



# Austrian Ombudsman Board

## Submission

### To the UN Committee against Torture

On the occasion of the 6<sup>th</sup> Periodic Report of Austria  
concerning the implementation of the Convention against Torture

23 October 2015

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## **1. Introduction (Mandate, NPM-Structure, Resources)**

### AOB

The Austrian Ombudsman Board (AOB) is accredited at the International Coordinating Committee of National Human Rights Institutions as Austrian NHRI.

The AOB independently monitors public administration. Anyone regardless of nationality or age can file a complaint about maladministration; the AOB can also initiate ex officio investigative proceedings. The AOB publicly reports its findings to Parliament and makes recommendations to the supreme administrative bodies.

Currently, the AOB is accredited at the ICC with B-Status. Due to the constitutional amendments made after the last review in 2011, the AOB now fulfils the Paris Principles regarding its broad human rights mandate, i.e. to protect and promote human rights, as well as regarding its cooperation with civil society.

### OPCAT Mandate

Since July 2012 the Austrian Ombudsman Board (AOB) fulfils the mandate to protect and promote human rights, granted to it under Austrian constitutional law. The Act on the Implementation of OPCAT (OPCAT-Durchführungsgesetz, Federal Law Gazette I, No. 1/2012) goes far beyond the mere implementation of the OPCAT and as the National Human Right Institution in Austria the AOB welcomes the significant extension of this mandate with regard to preventive work.

This very broad preventive mandate includes a mandate as NPM according to OPCAT (Austrian Federal Constitution, Art. 148a subsection 1), a mandate as independent monitoring authority according to Art. 16 para. 3 CRPD (Austrian Federal Constitution, Art. 148a subsection 2) as well as a mandate to monitor and concomitantly examine the behaviour of organs authorized to issue direct orders and carry out coercive measures (Austrian Federal Constitution, Art. 148a subsection 3).

### NPM

In order to be able to fulfil its tasks as the National Preventive Mechanism, the Austrian Ombudsman Board has set up six regional commissions.

These expert commissions have unrestricted access to all institutions and receive all the information and documents required to exercise their mandate. They also have, for example, comprehensive access to the medical data of prisoners in police detention centres. The

commissions can hold private conversations with people in detention or people with disabilities if they wish to do so.

The commissions use the inspection focal points stipulated by the AOB as guidelines for their work, which bears a great deal of responsibility. They report directly to the AOB about their visits and inspections and carry out assessments of human rights infringements and recommendations on how to prevent these infringements. If the AOB comes to differing conclusions, the commissions are entitled to add appropriate comments to the Ombudsman Board reports.

Each commission consists of a chairperson and members who are appointed by the AOB in line with international requirements on gender parity. The commissions are multi-ethnic and are composed of people from various disciplines. There are six regional commissions throughout Austria with a total of almost 60 part-time members.

Since September 2012 the visiting commissions conducted a total of 1392 inspections and observations (status 31 August 2015). They thereby visited 244 police stations, 134 prisons and correctional institutions, 188 child and youth welfare institutions, 205 institutions for persons with disabilities, 281 retirement and nursing homes, 118 psychiatric wards and 10 military barracks. They also observed 53 forced returns and 159 police raids, demonstrations and public manifestations.

All perceptions and findings of the commissions are documented in standardized protocols, which create the basis for the subsequent evaluation by the Austrian Ombudsman Board. If the AOB suspects an interference with or violation of human rights it will immediately initiate proceedings and contact the relevant authorities or social facilities in order to identify systemic flaws, elaborate possible solutions and remedy the situation expeditiously.

### Human Rights Advisory Council

The Human Rights Advisory Council was established in 2012 as an advisory body to the AOB. It supports the NPM regarding the clarification of monitoring competences and questions that arise during visits by the commissions that go beyond the problems inherent in an individual case.

The Human Rights Advisory Council consists of an independent chairperson and vice chairperson appointed by the AOB. Additionally, Non-governmental organizations and federal ministries can nominate 32 members and substitute members. It therefore also serves as a platform that enables institutional cooperation between the AOB and civil society.

### Website

The frequently visited website of the Austrian Ombudsman Board offers an own section about Preventive Human Rights Monitoring, providing detailed information about the mandate, the organisational structure and the activities of the Austrian NPM.

The website explains the main responsibilities of the NPM, outlines the methodology and guidelines for the visiting commissions, publishes selected cases and findings and provides the NPM's recommendations in a comprehensive manner. Functioning also as a communication platform for NGOs and Civil Society Organisations, the homepage of the AOB informs the public about the institution's activities in the protection and promotion of Human Rights and also safeguards full transparency of the National Preventive Mechanism.

## Personnel

In order to implement the OPCAT mandate, the AOB has received 14 additional permanent positions in order to fulfil these new responsibilities. Employees were deployed for the following responsibilities: six legal experts, five employees in administration, two persons in the OPCAT secretariat and one person for public relations work.

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

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

As of now, 90 staff members are working at the Austrian Ombudsman Board. Not included in the staff numbers are the members of the six commissions and the 34 members and substitute members of the Human Rights Advisory Council within the Austrian Ombudsman Board.

## Budget

In 2014, the budget of the AOB was 10.046.000 Euro, including the costs of the National Preventive Mechanism.

The use of resources allocated to the work of the NPM is determined by the members of the AOB in consultation with the six NPM commissions, ensuring full transparency. Given that the commissions' heads decide autonomously on the programme of work and the use of funds allocated to their commission according to the prioritization of the needs for fulfilling their mandate, financial independence of the NPM is guaranteed.

In 2014 a budget of EUR 1,450,000 was available for the commissions and the Human Rights Advisory Council. This includes expenses and remunerations related to the visits of the commissions, expenses of the Human Rights Advisory Council as well as trainings and workshops.

## **2. Civil Society Inclusion**

### Institutionalised Cooperation with NGOs via the Human Rights Advisory Council

As mentioned before, the Human Rights Advisory Council is a platform that enables institutional cooperation between the AOB and civil and Non-governmental organizations. 16 members and substitute members are nominated by NGOs and therefore take an active part in this advisory body.

The Human Rights Advisory Council advises the members of the AOB in the sector of human rights and makes recommendations regarding the definition of monitoring priorities and monitoring standards. Its responsibility is to advise the AOB regarding its new competencies, which includes the determination of general investigative focal points and consultation prior to issuing determinations of maladministration and/or recommendations. It further provides guidance on how to ensure a uniform course of action and how to establish investigative standards.

Furthermore, the Human Rights Advisory Council makes suggestions on how to ensure unity of action and has the right to be heard prior to the appointment of the members of the Commissions. As a forum for dialogue between representatives of human rights organisations and relevant Ministries, the Human Rights Advisory Council can adopt international human rights standards and incorporate them into national monitoring priorities.

These uniform monitoring priorities then become the benchmark for the Human Rights Advisory Council when it advises the AOB in the determination of maladministration and represent a guideline for the assessment of whether the provided recommendations adequately target the existing problems and adhere to the predefined human rights standards.

### NGO Forum and National Action Plan for Human Rights

The AOB annually hosts an NGO Forum to bring together civil society players and offers a platform for exchange of views on current matters. So far, the focus of these NGO meetings has been on the new mandate of the AOB as NPM and most recently they were dedicated to the National Action Plan for Human Rights (NAP-HR). The AOB is actively involved in the development of this plan and strives to include civil society in a transparent process. Therefore, the AOB established a communication platform on its website, providing general information and all statements submitted by NGOs during the consultation process. The AOB furthermore established a working group on this matter, consisting of representatives from the Government, the AOB and civil society.

Apart from the institutionalised cooperation through the NGO forums and the Human Rights Advisory Council, the AOB maintains numerous contacts with NGOs and civil society organisations. The AOB closely and regularly exchanges its views with a broad variety of civil society actors such as representatives of persons with disabilities, youth organisations or unemployment representatives.

Moreover, the AOB is holding joint press conferences with representatives of civil society on particular thematic issues.

### VA.trium and the educational mandate of the Austrian Ombudsman Board

The AOB always felt a deep moral obligation to promote public awareness on democracy, human rights and the rule of law and to inform the public about the importance of the protection and promotion of citizens and human rights.

As NHRI and NPM the AOB not only performs a preventive monitoring mandate but also aims at educating about the importance of human rights and spreading awareness on this topic. In doing so, it puts a special focus on young people and reaches out to pupils and students with a view to creating more awareness among this demographic group and to ensuring a better understanding of citizens and human rights among them.

In September 2014, the AOB inaugurated its new visitor centre "VA.TRIUM" to further open its doors and present itself to the public and to welcome all interested parties. The AOB's visitor centre is an important and relevant educational and awareness raising initiative, which marks the beginning of a new era for the AOB. It opens up new ways of informing the public about citizens and human rights and about how to make use of those rights. It encourages citizens to take an active part in the socio-political dialogue and fits perfectly into the AOB's daily work and area of expertise and competence.

In the framework of this project, the AOB offers tours of its premises and shares first-hand practical knowledge on citizenship, human and children's rights as part of political education, law subjects or history lessons. So far mainly schools or universities took advantage of this new service offered by the AOB, but guided tours are adaptable and can be offered to various target groups. Following the tour, one of the ombudsmen together with legal experts from the AOB make themselves available to answer questions on the legal practice and on the work performed by the AOB.

In addition to this, the AOB participates in a TV programme called "Bürgeranwalt" ("Advocate for the People"), which is shown by the public broadcaster ORF and has become an important platform for the AOB to continually inform the general public about its work and activities. Every week this TV-show enables the AOB to present individual cases to the public and many of them include problems and/or complaints which do not only focus on maladministration but also often deal with human rights-related issues.

### **3. Introduction of Criminal Provision of ‘Torture’ in Criminal Code**

Since 1 January 2013 an explicit criminal provision prohibiting torture was included in the Austrian Criminal Code (Strafgesetzbuch). Art. 312a of the Criminal Code sets a general frame of one to ten years imprisonment for committing the crime of torture. This can be extended to a life-long sentence if the victim was killed in the incident. The wording of the provision is incorporating that of Art. 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even though the creation of this criminal provision has been an important and positive development of implementing international obligations its proper application in practice will have to be closely observed.

### **4. Abolition of Net-beds**

Since 1999, the CPT has unambiguously reiterated that “net beds be withdrawn from service as a tool for managing agitated persons in all psychiatric/social welfare institutions and facilities in Austria”. This had not been realised in Vienna and Styria.

The NPM, as well as the Human Rights Advisory Council, have repeatedly addressed this problem area in the last two years. Also Ombudsman Kräuter has highlighted this subject in speeches at the National Assembly, in TV reports and press conferences with the goal of pushing through the implementation of international human rights standards in this regard.

These joint and persistent efforts were successful. In July 2014, taking into consideration the protection of human dignity and the obligations of the Republic of Austria under international law, the Federal Ministry of Health, as mutually agreed with the Federal Ministry of Justice, issued a decree to all Governors that the use of psychiatric intensive beds (net beds) as well as other “cage-type beds” no longer corresponds to European standards and is therefore not permitted.

In light of the necessary concomitant measures, the operators of medical facilities and nursing and group homes were given a one-year transition period until 1 July 2015, based on the Hospitalisation of Mentally Ill Persons Act and the Nursing and Residential Homes Residence Act. It is thus an important achievement from the Austrian NPM that since 1 July 2015 net-beds are now banned entirely in Austria.



## 5. Persons with disabilities

### Inclusion in society

The principle of inclusion and deinstitutionalisation formulated in the CRPD requires major changes in the area of care of persons with disabilities. This also of course applies to school enrolment of children with impairments. The commissions find the continued existence of disability-specific large-scale institutions to be highly worthy of censure.

Inclusion can only be put into practice, when the Federal Government and the Laender create coordinated framework conditions to ensure that people with disabilities are not housed in special institutions, but can freely choose where and how they would like to live. However, no comprehensive master plans for deinstitutionalization exist. Moreover, personal assistance for people with disabilities as an alternative to institutional care is not uniformly regulated Austria-wide nor are such alternatives being expanded.

These are serious shortcomings from a human rights standpoint. Tackling these shortcomings by dismantling large-scale institutions and increasing personal assistance would - according to international research - also prevent violence. To make this happen, the uncompromising determination of politicians and transparent plans and concepts with concrete time horizons are necessary.

Recommendation:

- comply with obligation to deinstitutionalisation in accordance with UN-CRPD
- Austria-wide, uniform regulations for assistance for people with disabilities
- development of comprehensive, overall concepts

### Work in occupational therapy workshops

Austria-wide there are an estimated 21,000 people with disabilities participating in special kinds of work in so-called “occupational therapy workshops”. Regardless of the type and scope of the work performed, such occupations are not considered to be regular employment relationships, are not paid and do not result in any kind of independent security under pension insurance law.

Pocket money amounting to an average of EUR 65.00 per month is paid out under criteria that are not transparent. The AOB presumes that such employment in the current form does not conform to the provisions of UN-CRPD, i.e that under Art. 27 of the UN- CRPD, persons with disabilities have the same right to work and employment as everyone else. The UN Committee on the Rights of Persons with Disabilities has also criticized this. Detailed remarks by the Human Rights Advisory Council on this problem – indicating that in extreme cases situations in “occupational therapy workshops” can amount to abuse or even exploitation - were published on the website of the AOB. The AOB took this input and advice of the Human Rights Advisory Council into account when issuing its recommendations.

Recommendation:

- ensure right to work in accordance with CRPD
- promote integration into normal jobs adequately
- pursue payment of regular wages in occupational therapy workshops

## **6. Retirement and Nursing Homes: Deprivation of liberty by way of medication**

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

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

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

If unsuitable or too many medications are given concurrently and are perhaps overdosed as well, this can result in serious behavioural problems and ailments. Interactions of psychopharmacological medications are difficult to assess and high doses of some pharmaceuticals can build up in the body as they are not metabolised and eliminated fast enough by the elderly.

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

Another aspect criticized by the NPM is that sometimes access to medical data held by external doctors of residents in stationary care in nursing homes is denied. This impedes a sensitive and adequate treatment of patients. The Ombudsman Board therefore recommends the amendment of the underlying legal provisions.

Findings:

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

## **7. Coercive measures and restriction of freedom in psychiatric hospitals**

Much too little is being invested in Austria in the development, research and use of preventive measures and alternatives to coercive treatment. Operators of hospitals and psychiatric institutions must ensure – as far as personnel, concept and organisation are concerned – that there be as many graduated response possibilities with regard to intervention intensity as possible before coercive measures are used.

The guiding criteria for professional action must be the principles of voluntary action, (assisted) self-determination, participative decision-making as well as intensive care and occupational activity – if necessary during acute crises at a ratio of 1:1. This requires resources, patience and personal attention, equal footing between staff and patient, respectful attitude vis-à-vis individual life patterns, as well as ongoing qualification of staff in dealing with crisis situations, violence and aggression.

De-escalation can take place at various different levels. It begins with prevention of aggression, in a conversation that seeks to calm an agitated patient and then ranging from conflict resolution without losers to restraints, which must be used with the least invasive impact on the patient while maintaining the patient's dignity. This is what the principle of proportionality under the Federal Constitution requires, according to which sovereign acts by the state in order to achieve an overriding goal in the public interest must be suitable, necessary and reasonable for those impacted by them.

Any coercive measure is excessive if a milder directive that is just as suitable is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel.

In day to day psychiatric care in most Austrian clinics, it is, for example, unfortunately not customary that patients be supervised 1:1 “constantly, directly and personally” after they have been restrained, as the CPT has been demanding for years. This intensive care must not be understood as a purely supervisory measure because it also offers a high degree of therapeutic potential; video monitoring systems and frequent rounds are not an equivalent replacement. More human attention and presence is required.

An improvement with regard to patients in psychiatric hospitals could be reached due to persistent efforts of the Austrian NPM. The commissions had found that psychiatric patients were sometimes taken care of by personnel of private security companies. This personnel however lacked the necessary training to treat these patients adequately. Following a recommendation by the Ombudsman the Federal Ministry of Health issued a decree prohibiting the participation of private security staff in the treatment of patients in psychiatric hospitals. A decision by the Austrian Supreme Court in this respect was also issued. Psychiatric patients may therefore only be cared for by persons who have received training for this very demanding work in accordance with statutory requirements.

Recommendation:

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

### Evaluation of conditions for restrictions of freedom

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

The frequency and the environment, in which restraints are used, are important indicators for sensitive treatment of patients and the protection of their fundamental personal rights. It would be necessary to focus attention in and outside of psychiatric wards on the use and acquisition of alternative measures (e.g. low-profile beds, sensor floor mats, etc.). In the opinion of the NPM, there is significant room for improvement in many places.

The configuration of the space and the organisational procedures in psychiatric institutions can contribute significantly to the prevention of violence and aggression. Aspects such as communication, information and transparency of action while maintaining privacy and self-determination are highly important, especially vis-à-vis people who are ill. Gender-specific issues and vulnerabilities always require particular attention. The commissions frequently found that patients were cared for in beds set up in hallways and were sometimes restrained there; this is an absolutely unacceptable violation of their human dignity and their fundamental personal rights. Furthermore, the commissions often found that restraining straps on beds were constantly visible to patients and no arrangements were made so that the restraints could not be seen by uninvolved third parties. This promotes the feeling of being helpless and at the mercy of the institution, creates a permanent threatening scenario and is perceived by the person affected as humiliating and shameful.

## **8. Training of Medical Personnel – Awareness Raising of Istanbul Protocol**

Physicians employed in hospitals play a crucial role in the investigation of police brutality towards potential victims. The Austrian NPM however detected a structural deficit because physicians often lacked awareness for a sensitive treatment of victims and for the necessity to immediately secure any evidence of ill-treatment.

Following a recommendation of the Austrian Ombudsman Board, the Federal Ministry of Health agreed to inform all hospital carriers regarding the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”) and to supervise its implementation in all Austrian Provinces.

It is also worth mentioning that members of the NPM commissions were involved in a project funded by the European Commission on “Awareness Raising and Training Measures for the Istanbul Protocol in Europe (ART-IP)”.

## **9. Correctional Institutions**

### Long lock-up times and lack of activities due to personnel shortages

A systematic exploration of the lock-off time within all 28 correctional institutions of Austria illustrated rigid closing times. The investigation revealed that closing times of eleven correctional institutions already started between 11:15 am and 12:00 am on weekends and bank holidays. This is caused by insufficient staff, inadequate staff management and lacking will for amendments caused by a very strong staff union.

Furthermore the NPM observed that social activities in some correctional institutions are extremely limited. Because of an extended night shift, all activities have to fit in a shortened daily schedule, which means that inmates have to decide whether they want to work or be in the fresh air. Although the Austrian Prison Act stipulates that inmates have the right to spend at least one hour in the open air every day, the reality due to staff shortages proves different.

The NPM emphasises rigid closing times and the lack of activity can trigger aggressions as well as depressions of inmates, especially in case of juvenile offenders. Time spent outside prison cells as well as activities avoid conflict and are more likely to prevent assaults among inmates. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. The NPM also stresses the need to provide education, training and employment within correctional institutions, offering activities which raise the morale of prisoners and provide them with useful skills for their future return to the employment market.

Recommendation:

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

Women in prison – gross discrimination evident

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

Among others, there were frequent complaints about monotonous work and too few opportunities to engage in reasonable recreational activities. While male inmates can engage in sports in almost all institutions and have gyms available to them, the leisure time activities of females are often limited to stereotypical work, such as crocheting or doing handicrafts. With respect to employment, women would only receive about half as much work (and pay). In addition, the work assigned is often cleaning and polishing, which is perceived to be discriminatory.

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

There have also been complaints about insufficient provisions for the specific needs of female prisoners. The Federal Ministry of Justice rejects the allegation that the prison administration does not take the specific needs of menstruating or menopausal women adequately into account. An adequate supply of hygienic articles is allegedly provided. The department showers can also be used several times a day. Unfortunately, there are no special qualifications for prison guards, who serve in female prisons or in the mother and child departments.

Therefore, the NPM has made the Federal Ministry of Justice aware of the Bangkok Rules (Principle 29 – 35), which state that personnel must receive special training for the special needs of female prisoners and especially for children in prison. The Ministry noted that the Bangkok Rules were not binding, but announced it would consider the development of a female-specific training module.

On the other hand, preventive gynaecological exams requested by the NPM were again rejected – with reference to the lack of a statutory right to such examinations. The current investigation is not yet completed. The NPM will also pay more attention to the situation of women in prison in the coming year

Recommendation:

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

Potentially suicidal inmate placed in single cell

At Leoben correctional institution, the commission encountered a detainee awaiting trial who was placed in a single cell with real time video monitoring after threatening suicide. The man suffers from a mental disorder that prevents placement with other inmates.

When the inmate expressed an intention to commit suicide, he was moved to a single cell with real time video monitoring for almost two months. There is currently a cell assignment programme in use at all institutions (VISCI – Viennese Instrument for Suicidality in Correctional Institutions). The programme identifies whether the particular person is suicidal (red), somewhat suicidal (orange) or stable (green). If the signal is “red”, interventions are made immediately.

In this case, single detention is prohibited. If suicidal acts have already been attempted or if the inmate is in an acute psychotic state and is a danger to himself and/or others, a temporary move to a video monitored security cell can be ordered in accordance with Section 103 (2) No. 4 of the Penitentiary System Act. Within 24 hours, the person at risk must be seen by a psychiatric physician, who will make a recommendation as to the inmate’s further detention.

In the specific case, the inmate was examined by a psychiatric physician at 14-day intervals and treated with medication. However, the risk of suicide could not be eliminated. Not until the inmate expressed reservations against his detention was he assigned to another single cell without video monitoring.

The NPM criticises the nature and duration of the detention in a single cell. In the opinion of the physician, the risk of suicide was a continuing one in this case. The VISCI assessment was in the “red” zone. Therefore, detention in a single cell, even one that is video monitored, is not a suitable type of placement to ensure that the potentially suicidal inmate is continuously observed over many weeks. If the special duty of care in these situations cannot be met in-house, the inmate must be immediately moved to a psychiatric institution.

Recommendation:

- A potentially suicidal inmate may not be housed in a single cell.
- Video monitoring does not rule out suicide by the person at risk during an unobserved moment

## Need for special audit and reform of detention of mentally ill offenders

In May 2014 a shocking case of neglect of a 74-year-old mentally ill inmate in the prison of Stein was discovered by the media. Allegedly, the bandages applied to the leg of the inmate have never been changed and his legs were not washed for several months. The inmate apparently also refused medical care. Despite the smell of decay emanating from the inmate's wounds, the prison guards had overlooked the situation for several months. Based on newspaper reports the AOB initiated ex-officio investigations in this case.

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

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

There will be a hygiene manager in every correctional institution. The NPM was also able to push through its request for a control or warning system for inmates who repeatedly reject medical treatment. Any such repeated rejection of a medical examination will be recorded in the integrated prison administration's MED Module (Medical Data) in the future and this will automatically trigger a report to the medical superintendent.

The NPM demands that the care and nursing of inmates, who need more care due to their age or their mental condition, is guaranteed in Austrian correctional institutions to the same extent as for patients in hospitals and nursing facilities. Apart from the caseload which is reflected in an increased need for personal attention by judicial officers and caregivers it should be asked in each individual case whether it is appropriate to place such persons in solitary detention when the frequent consequence of this is a lack of socialisation with other inmates.

The NPM points out the great importance that regular outdoor exercise has for maintaining and promoting the physical and mental health of inmates. Inmates who have a special need for care due to advanced age or physical or mental illness must be enabled to spend time outdoors. If necessary, they should even be required to exercise outdoors. It may be necessary to change conditions so that even fragile or sick inmates can spend time outdoors (e.g. the need for toilet facilities nearby for incontinent inmates, barrier-free access to the yard, etc.).



Recommendation:

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

### Healthcare and medical care in prison

Inadequate healthcare can result in situations of inhuman and degrading treatment. Therefore, the NPM again addressed the question of how to guarantee that medical care for inmates is at the same level as for persons at liberty. There is a need for professional oversight of the physicians at penal institutions and institutions for the detention of mentally ill offenders for quality assurance purposes. The NPM has long requested the establishment of an office of a medical superintendent, equipped with wide-reaching authority.

As an employee of the Care Department, the medical superintendent has access to the Federal Electronic File Management Project. The medical superintendent primarily assumes the healthcare tasks to be performed by the highest prison authority. This includes developing guidelines for the medical treatment of inmates, standards for equipping practising rooms, for medication and for the practice of prescribing medicines that require approval. Another area of responsibility is providing (operational and strategic) advice to the Federal Ministry of Justice and the prison administration on medical care matters. The tasks to be performed by the medical superintendent also include drafting and approving the statements regarding the medical care of inmates made by correctional institution medical services to courts, authorities, the NPM and diplomatic representatives.

Recommendation:

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

## **10. Allegations of Misconduct by Police Authorities**

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

The Austrian Ombudsman Board has not received additional powers to investigate racism and misconduct on the part of the police. As ombudsman institution the AOB is generally responsible for the investigation of maladministration, in cases where persons concerned lodge a complaint and have exhausted all other legal remedies.

From a human rights perspective it is particularly delicate for a state under the rule of law, when misconduct, abuse, and excessive use of force on the part of the police, which has the monopoly on the use of force and is equipped with wide-ranging competencies, occur. This is especially the case when furnishing evidence is difficult, otherwise common investigative measures were not taken and this behaviour is not adequately penalized.

In this context, it should be kept in mind, that the AOB currently has no powers to gather evidence by itself, to summon suspects or witnesses by coercive measures or to question witnesses under oath. An investigation procedure by the Ombudsman does therefore not provide the possibilities of adversarial proceedings. Due to these limitations a consistent investigation of allegations of misconduct can therefore not be ensured. This means that the AOB cannot assist potential victims of police abuses in the enforcement of their legal interests or the enforcement of financial compensations during pending court or administrative proceedings. The AOB is equally not competent to represent victims in interrogations, lodge appeals, examine court rulings etc. The AOB merely has the power to request the submission of statements by the examined authority, and the access to files.

In 2014 eleven complaints of alleged misconduct by the police were lodged. Four cases were inadmissible because of existing court rulings; in one case no maladministration could be found due to lack of evidence, one complaint was withdrawn by the complainant, three were still pending before the courts, and two are currently still being investigated.

In 2015 six cases of alleged misconduct were dealt with so far. In three of these cases the AOB started investigations ex-officio due to reports in the media – they are still being investigated. One complaint lacked substantiated indication of misconduct; another one lacked evidence and the third one is still pending.

Since the assumption of the OPCAT mandate in 2012, the Federal Ministry of Interior informs the AOB about all notifications of alleged misconduct by police officers. The aim is to recognize in which police stations the number of such allegations is particularly high. In 2014 332 notifications and in 2015 so far 248 notifications were made. Based on this information the commissions can schedule visits to these facilities and/or ask the Ministry of Interior for statements. The aim of preventive controls is, inter alia, to draw attention to possible structural shortcomings as well as the background of misconduct and the use of excessive force by police officers in detention areas, and to demand the adoption of measures to prevent police abuses in the future as much as possible. It is necessary without a doubt to analyse the causes of police abuses and to incorporate the findings into the training of police officers. The police must learn to understand their own misbehaviour as an opportunity to improve their work and not as a threat. To overcome obstacles immanent to the police, a new culture in dealing with mistakes in the police force has to be supported by the political sphere.

An individual examination of all the notified cases of alleged misconduct by the police is not prescribed by the OPCAT mandate. Nor is the AOB equipped with sufficient staff to deal with

several hundred cases of ex-officio investigations per year. However, individual complaints and notifications of the Ministry of Interior are merged.

At present, the preparations for the establishment of the first Austrian National Action Plan for Human Rights of the Federal Government are taking place, in which the Austrian Ombudsman Board plays a crucial role and offers a platform for the participation of the civil society in this process. The creation of an independent body to investigate allegations of racism and ill-treatment by the police or prison officers is such a proposal by civil society.

## 11. Unaccompanied Minor Refugees

It is shameful that despite continuing international conflicts and other threatening situations the quotas agreed between the Federal Government and the *Laender* regarding the Austria-wide distribution of persons forced to flee their countries are not being complied with. It continues to be the case that many refugees must remain in inadequate, poorly equipped mass housing with insufficient support services and without any prospects for the future for several years until their applications for asylum have been decided upon.

For unaccompanied minor refugees (UMRs) as a group, the situation is particularly precarious. At the beginning of October 2015 there were on average 1600 unaccompanied minor refugees in the first reception centre Traiskirchen. These persons under 18 have to remain in mass housing because the *Laender* have no adequate spaces where they could be cared for. Currently, there are about 6000 unaccompanied minor refugees in Austria. “Warehousing” these children in reception centres without any socio-pedagogical care, without providing proper placement in child and youth welfare facilities and without fulfilling caretaking obligations, is not only a violation under international law but also against Austrian constitutional law.

Moreover, the money available from the basic level of social services (*Grundversorgung*), which is only half of the amount available for other institutions providing aid to children and adolescents, cannot provide for sufficient trained pedagogical personnel, e.g. specialising in trauma. This results in de facto discrimination of children and adolescents solely due to their origin, although the *Laender* – as providers of assistance to children and adolescents – are responsible for unaccompanied minors.

The AOB demands that steps be taken quickly and that all institutions for UMRs in the *Laender* must comply with the applicable socio-pedagogical standards established in Austria. This should also be monitored in the future by children and youth welfare organisations. Individual clarification of needs and the assignment of child refugees to shared accommodations or residential homes, which must be set up in the *Laender*, should be undertaken child-appropriately by clearing organisations. UMRs require socio-spatial integration, must receive help in learning the German language and in their schooling and must have full access to all vocational training, not just to those occupations where there are shortages as is currently the case.

Recommendation:

- accommodate UMRs in child-appropriate, shared accommodations or residential homes etc.
- socio-spatial integration for UMRs (language lessons, schooling, vocational training)
- accommodation must comply with Austrian socio-pedagogical standards
- monitoring through child and youth welfare organisations

## 12. Forced Returns

Deportations and repatriations are very stressful for those affected. The circumstances must therefore be designed in a way that makes the official act bearable. This requires suitable interpreters, good communication skills of the involved officers as well as the provision of health care.

As a result of a number of observations of forced returns, the following criticisms were made:

A translation must always objectively reflect the contents, which is why it is out of place if the interpreter injects himself/herself into the conversation or even begins to conduct his/her own conversation. However, the complete absence of interpretation can result in serious uncertainty and misunderstandings on the part of both officials and the persons involved.

In the case of medical assessments, in some cases, no anamnesis was obtained from the patient. The NPM objected numerous times to the fact that in cases of hunger strikes no psychiatrist was consulted. The NPM also considered problematic the absence of anamnesis in cases of fear of flying as well as the omission of clarification about possible side effects of medication for the fear of flying.

The authorities should always give adequate consideration to the health care of chronically ill persons during (forced) returns. Following the suggestion of a commission, the NPM asked about the extent to which care on the other side of the border is taken into consideration in these official acts. The Federal Ministry of Interior pointed out the medical needs must be communicated to the target state when persons are transferred to another EU member state under the Dublin III Regulation. When a forced return is made to a non-EU state with no such agreement, there is no legal basis for an exchange of sensitive health data. With respect to Art. 3 of ECHR the proceedings prior to forced returns must determine whether there is a possibility of treatment in the target country and thus whether measures to end the person's stay in Austria are permissible.

In a case of a joint forced return of three families with children, too few officials were deployed. Three forced returns with children involved, of which at least one return was problematic due to massive resistance, should not have taken place at the same time with this number of officials. Despite the existing friction between preparation of the party involved and their right to personal freedom, the people being returned also have to be adequately prepared psychologically for their return.

The NPM criticised numerous times that in the case of forced returns, the separation of families was condoned. The authorities did not take Art. 8 of ECHR sufficiently into account. The welfare of children and the effect on family life must always be taken into consideration. In doubtful cases, the protection of children and family life must take precedence over the interests of the state in removing or deporting a family.

Recommendation:

- Separating families during (forced) returns should be avoided.
- It is helpful to deploy additional female officials when deporting families with children.
- A psychiatric report and/or psychological preparation can prevent difficult situations.
- If a person is fearful of flying, there should be a medical report, including the prescribed medicines.
- If a person being removed or deported is chronically ill, the authorities in the target country should be informed of the person's medical needs if there is a legal basis for doing so.
- A sufficient amount of baby food must be made available.
- Good conduct of interviews with due regard for the situation should be standardised.
- Professional interpreters should be used during (forced) returns.