. (2014)

There may be no discrimination against addicted persons with respect to their access to work and educational offerings due to their illness. (2017)

A total ban on Internet access and computer use is inadmissible. Permanent steps must be taken to provide abuse-proof access to the Internet for continuing education purposes. (2014)

Correctional institutions must ensure that inmates who lack a primary school education receive the necessary instruction at the primary school level. In any case, an opportunity to receive this school education should be provided if this applies to a large number of inmates. (2013)

### Access to information within institutions and facilities

Inmates should know the punishment they can expect for various forms of disruptive and abnormal behaviour. Providing this data to inmates is preventive in nature. This data should provide decision-makers with a background for establishing a uniform ruling practice. (2014)

Access to information does not only mean that information is provided. Information must be provided to the inmates in a language and vocabulary they can understand. (2013) The house rules must be made available to inmates not only in German but also in a language that they understand. (2015)

Inmates are not to be involved to provide translation services. When there are communication problems, trained interpreters should be utilised. (2016) The video interpreting system should be made available as soon as possible Austria-wide for all specialist departments and for the areas of admission and the administrative penalty unit in all facilities for the detention of mentally ill offenders. If the video interpreting system is available, it should be used. (2016, 2017)

Information notices must be revised as soon as possible if there is a change in the law. (2014)

### Complaints management

The establishment of a complaint register must be vigorously pursued. (2014, 2015)

### Measures that restrict freedom

Task force trainings may not cause longer lock-up times. (2014)

Forensic ward/psychiatric institutions: Strapping a patient to a hospital bed is only permitted when it is absolutely necessary due to the progression of the disease. The external conditions accompanying the restraint may not be frightening to the person affected. During the period of restraint, this type of detention must be continually questioned. A form on “Restrictions on the freedom of movement”, recommended by the NPM, must be prepared. (2014)

All persons who are restrained or isolated against their will in a public medical facility should have the opportunity to be represented. (2017)

### Security measures

The ordering of urine tests should be noted in a register in order to ensure a traceability of random urine tests. (2013)

Saliva tests should replace urine tests because they are less intrusive by nature. All institutions should make saliva tests available as soon as possible. (2014)

If the Federal Ministry for the Constitution, Reforms, Deregulation and Justice assigns a person in detention to a public psychiatric facility, the Ministry is responsible for deficits in their infrastructure. If the Ministry cannot ensure that these deficits are remedied, the persons affected must be housed in a facility run by the Federal Ministry itself. (2014)

Mentally ill offenders (in particular if they are restrained or isolated) should have the same legal protection or have the opportunity to be represented as provided under the Hospitalisation of Mentally Ill Persons Act . (2017)

The straps on strap beds should always be covered so they are not visible to patients. (2017)

### Health care

Inmates are entitled to the same level of medical care and nursing as persons at liberty in hospitals and nursing homes. (2014, 2015)

There must be an adequate number of medical and nursing staff to provide medical and nursing treatment under conditions that are comparable to those of patients who are at liberty. (2017). It is necessary to hire additional medical personnel, particular for the purpose of psychiatric care, in numerous correctional institutions. (2015, 2016) The need for nursing staff must be regularly assessed and adjusted. (2017)

The key figures in the medical area, which have been lacking for years, must be determined as soon as possible. (2017)

Inmates with a substance use disorder have a right to have their special treatment, care and counselling needs taken into account. (2017)

Infirmery staff should wear a clearly visible tag stating their name or function. (2017)

In case there are communication problems in the medical area, trained interpreters should be utilised. The video interpreting systems should be made available in all infirmaries and used without exception. (2014, 2015, 2016, 2017) Forensic wards/psychiatric institutions: A video interpreting system should also be established in public hospitals. (2017)

Preventive examinations are part of standard medical care. (2014)

Regular visits, in particular, should help prevent the physical and emotional neglect of long-time inmates. (2014, 2015)

Nursing staff should give unrequested support to patients who need care and who may not be able to maintain adequate bodily hygiene on their own. (2016)

Only trained health care and nursing personnel should provide services in infirmaries and doctor's offices. They may not perform any supervisory functions. Prison guards may only be utilised as an exception by request of the doctor and due to a risk assessment. (2016)

If it is absolutely necessary to have a prison guard present at the examination of a detainee, this should only be a person of the same gender. (2015)

Medical experiments on inmates are prohibited by law. The prohibition is absolute. It is irrelevant whether an adverse effect can be expected from the invasive procedure. (2016)

The maintenance of an electronic record of nursing care is indispensable. The ability to trace the individual instances of treatment and care shall ensure increased care in dealing with prisoners in need of nursing care. (2015)

Newly arrived inmates must be subject to a medical examination by a doctor (health examination upon arrival) within 24 hours of their admission, or also in the event of a transfer (e.g. due to a change of prisons or a change of classification). (2016)

The scope of the health examination upon arrival must be standardised in the sense of a nationwide procedure. In the interest of self-protection, the protection of others and the discovery of mistreatment, it should also include a full-body inspection including disrobement alongside a health examination upon arrival. Inmates should be expressly informed of the option of a blood test. The refusal by an inmate to take a blood test should be documented in the Electronic Patient Record Module. (2016, 2017)

Inmates who suffer from a (pre-existing) psychiatric disease should be sent to a specialist in psychiatry shortly after their admission to the correctional institution and receive psychiatric support through regular contacts. (2016)

In order to ensure effective suicide prevention, inmates who have been coded red in the VISCI system must be sent to the psychological and psychiatric service as soon as possible, and (medical) findings and therapy proposals must be prepared. (2016)

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Psychiatric and psychological care is part of health care and, as such, must be ensured by the institutions in pre-trial detention and in detention of mentally ill offenders. (2014) For adolescents and young adults, the psychiatric and psychological care must be provided by specialists in child and adolescent psychiatry, and must in particular involve the implementation or definition of the indications for substitution treatment. (2016)

Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from the other prison inmates. Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification. (2017)

The long-term placement of suicide-prone inmates in single cells is not permissible. Placement in a single cell can only be an exceptional measure for a limited period of time. (2016) Video monitoring does not rule out suicide by the persons at risk during an unobserved moment. (2014)

Individual offers of therapy for persons in detention must be provided along corresponding spaces. Therapy must commence promptly after admission. A standstill which lasts for months is unacceptable. (2017)

The hygienic condition of all mattresses, blankets and pillows in infirmary detention cells must be checked monthly. They must be cleaned at regular intervals and replaced, when necessary. (2016)

Before providing placebo medication, steps must be taken to ensure that the consent of the individual in question is obtained. (2015)

## Personnel

An autonomous pool of employees should be available to the juvenile sections. These employees should have completed the training programme on “Detention of juvenile offenders as a field of work”. They should be available in sufficient numbers for night work and accompany juvenile inmates when they are taken outside. (2014, 2016)

Unless there are specific concerns in an individual situation, prison guards have to wear civilian clothing when taking juveniles outside. (2015, 2016)

Having to deal with suicides often leads to stress disorders long afterwards. This should be minimised through measures taken by the employer. The administration of the judiciary must make every effort to ensure that seeking psychotherapeutic care is not viewed as a weakness. (2014)

Law enforcement officers must be motivated to regularly utilise psychological supervision. (2017)

It should generally be ensured that prison guards who work in special work clothes (uniforms) wear a clearly visible name tag for identification. In particularly dangerous situations, some other visible identifying feature (e.g. a personnel number) can be worn instead of a name tag. (2016)

The employer must ensure that the sexual autonomy, sexual integrity and privacy of employees are not endangered. Therefore, the employer must ensure that no pictures of naked people are hung in staff rooms. (2014)

#### Returns and releases

There must be more follow-up-care places throughout Austria. (2013) In this regard, the creation of follow-up-care places for juveniles and persons with multiple diagnoses must be a priority, particularly in the western *Laender*. To better match up supply and demand, allocation management must be optimised with respect to after-care facilities. (2017)

The *Laender* should offer supervised housing to persons who cannot return to an independent lifestyle due to age or poor health. (2017)

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### 3.6 Barracks

#### Infrastructural fixtures and fittings

When barracks are converted or when new barracks are built, military detention areas should be equipped with separate sanitary facilities in future. (2014)

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### 3.7 Police stations

#### Infrastructural fixtures and fittings

An endeavour should be made to fully partition the toilet area – even for short-term detentions – for new construction, new rentals and converted buildings. (2015)

Detention areas in police stations may only be occupied in accordance with their size. There should be no overcrowding even when there is an urgent need for space. At risk of overcrowding, detainees must be moved to other police stations. (2016)

Alarm buttons in detention rooms in police stations must be adequately labelled, so that detained persons can contact the guards. (2015, 2017)

Police stations must be hygienic, well-kept and equipped with functioning heating systems. (2014, 2015, 2016)

Police stations must have their own staff protection systems. (2016)

Police stations and police detention centres must have toilet facilities for female personnel. (2015)

Inmates in police stations must be given daily access to restroom sinks with warm water connections. (2014)

A permanently activated call bell system must be provided in police stations so that persons in police custody can always contact the guards. (2014, 2016)

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Police stations should be barrier-free. The existing staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities (*Bundes-Behindertengleichstellungsgesetz*) must be complied with. The approximately 300 police stations not contained in this plan must be relocated by 31 December 2019, or another organisational solution must be found. Barriers must be removed immediately in urgent cases. (2015, 2016, 2017)

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Detention rooms in police stations must be equipped with light switches that can be operated from the inside, but can also be deactivated from the outside for safety reasons. The Directive on Workplace must be altered accordingly. (2016, 2017)

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When police stations are being built or converted, examination rooms with an emergency call system should be set up. (2017)

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Existing basement detention rooms in police stations must have sufficient lighting and ventilation, be compliant with the fire safety regulations and guarantee the ability to make direct contact and a quick reaction in the event of an incident. They must be linked to the police stations. (2017)

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Detention rooms should not be located in the basement of new and converted detention rooms. (2017)

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Detention rooms in police stations must be equipped and furnished in a way that they cannot be vandalised. Fittings and components that can cause injury or be used as fixing points for strangulation must be avoided. (2017)

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Police stations must be hygienic and have personnel safety systems. Detention rooms must be sufficiently lit. (2017)

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All police detention centres must have a sufficient number of inmate cells that are suitable for single detention in accordance with Section 5 or 5b (2) (4) of the Detention Regulation (*Anhalteordnung*). (2017)

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All single cells must have an alarm button, which can be activated in the inmate cell. (2017)

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Each inmate cell must be equipped with an electrical outlet, which is switchable from the outside (with distributor sockets, if appropriate) in order to connect private devices such as radios or TV sets, thereby providing detainees with further occupational opportunities. (2015)

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Tiled security cells must have a (squat) toilet with flushing function, a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating). (2017)

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Single cells under Section 5 of the Detention Regulation must be equipped with a sink, a supply of hot and cold water, a sit-down toilet, a bed and a table with seating. (2017)

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The technical surveillance of specially secured inmate cells should be carried out using video surveillance that is independent of any light source and protects the prisoner's privacy. (2017)

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Police detention centres must be cleaned regularly and at proper intervals. It must be ensured that detainees have access to hygienic sanitary facilities. The mattresses and textiles issued to detainees must be clean. Privacy must be ensured through structural or organisational measures. The showers must be checked regularly (particularly the direction in which the shower water sprays) and repaired, if necessary (replacement of shower heads). (2014, 2017)

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Toilets in cells for multiple inmates must be designed so that they are completely separate from the rest of the inmate cell. Budgetary priority should be given to planning and implementing the construction of structurally partitioned toilet facilities in cells for multiple inmates at all police detention centres. Cells for multiple inmates without (fully) walled-in toilet areas may not house more than one inmate until they have been renovated. (2014, 2015, 2016, 2017)

The level of fire prevention in police detention must be adjusted to at least meet the standards for correctional institutions. The Federal Ministry of the Interior should develop an overall strategy for a uniform national design for preventive and protective fire safety and issue appropriate standards. (2015, 2016, 2017)

Sufficiently large rooms should be made available to private organisations (legal advice and repatriation counselling) to ensure that they can provide their services without being disturbed. (2017)

### Living conditions

Persons detained in police stations must also be offered vegetarian meals. (2016)

Social areas must be created for inmates serving an administrative penalty in police detention centres. (2014)

All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation. (2017)

Persons in detention pending forced return must be transferred to the open detention station at the police detention centre within 48 hours of admission. There should only be exceptions to open detention in cases agreed upon with the NPM. The cell doors in open detention should be continuously open from 8 a.m. to 9 p.m. Section 5a of the Detention Regulation should be amended to codify and clarify the principles for detention pending forced return in open detention stations. (2017)

It should be ensured that detainees are offered at least one hour of daily outdoor exercise. The interior and exterior areas of the police detention centre should be equipped for this purpose. (2017)

Detainees should be able to shower at least twice per week – and to shower daily under special circumstances. Detainees must be informed of their opportunity to shower. (2017)

The detainees at the (police) detention centres should have more varied employment opportunities. (2017)

Asylum seekers should be detained in open detention stations at police detention centres under the most benign conditions possible in accordance with Section 5a of the Detention Regulation. (2017)

Families of asylum seekers must always be held in detention together. Children must be provided with toys and items to occupy themselves, which are suitable for children. (2017)

Detained asylum seekers must be actively offered showers upon admission to the police detention centre. (2017)

### Contact with the outside

The Federal Ministry of the Interior must ensure that all detainees in police detention centres can receive 30-minute visits at least twice per week. Weekend visits should also be made possible. (2017)

Unless there are certain security concerns or unless prisoners in court custody are involved, visits with detainees at police detention centres should be in the form of table visits. Measures should be taken to ensure that table visits are not disturbed – including by structural conditions. (2017)

Detainees should be permitted physical contact with visitors in the form of non-sexual touching. A separate room with a table should be provided for visits with relatives who are minors. (2017)

An adequate supply of functioning (sports) equipment and board games should be provided, and detainees should be allowed to use leisure-time opportunities offered externally. (2017)

### Access to information within institutions and facilities

Repatriation counsellors cannot replace professional interpreters. Repatriation counselling and interpreting services must be provided by different persons. (2014)

Law enforcement officers should not call in the support staff of federal support facilities as interpreters to official acts. If required, professional interpreters must be deployed. (2017)

Prompt translation into 27 languages of the information in the “Infomat” for detainees awaiting forced returns in (police) detention centres and in the Vordernberg detention centre is necessary. (2014)

All detainees in police detention centres should be granted access to the outside world by providing radios and TV sets in communal rooms and offering (foreign-language) print media. (2017)

Except for detainees in specially secured cells, detained persons should be able to use their own personal radio and TV set in their cells. (2017)

### Measures that restrict freedom

A stay in a lockable inmate cell is only voluntary if there is no doubt that the affected person is aware that this stay is voluntary. (2014)

Detention at police stations must be seamlessly documented to ensure that the deprivation of liberty is verifiable. Under the Detention Regulation, the reason for placing an inmate in a specially secured cell must be documented in each individual case. To improve the process, a uniform detention book should be used nationwide. (2014, 2015, 2016, 2017)

The duration of any deprivation of liberty should be limited to what is absolutely necessary. Detentions by the police may not be extended because doctors cannot be reached within a reasonable period of time. Therefore, the Federal Ministry of the Interior has to take appropriate organisational measures. (2016)

Padded or rubberised inmate cells in police detention centres should be subject to constant personal surveillance, tiled security cells should be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance. (2017)

The reason, commencement and end of detention in a single cell and the attendance of a doctor during detention in a specially secured cell must be documented. (2017)

Detainees at the (police) detention centres must be held in specially secured cells for as short a period is possible, and such detention must be in accordance with the principle of proportionality. (2017)

Persons in detention pending forced return should only be held in the closed detention station of the detention centre in the cases agreed upon with the NPM. (2017)

Hunger-strikers should only be held in isolation on the advice of a doctor and only for legitimate security and health reasons. (2017)

#### Health care

A clear definition of the term “fitness to undergo detention” should be provided in the Detention Regulation. (2015)

Particular sensitivity should be used in determining whether a person is unfit to undergo detention due to mental impairment. If there is a clear indication of mental impairment on the medical history sheet or in the detention log, a psychiatrist must be called in. (2015)

A precise verbal exchange with the person being examined is necessary. An interpreter must be called in, if necessary. (2015)

Police doctors must have access to psychiatric expertise at all times, regardless of the day of the week and the time of day. (2015)

Upon request, detainees must be enabled to have a visit from a spiritual counsellor. Any restriction of the right to regular spiritual counselling must be proportionate to the reason for the restriction. (2016)

It is necessary to adopt a guideline setting out criteria for the provision of adequate health care to inebriated, substance-impaired or mentally ill persons and persons who are a danger to themselves. (2014, 2015)

In the event that there is a risk of self-harm, where medically necessary, transfer to specialist clinics should be preferred to accommodation in specially secured cells. (2015)

Before ending detention, police doctors should inform persons found to be unfit to undergo detention of any additional medical measures and possibilities, in order to recommend any follow-up care to the person released. (2015)

An interpreter or a bilingual person must be deployed when conducting a medical examination of a non-German-speaking detainee. (2014)

Information regarding the deployment of an interpreter or a bilingual person must be documented in the detention logs. (2014)

Every inmate must be provided with the medical history sheet in his or her native language regardless of any knowledge of German. (2014)

Medical examinations must be verifiably documented without any contradictions. (2013)

Medications may only be administered by trained personnel under a doctor's supervision. (2013)

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The initial medical examination of prisoners held in specially secured cells in police detention centres must be conducted as soon as possible. (2017)

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Hunger-strikers in detention pending forced return should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention station. (2017)

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If a detained person is suspected of being suicide-prone, this should be documented. Information should be provided to decision-makers, and an assessment should be quickly made by a (specialised) doctor. (2017)

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If a danger of suicide is identified, organisational measures should be taken to prevent access by the detained person to dangerous objects. (2017)

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After a suicide (attempt), life-saving emergency measures be initiated and therest of the rescue chain activated. Crisis intervention measures should be carried out quickly with fellow prisoners. (2017)

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Organisational guidelines should be issued to ensure that, after every suicide or (thwarted) suicide attempt, a standardised case analysis is made to optimise prevention work. (2017)

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The Federal Ministry of the Interior must ensure that all persons held in detention centres receive an adequate level of curative medical treatment based on state-of-the-art science. (2017)

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The medical and nursing staff of the detention centre must be able to access psychiatric expertise at any time. (2017)

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The existing spatial and staffing concept in the outpatient area of the detention centre should be adapted. Patient documentation in the outpatient area should be maintained in electronic form. (2017)

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Medical examinations and treatments of persons in police stations must be carried out alone with the doctor as a matter of principle. Law enforcement officers may only be called in to medical examinations in police custody for safety reasons, and they should not have made the arrest. (2017)

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In police stations, the presence of a law enforcement officer during the medical examination and treatment, the name and the reason for the presence of the called in law enforcement officer as well as information on which measures were taken to protect privacy must be documented in the detention log. (2017)

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In the case of disrobement during medical examinations in police stations, the law enforcement officer called in must be of the same gender as the detained person. (2017)

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In any case, law enforcement officers that are called in for safety reasons in police stations have to remain out of earshot and, if possible, out of sight. (2017)

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Insofar as possible, separate examination rooms should be provided for police stations. In any case, technical measures must be taken to guarantee a discreet medical examination. (2017)

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Non-smoker protection must be complied with in all police stations. Detention rooms may not be used as smoking rooms for staff. (2017)

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## Personnel

The actual personnel level in police stations should correspond to what is organisationally required, in order to avoid stress and heavy workloads, which can also affect detainees. (2016)

All activities engaged in and measures taken by private security personnel at Vordernberg detention centre should be documented. (2014)

Individual supervision and counselling from outside should be actively offered to law enforcement officers. Superior officers should promote the acceptance of supervision and counselling by staff and a positive attitude to this. (2015)

The law enforcement officers working in police detention centres have to use the formal form of address (“*Sie*”) when speaking to detainees. They have to maintain a proper conversational tone with detainees and comply with the requirements of the guidelines. (2016)

All police officers should be trained to recognise suicidal behaviour and risk factors in prisoners at an early stage and take suicide prevention measures. (2017)

After a suicide (attempt), there should be reflection on the events within a short period of time in the facility, and police and medical personnel should be invited. (2017)

The actual number of law enforcement officers working at the police stations should be equal to the planned number. Understaffing results in stress and overload, both of which also have a negative impact on the detainees. (2017)

There should be a gender balance between male and female law enforcement officers at police stations. The proportion of women working in law enforcement should be increased. (2017)

### 3.8 Returns and release of detainees

Families should not be separated during (forced) returns even if one of the parents is not fit for travel or cannot be found. If one of the parents goes into hiding in order to evade the official act, the authorities should first wait and exhaust all possibilities of finding all of the members of the family. (2014, 2015, 2017)

It is helpful to deploy additional female officers when deporting families with children. (2014)

Special consideration should be given to the best interest of children, especially small children, during (forced) returns. Flights should be scheduled at times that enable children to maintain their ordinary sleeping rhythm. (2015, 2017)

It should not be allowed to return or deport children without the parent who is their legal guardian. (2017)

The interests in carrying out a (forced) return – particularly if coercion is used – and the resulting risks must be in a reasonable relationship to each other. If necessary, the official act should be suspended, interrupted and/or deferred. (2015)

In every stage of the action, it should be determined whether human rights aspects have arisen that make continuation of the procedure seem inappropriate. (2015)

Guidelines for voluntary returns must be prepared to provide guidance to persons who wish to voluntarily return to their home countries. (2015)

In the case of pregnant women, (forced) return procedures should not take place in the period between eight weeks prior to the expected term and eight weeks after childbirth. (2017)

A psychiatric report and/or psychological preparation can prevent difficult situations. (2014)

If a person is fearful of flying, there should be a medical report, including the prescribed medicines. (2014)

A sufficient amount of baby food must be made available. Mothers must be able to breastfeed their baby without disruptions. (2014)

Good conduct of interviews with due regard for the situation should be standardised. (2014)

Professional interpreters should be used during (forced) returns. (2014, 2015)

The functions of the return counsellor and those of the professional interpreter must be strictly separated during forced returns. (2016)

Police officers must ensure that they take official actions themselves and that they are not taken by interpreters. (2016)

If the medical history sheet on health matters is not understandable, a professional interpreter must be called in to clarify open questions. (2016)

Requests for voluntary departure should always be given priority so that coercive measures can be avoided. (2017)

Release after termination of detention pending forced return and – if intended – placement with a support organisation should be made without delay. (2014)

### 3.9 Acts of direct administrative power and coercive measures

#### Police operations

Only timely notification of the NPM regarding upcoming operations enables observation by the commissions and compliance with the NPM's mandate. It is essential to raise awareness of law enforcement officers regarding the tasks and powers of the NPM and the decree issued by the Federal Ministry of the Interior which regulates the notification of the NPM concerning police operations. (2015)

The difference between voluntarily accompanying a police officer and an arrest must be carefully explained to the affected person. The affected person must be aware of the "voluntary" nature of this action. (2016)

The Federal Ministry of the Interior should make those responsible in the *Laender* police departments aware that the obligation for police stations to notify police operations to the NPM must be complied with. In this way, the NPM can fulfil its legal mandate. (2017)

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#### Demonstrations

When the police encircle a crowd, the persons in the crowd must be given clearly audible information. (2014)

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Encirclement should be for as short a time as possible. (2014)

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The police should have appropriate technical equipment to make understandable announcements to demonstrators which should give them an opportunity to comply with police orders. (2016, 2017)

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The police must carefully weigh whether encirclement is necessary, justified and proportional. Peaceful demonstrators should be given the opportunity to leave the area in due time. (2016)

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Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this. (2014)

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The successful “3-D strategy” (Dialogue – De-escalation – Drastic Measures) should be retained and further developed. (2014, 2015)

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#### Compensatory measures in border areas

Interpreters must always be available. (2014)

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The initial questioning of traumatised persons, who are often picked up during compensatory measures (asylum seekers, victims of human trafficking) must be done by professionals. (2014)

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Quick clarification regarding the reason for and the sequence of the official act is absolutely necessary to avoid uncertainty. (2014)

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Transportation for refugees must be arranged in a timely manner to avoid stays in the train station’s main hall, and thus a “public spectacle”. (2015)

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Heated rooms at major train stations should be set up for compensatory monitoring and control activities. (2015)

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The special transit area at the Schwechat Airport is a “place of deprivation of liberty” within the meaning of the OPCAT. Therefore, all human rights principles that apply to places of deprivation of liberty must also apply to the rooms in the special transit area. (2016)

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#### Local controls

Female officers should always be part of the operations team during monitoring and control activities with respect to prostitution and red light districts. (2015, 2017)

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The persons in charge of the operations and the employees must be sensitised regarding the identification of victims of human trafficking. (2015)

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In the course of inspections regarding basic reception conditions, all police officers must be respectful and polite, particularly when entering apartments, which are very private areas. Furthermore, they should wear civilian clothing. (2016)

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## Annex

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