

Austrian Ombudsman Board  
Annual Report  
**2018**

on the activities of the Austrian National Preventive Mechanism (NPM)  
Protection & Promotion of Human Rights

# Preface

This report documents the activities of the National Preventive Mechanism (NPM) in 2018. More than 500 monitoring visits were carried out, most of them in public and private institutions and facilities where the freedom of individuals is restricted. The responsible ministries, supervisory authorities and the affected institutions and facilities were informed about the results of the visits in detail. The NPM also strongly advocated in the year under review that the identified deficits should be rectified as quickly as possible. A large number of presentations and information events were held with the goal of raising public awareness and placing the protection of human rights on a broad basis. International cooperation was further intensified above and beyond these nationwide activities.

All of these measures have a common objective: they serve to protect persons from being treated in an inhuman or degrading manner. Human dignity is at considerable risk in places where persons' liberty is deprived in particular, such as in correctional institutions, police detention centres or retirement and nursing homes. Persons living in such places have little chance to be heard, as they have only limited contact to the outside world. To a large extent, they are at the mercy of the staff of the respective institution or facility or they are, at least, in a dependent position. This inevitably leads to precarious situations.

The essence of the preventive mandate is to detect these risks as early as possible and to help in avoiding maladministration before it occurs. The regular and mostly unannounced monitoring visits play a central role here. They are considered a particularly effective mechanism in preventing violation of human rights. All visits are made on the basis of the monitoring methodology developed by the NPM and according to harmonised standards. Special attention is paid to identifying risks. In this way, it is possible to answer the question as to which preventive measures are necessary to avert the violation of human rights or, at least, to render such violations less likely. The information gathered and observations made by the commissions are documented in comprehensive visit reports; a total of 3,134 have been drafted since 2012.

The NPM has been collecting recommendations that summarise the results of the reports of the commissions since the very beginning. A total of 179 new recommendations were formulated alone in the year under review 2018. These recommendations are designed to provide orientation to the institutions and the staff working there, on which human rights standards have to be guaranteed. To this end, it is necessary to increase the awareness of all those involved for what treating persons with human dignity entails.

The individual activities of the NPM are strategically aligned to interact with one another and be able to trigger a change process in the institutions and facilities, with those responsible and in society. The promotion of human rights protection is a time-consuming process. This is evident from the fact that many deficits are still observed on the monitoring visits, which was the case in 82% of the visits in 2018. The most serious and frequent deficits are covered in detail in this volume. They should not be trivialised as isolated incidents, as, in most cases, they are symptomatic for the system in which the institutions and facilities operate.

This report also documents many positive developments and improvements that could be achieved. Seven years after the NPM has been granted the human rights mandate, it can be safely said that the interaction between the NPM and the institutions and facilities that it monitors has improved considerably. One indication for this is that the recommendations of the commissions are more frequently received as helpful feedback from the outside and suggestions for improvement are quickly adopted. This is attributable not only to the professionalization of the work, but also to the higher awareness level of the NPM. The preventive work also profits from the long-standing commitment to an international network. The exchange of information with similar organisations facilitates continued development and alignment with international experience, which also benefits the Austrian institutions.

We would like to take this opportunity to thank the commissions for their commitment, and the Human Rights Advisory Council for their advisory support. We would also like to extend our sincere gratitude to all of our staff who make an enormous contribution to protecting human rights in Austria in their day-to-day work.

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

Günther Kräuter

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Peter Fichtenbauer

Vienna, June 2019

# Introduction

This volume provides a summary of the work of the AOB and its commissions in 2018. Since it has been granted the OPCAT mandate, the Austrian NPM conducts about 500 monitoring visits every year; 520 were carried out in the year under review. Due to the large number of visits conducted it is not possible to report the results of the monitoring in detail. This volume thus concentrates on the key statements and on the priorities set in 2018. Some of the depicted cases of maladministration were already the subject of previous reports. These were deliberately included once again, as this report serves to draw public attention to the deficits and to expedite reform processes. Realistically speaking, it can be assumed that where deficits are systemic in particular, the reforms require a certain lead time despite the considerable efforts made on the part of the NPM.

This volume is divided into three sections: a summary of the overall activities of the NPM is depicted in chapter 1. The preventive mandate of the NPM described at the beginning sets the relevant framework. Details on the organisation of the NPM, the personnel situation and the budget follow. The nature and scope of the monitoring work is broken down into detail using statistics. Information is provided on how many visits were conducted in which institutions and facilities, how these were distributed across the individual *Laender* and in how many cases shortcomings in the human rights situation were identified. The relevant areas subject to criticism are also indicated. The final section presents the international activities which are now established thanks to numerous NPM networks and guarantee both an ongoing sharing of experience and an approach which is as standardised as possible.

The observations of the commissions and results of the investigations are covered in detail in chapter 2. The focus is on conditions that are seen critical from a human rights point of view and which indicate systemic deficits. In accordance with the preventive approach set forth in the mandate, these are deficits that can result in the violation of human rights. The discussion of the individual problem areas is followed by concrete recommendations by the NPM. Outside of the scope of systemic deficits, isolated cases are documented, where particularly critical situations were observed.

The work of the NPM is very solution-oriented. In concrete terms, this means that the work of the NPM is not only comprised of conducting visits. After the visits, contact is made and negotiations are held with the responsible supervisory authorities and the affected institutions and facilities with the aim of effecting improvement. The Report also takes account of this by making reference to the reactions of those responsible and highlighting positive developments.

All of the recommendations made by the NPM since it has been granted the mandate are listed in the last chapter. They are structured according to the type of facility and focus of content. The recommendations should be seen as a kind of instruction manual for safeguarding guarantees covered by human rights. They are designed to make a contribution to preventively averting violations of human rights.

# 1. Overview of the National Preventive Mechanism

## 1.1. Mandate

The Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz* – Federal Law Gazette 1/2012) was enacted in Austria in order to conform to the stipulations set down by OPCAT. With the coming into force of the same on 1 July 2012, the NPM, which was set up at the same time, and its six commissions took up their work. The commissions visit places where liberty is deprived, observe and monitor the bodies empowered to issue direct orders and carry out coercive measures, and perform the tasks set forth in the UN Convention on the Rights of Persons with Disabilities (CRPD). With the OPCAT mandate, the Austrian Ombudsman Board (AOB) was upgraded to the “Human Rights House of the Republic of Austria” and has, since then, the constitutional obligation to work for the “protection and promotion of human rights” (Article 148a (3) of the Federal Constitutional Law – *B-VG*). According to the Association for the Prevention of Torture (APT), the construct of the Austrian NPM is unique. That the Austrian model with its relatively large number of commission members (currently 57 in total) enables highly frequent visits nationwide and a diverse range of expertise within the individual commissions is seen as an advantage.

The commissions carried out 520 monitoring visits in 2018. Most of the initial visits were to institutions for persons with disabilities, retirement and nursing homes, child and youth welfare facilities and police stations. Besides, it has been possible to visit many of the classic places of detention such as correctional institutions, police stations and police detention centres since 2012. The visit reports drawn up by the commissions on their monitoring activities contain both observations and human rights assessments including derived recommendations for rectification for the AOB. All visits are conducted on the basis of the monitoring methodology developed by the NPM. Systematic follow-up is used to track whether recommendations were implemented and concrete improvements brought about in practice. The specifications for the monitoring framework and methodology can be accessed on the website:

[http://volksanwaltschaft.gv.at/downloads/934a1/Pr%C3%BCfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH\\_20160701.pdf](http://volksanwaltschaft.gv.at/downloads/934a1/Pr%C3%BCfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH_20160701.pdf).

However, the efficacy of the NPM is not least dependent on its acceptance by the institutions and facilities and their respective legal entities. The owners and/or operators of the visited institutions and facilities and the cooperation partners of the NPM invite the NPM and usually willingly accept invitations to a constructive dialogue with the NPM (under Article 22 of the OPCAT). In addition to their monitoring and control work, the commissions held 16 round-table meetings with institutions and facilities or their senior administrative departments. Lobby groups, umbrella associations, but also organisational functionaries of social institutions contacted the NPM 14 times in the year under review.

As already announced in the NPM Report 2016 (p.11), a training module on the work of the NPM was implemented in the two-year police training programme. NPM staff held a total of 50 classes in 2018: 16 classes in the St. Pölten training centre, eleven classes in Vienna, six classes in Absam, five classes in Traiskirchen, four classes in Salzburg and Graz respectively, and two classes in Eisenstadt and Ybbs respectively. Additional training courses are set for 2019.

Prison staff have also been taught about the preventive and *ex-post* control work of the AOB as part of their training since 2017. There were five teaching sessions at the training centres in Vienna, Stein, Linz and Graz-Karlau in 2018.

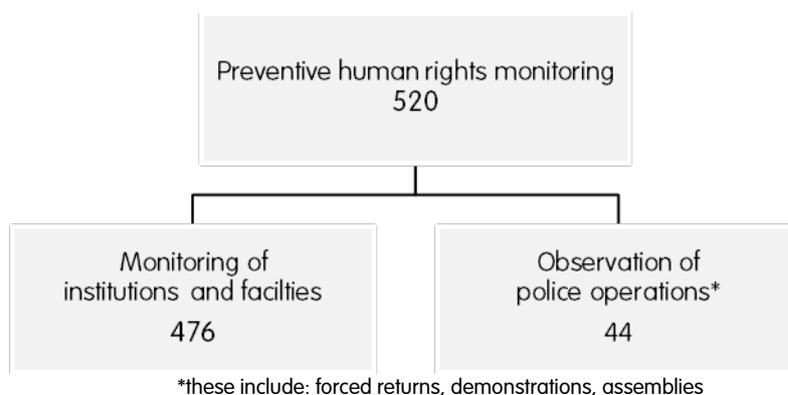
The NPM is also obliged to inform the public about its responsibilities and the results of its work and fulfils its obligation to inform at events, lectures and training programmes.

Only human rights that are recognised and understood can take effect. The medium-term objective of the public relations work of the AOB is thus to reach persons living in institutions and facilities, their relatives, trusted persons as well as the staff working there, and to make them allies. For this reason, the Austrian NPM has issued special brochures that contain all of the recommendations resulting from visits to correctional institutions, retirement and nursing homes, and institutions and facilities for persons with disabilities. These brochures help in reacting specifically to target groups and are thus of considerable interest.

## 1.2. Monitoring and control visits in numbers

The six NPM commissions carried out 520 visits throughout Austria in the year under review. They monitored institutions and facilities in which individuals are detained and observed police operations. The visits were unannounced in most cases and announced in only 6.2% of the cases.

**Monitoring and control activities of the commissions in 2018**  
(absolute figures)



A total of 476 visits were conducted in institutions and facilities. The vast majority were in institutions and facilities that can be categorised as so-called “less traditional places of detention”. These include retirement and nursing homes, child and youth welfare facilities, psychiatric departments and medical facilities. Many of the institutions and facilities were visited more than once in the year under review, in particular correctional institutions and police detention centres. The number of visits is thus not equivalent to the number of institutions and facilities visited. The visits lasted seven hours on average.

The commissions also observed and accompanied police operations 44 times. These were predominantly major police operations, raids; football matches where trouble was expected, forced returns and demonstrations.

In addition to the monitoring and control activities, the commissions held 16 round-table meetings with institutions and facilities and senior administrative departments.

The following table breaks down the visits in detail, indicating the distribution of the visits across the different institutions and facilities in the *Laender*. The total row indicates how often each type of institution/facility was visited. It is evident that retirement and nursing homes, facilities for persons with disabilities and child and youth welfare facilities were visited most frequently. This is because these institutions and facilities comprise the majority of those to be monitored by the NPM. Police operations are shown in the last column of the table.

**Number of visits in 2018 in individual *Laender* according to type of institution or facility**

	polic e	ret + nur.h.	youth	inst. f. disabl.	psych. wards	corr. inst.	oth ers	pol. op.
Vienna	18	22	35	22	8	8	3	16
Burgenland	2	4	9	1	0	1	0	1
Lower Austria	3	30	21	18	7	13	10	0
Upper Austria	10	20	8	11	2	4	1	3
Salzburg	7	7	3	4	0	1	1	10
Carinthia	7	3	5	3	2	2	1	1
Styria	12	14	5	9	18	10	2	3
Vorarlberg	3	2	1	5	0	2	1	2
Tyrol	5	20	10	11	5	4	0	8
<b>Total</b>	<b>67</b>	<b>122</b>	<b>97</b>	<b>84</b>	<b>42</b>	<b>45</b>	<b>19</b>	<b>44</b>
<i>unannounced</i>	<i>66</i>	<i>122</i>	<i>96</i>	<i>84</i>	<i>42</i>	<i>43</i>	<i>18</i>	<i>17</i>

**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/hospitals

corr.inst. = correctional institutions

others = asylum seeker accommodation, barracks etc.

pol.op. = police operations

The total number of visits per *Land* is documented in the following table. Clear distinctions are evident from the distribution of the visits across the *Laender*: most of the visits were in Vienna and Lower Austria. It must be taken into consideration here that these are the two most populous *Laender* with a very high density of institutions and facilities.

**Number of visits in 2018  
in the individual *Laender***

	2018
Vienna	132
Lower Austria	102
Styria	73
Tyrol	63
Upper Austria	59
Salzburg	33
Carinthia	24
Burgenland	18
Vorarlberg	16
<b>Total</b>	<b>520</b>

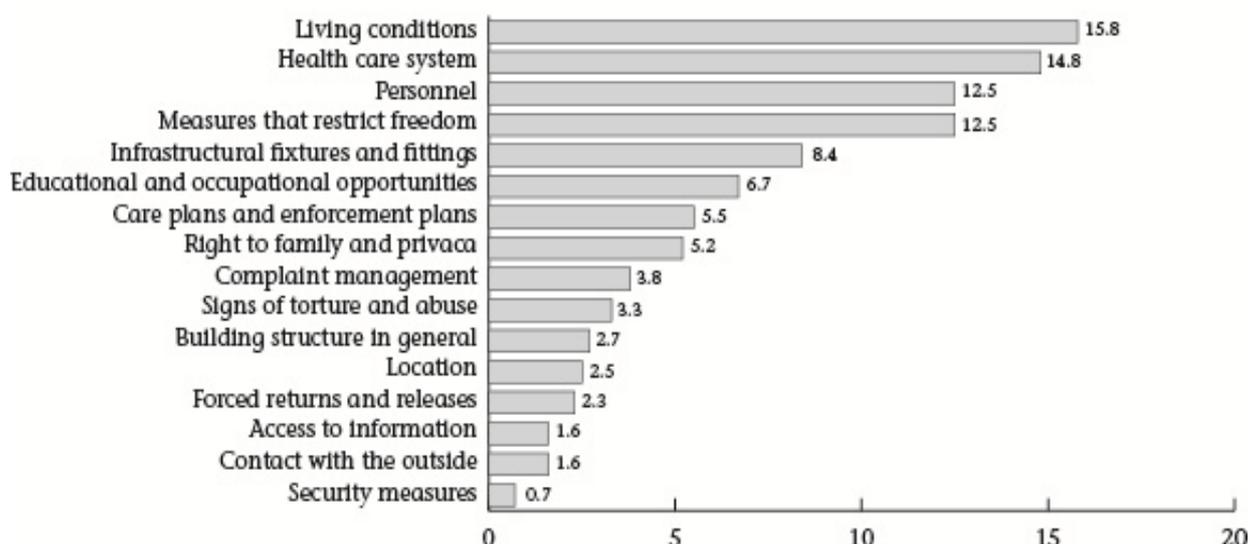
The results of the visits are documented by the commissions in comprehensive visit reports. The commissions criticised the human rights situation on 413 visits to institutions and facilities and on 15 police operations. There were no grounds for criticism on 92 visits (63 institutions and facilities and 29 police operations). This means that 82% of the visits uncovered deficits. The observation of police operations resulted in criticism less frequently on a pro rata basis than the visits by the commissions to institutions and facilities (34% compared to 87%).

The NPM examines these cases based on the observations of the commissions and contacts the competent ministries, supervisory authorities and also the institutions and facilities themselves in order to effect improvement.

### Proportion of visits in 2018 with or without criticism

	with criticism	without criticism
Monitoring of institutions and facilities	87%	13%
Monitoring of police operations	34%	66%
<b>Visits in total</b>	<b>82%</b>	<b>18%</b>

The following graph gives an impression of the topics criticised by the commissions and shows the respective percentage share of all criticisms. It should be noted in this context that several areas are examined on each visit and it is therefore possible that several deficits can be identified on the same visit. The most frequent reasons for criticism were living conditions, including sanitary and hygiene standards, food and 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.



### 1.3. Budget

In 2018, 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 1,264,000 was budgeted for reimbursements and travel expenses for the commission members alone and around EUR 83,000 for the Human Rights Advisory Council. Around EUR 103,000 was available for workshops for the commissions and the personnel working in the OPCAT area as well as for other activities. It was therefore possible to avoid

budget cuts, thanks in particular to the National Council as the legislative body in financial matters but also the Federal Ministry of Finance. Both of them emphasised the necessary financial independence for the preventive activities and showed understanding for a sufficient budgetary allocation to the Austrian 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 papers and documents in order to support the NPM with information from similar institutions. Staff members who are entrusted with NPM responsibilities are legal experts who have experience in the areas of rights of persons with disabilities, children’s rights, social rights, police, asylum and the judiciary.

### **1.4.2. The commissions**

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT, the NPM must entrust the multidisciplinary commissions it has set up with the tasks they have to perform (see Annex). If required, the regional commissions may involve experts from other specialist areas provided that members of another commission are not available for this purpose. The commissions are organised according to regional criteria. They usually consist of eight members and one commission head respectively.

The membership of three commission heads and 21 commission members who had been active for the NPM since its inception expired on 1 July 2018. The principle of the partial replacement of commission members every three years is set forth by law in the NPM. In this way, it promotes openness and the ability of the system to learn new perspectives without ruling out the possibility of being reappointed.

Job tenders were published in newspapers in January 2018 to ensure timely appointments. Also, the attention of numerous professional associations, lobbies and NGOs on federal and regional level was drawn to these announcements to be able to undertake a gender-balanced, pluralistic, multidisciplinary and multi-ethnic appointment.

As in 2012 and 2015, there was an encouragingly large amount of interest in working with the OPCAT mechanism. A total of 44 applications for the three vacant commission head positions were submitted on time; 280 persons with a wide range of qualifications and professional backgrounds were interested in becoming members of the commissions. All of the appointments were carried out according to a rigorous selection procedure and after a hearing by the Human Rights Advisory Council. Although the commissions were and are free to add missing or additional specialist expertise by involving external official experts, the new appointments ensure that every commission has at least one permanent member with expert knowledge of psychiatry, care and pedagogy.

Reinhard Klaushofer, Head of the Austrian Human Rights Institute in Salzburg, was reappointed as Head of Commission 2 (Salzburg/Upper Austria). Andrea Berzlanovich was appointed as

Head of Commission 4 as was Gabriele Aicher of Commission 6. The NPM would like to take this opportunity to thank Ernst Berger and Franjo Schruiff for their work as commission heads, as well as all other former experts for their high level of personal commitment.

### 1.4.3. Human Rights Advisory Council

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

## 1.5. International collaboration and cooperation

The NPM is always interested in a spirited sharing of experience with other NPMs.

The European NPM Forum was initiated on a joint project between the EU and the Council of Europe. In March 2018 the Council of Europe, the European Union Agency for Fundamental Rights (FRA) and the Austrian NPM organised a meeting of NPM representatives from Albania, France, Greece, Italy, Lithuania, Slovenia and Austria. Together with experts from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the UN Subcommittee on Prevention of Torture (SPT), the Association for the Prevention of Torture (APT) and the Ludwig Boltzmann Institute for Human Rights (*BIM*), they discussed the possibility of setting up a database with which to exchange national standards and NPM recommendations for correctional institutions.

It has not been clarified, how such a database could guarantee a transparent overview, objectivised through the work of European NPMs, and how the available information can contribute to judicial decisions when transferring detained persons inside the EU.

A further meeting of the European NPM Forum took place in Ljubljana in April to mark the occasion of the 10-year anniversary of the Slovenian NPM. The focus was on how the impact of NPM activity can be best evaluated and analysed. An expert from the Austrian NPM took part in this meeting.

The Austrian NPM has been a member of the South-East Europe NPM Network (SEE NPM Network) since October 2013. The networking of institutions in the Southeast European area promotes the exchange of knowledge and experience as well as mutual support.

In 2018, the NPM from Montenegro took over the chair of the SEE NPM and organised two meetings in Podgorica. The first meeting focused on the topic of suicide prevention in detention. It became evident from sharing experience that there is often insufficient data in this area. Information on attempted or completed suicide is not forwarded automatically but has to be actively queried during visits to the institutions and facilities respectively. The colleagues from different countries showed great interest in the Viennese Instrument for Suicidality in Correctional Institutions (VISCI) system presented by the Austrian NPM, which is used when screening inmates in correctional institutions.

The second SEE NPM Network meeting was organised in close cooperation with the Council of Europe within a project on the topic of effective alternatives to the detention of migrants (learning,

sharing and applying). Legal and practical aspects in particular were the subject of debate. The attending NPMs exchanged information on their monitoring methods and discussed existing priorities and challenges.

The 4<sup>th</sup> session of the International Ombudsman Institute (IOI) training series for NPMs, which was set up in 2015, was held by the Danish Ombudsman institution in 2018. It dealt with the topic of “NPM recommendations” and how NPMs can reinforce their recommendations as well as track and expedite their implementation. As in previous workshops, the experts from the UN Committee against Torture (CAT), the UN Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) contributed their extensive knowledge to the discussion with the participants. In his function as IOI Secretary General, Ombudsman Kräuter opened the event.

In March 2018 a conference organised by the Council of Europe, the German National Office for the Prevention of Torture and the Austrian NPM took place in Trier on the topic of monitoring in retirement and nursing homes. The focus of the conference was how NPMs can work towards reducing the restriction of freedom. Reinhard Klaushofer reported about observations made by his commission, and Andrea Berzlanovich presented in short films and powerful images the considerable health impairments that can result from restraints.

The communication training organised by the Austrian NPM with actors who were simulating patients, specially trained by the Medical University of Vienna, received great resonance from the participants. The NPM has started using and adapted this practice-oriented training for its work, tried and tested it with its own commissions and will continue to use it in other training programmes. The learning content covers starting a conversation and talking to traumatised, agitated or cognitively impaired persons. The learning effect is reinforced through analysing critical conversation sequences in the group and receiving feedback from the actors.

The NPMs from the German-speaking countries (Germany, Austria, Switzerland) have been meeting to share their experience and ideas every year since 2014. The 2018 meeting took place in Vienna and focused on housing persons with disabilities in institutions and facilities in connection with the general topic of the UN Convention on the Rights of Persons with Disabilities and the OPCAT mandate. Representatives from the regional ombudsman offices of Tyrol, Vorarlberg and South Tyrol were invited to take part for the first time. The regional ombudsman of Vorarlberg is also the regional NPM.

In December 2018 the APT, together with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), organised the second NPM meeting for the OSCE region, at which Austria was also represented. The meeting brought NPMs, representatives from civil society and experts from relevant international and regional institutions together. The purpose of this meeting was to expand knowledge of the respective mandates and responsibilities, to discuss cooperation models for the prevention of torture in the OSCE region and, in particular, to address the topic of detaining and arresting migrants.

In November an NPM expert accepted the invitation from the Swiss Centre of Expertise in Human Rights (SCHR) to take part in the 4<sup>th</sup> symposium on the topic of police custody in Berne. The organisation and experience with this topic in Austria from both the monitoring and preventive perspective were the subject of presentations.

The Austria NPM also practices a close, bilateral exchange of experience with the colleagues from the Czech NPM. There was an initial, general sharing of experience in Vienna in the previous year. In 2018, the Czech NPM organised a joint visit to a regional court prison in Brno, in which inmates and detainees awaiting trial are housed. The Austrian NPM then invited the Czech colleagues to a follow-up visit in Vienna. Part of this meeting included a joint visit to the Korneuburg correctional institution followed by a general discussion of the challenges and problems associated with monitoring correctional institutions.

The bilateral exchange with the Hungarian NPM was also further intensified in 2018. After visiting a Hungarian prison last year, the Hungarian ombudsman László Székely returned the visit to Austria in December 2018.

## 1.6. Report of the Human Rights Advisory Council

The Human Rights Advisory Council met six times at plenary meetings in 2018. In addition, the Human Rights Advisory Council held working group meetings and prepared statements on the preventive protection of human rights as well as draft recommendations of the NPM. Furthermore, the Human Rights Advisory Council evaluated visit reports and analysed the resulting monitoring priorities.

In the year under review, the Human Rights Advisory Council made statements of opinion based on material presented by the NPM on the following topics. The relevant expertise was published on the website:

- Barrier-free accessibility in correctional institutions
- Consequences of the suspected nursing home scandal in Kirchstetten from the preventive human rights perspective
- Barrier-free public sanitary facilities in police stations

The working groups of the Human Rights Advisory Council worked on the following topics in 2018:

- Expulsions and prohibitions to return to inpatient care facilities
- Lock-up times in correctional institutions
- Mandate and working principles of the Human Rights Advisory Council
- Notes on the visit reports of the commissions

Furthermore, the Human Rights Advisory Council exercised its advisory function at meetings on the following topics:

- Prioritisation on the sexual determination of persons with disabilities
- Prioritisation on the penitentiary system and the detention of mentally ill offenders (penitentiary system for women, health and suicide prevention, treatment of substance use disorder and the incarceration of juvenile offenders)
- Prioritisation on call bells that can be deactivated, visibility of alarm buttons in detention rooms at police stations and fire protection in police detention; public announcements at demonstrations and the use of body cameras
- Constitutional requirements of restraints in psychiatric wards

- Review of the work of the first term of office of the Human Rights Advisory Council

The Human Rights Advisory Council prepared recommendations on the following structural human rights issues:

- Determination of maladministration and recommendations of the AOB to the regional government of Burgenland in connection with the lack of standards for the care of children and adolescents within the framework of child and youth welfare

The Human Rights Advisory Council also played an active role in the appointment process for the commission heads and members beginning on 1 July 2018 by participating in hearing the applicants.

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

## 2. Findings and recommendations

### 2.1. Retirement and nursing homes

#### 2.1.1. Introduction

A total of 122 retirement and nursing homes were visited by the commissions in the year under review 2018.

As in recent years, the NPM views the disparity between the increasing challenges and the amount of resources actually available to these institutions and facilities as a serious problem. The nationwide data required as the basis for appropriate intervention in the field of organisational development is not available. An analysis of the current requirements of health and care professions based on occupational and care theory that should serve as the basis for setting staffing ratios is not available. In-patient care is a growth area that will lose skilled personnel if there is no investment in making these professions more attractive. That the regional lack of caregivers sometimes makes it difficult to hire or replace staff in a timely manner was reported to the NPM all over the country. In some homes in Vorarlberg, Tyrol and Upper Austria, commissions found admissions freezes and unoccupied wards despite waiting lists. Nursing homes in the city of Salzburg were also temporarily unable to fill their vacant places in 2018. In view of the generally shrinking potential workforce, the competition for trainees and skilled staff will increase sharply in the coming years.

Many older people would like to be able to spend their old age at home or at least with trusted persons. More than 900,000 people, that is, approx. 10% of the population, are informally involved in taking care of others. Around 70% feel overworked; women are the caregivers in most cases (source: Federal Ministry of Labour, Social Affairs, Health and Consumer Protection [ed.] [2018]: *„Angehörigenpflege in Österreich. Einsicht in die Situation pflegender Angehöriger und in die Entwicklung informeller Pflegenetzwerke“*, University of Vienna). Home care provided by family members is undoubtedly the fundament of total care provision in Austria. In chapter 2.1.6 the NPM would like to clearly emphasise that relatives also play an important role in in-patient care.

Mobile and in-patient long-term care can, as studies by the WIFO from 2014 indicate, be seen as a substitute for care by relatives only with some reservations. The commissions are repeatedly told that persons are not sufficiently involved in the decision to move into a home, which is perceived as compromising their autonomy. In most cases, acute health-related issues or prolonged stays in hospital are given as the determining factors for an unplanned move into a home or one that is felt as being under time pressure. The proportion of elderly people over 80 years of age is forecasted to rise from a current approximate 354,000 to 600,000 in 2030. The overburdening of the informal support systems as a result of multi-morbidity or advanced dementia-related diseases is predominantly responsible for transferring persons to in-patient care facilities at present. The latter affects every sixth 80-year-old and almost every second 90-year-old. A total of 82,485 persons were living in nursing homes in 2017. At 69%, those with care level 4 to 7 comprised a far greater share than those living at home supported by mobile services. Only some 29% of these persons in need of care obtained care and nursing allowances from level 4 upwards. The need for professional care services is generally increasing even if this varies from region to region. Between 2012 and 2017, growth in the area of mobile services was 4% (Carinthia, Vorarlberg) to 27% (Tyrol), and in the in-patient area (long-term care incl.

alternative different types of accommodation) the range of change was from -6% in Vienna to +45% in Burgenland (source: *Statistik Austria* 2018).

In Austria, the supplementary payments for care in homes, for mobile services and 24-hour care are financed and sponsored differently by the Federal Government, *Laender* and municipality. This also complicates the needs-based regulation of the interfaces between acute care in hospitals, care at home and short or long-term care, amongst others. The NPM is of the opinion that special action needs to be taken here and new models developed.

The NPM has repeatedly emphasised the necessity of a solidary expansion of care provision with nationally harmonised quality and care standards (see most recently NPM Report 2017, p. 25). In December 2018, the Federal Government presented a "Care Master Plan" ("*Masterplan Pflege*") which stipulates that the conditions for high-quality care and medicine must be created. The support of persons in need of care and their relatives should be given the highest priority. Sets of financing measures are expected by the end of 2019. A parliamentary commission is planned for spring 2019.

### **2.1.2. Initiatives of the *Laender* and reactions to recommendations**

Moving into a nursing home is commonly associated with increased security of care until the time of passing but also with the loss of self-determination and fond habits and routines. These fears are not always justified. There are excellent homes that accommodate a wide range of interests (see also chapter 2.1.7 "Positive observations").

Regardless of how well the respective home is run, the NPM is adamant on one point: retirement and nursing homes are in no way suitable for younger persons with chronic psychiatric diseases. Placing these persons in such homes impairs their development to becoming independent. A specialised age-related psychiatric programme only becomes necessary if multi-morbidity requires it. Psychiatry allowances for the admission and care of young psychiatric patients, as currently practised in long-term care facilities in Styria, are a move in the wrong direction. This obfuscates the fact that an expansion of mobile socio-psychiatric care and/or locally integrated socio-psychiatric accommodation units are urgently needed. Commission 3 visited four large facilities alone in the year under review and found persons who were under 50, some even just 30 years of age.

In its report on the psycho-social offers in Salzburg and Styria ("Psychosoziale Angebote in den Ländern Salzburg und Steiermark", Reihe Bund 2019/9, Reihe Salzburg 2019/1, Reihe Steiermark 2019/2) of March 2019, the Austrian Court of Audit recommended that psychiatry allowances should only be granted to psychiatric patients who are entitled to a level 4 care allowance or if the patient's need for care has been officially confirmed by an expert. In the context of a needs-oriented enhancement of the psychosocial service offerings, the report also recommended that an alternative must be created in order to avoid the placement of mentally ill persons in nursing homes.

Private investors and their lobby groups sometimes criticise the work of the NPM because its monitoring standards and preventive recommendations are not only based on the respective legal regulations of the *Laender* laws for the operation of nursing homes. They also claim that complying with the recommendations costs money. Occasionally, there are objections that NPM visits are conducted in addition to inspections by regulatory supervisory bodies.

The NPM and the AOB itself are not regulatory bodies. Establishing the need for improvement does not necessarily mean that an unlawful act has been committed. The NPM does not have the authority to legally enforce its recommendations either. Differing interpretations are often due to the fact that social human rights, the observance of which the Republic of Austria has committed to under international law, have not been fully implemented in national legislation. This is one of the reasons why little attention is paid to social human rights. As is evident from the notes on Article 148a (3) of the Federal Constitutional Law (*Bundes-Verfassungsgesetz*), however, the constitutional legislature wanted to ensure that the NPM uses the international human rights standards and recommendations of the CPT and SPT.

It is thus indisputable for the NPM that the type of care required for persons with disabilities that caters to their individual needs (especially with dementia and chronic mental illnesses) is underrated in the different nationwide staffing targets for long-term care facilities. Staffing targets were developed predominantly at a time when care process planning that complies with scientific care management requirements, evaluation and quality assurance, and the application of holistic care concepts or the palliative approach to long-term care had not even been discussed. Amendments made to these targets since then have done nothing to alter the fact that their basis is no longer adequate (see chapter 2.1.4 "Insufficient personnel").

As in previous years, the commissions observed a high level of structural violence in some nursing homes. For example, in a nursing home in Upper Austria, the weekly scheduled shower and bath days were cancelled because no support could be provided with showering due to a lack of time. In the same home, the evening meal was served as early as 4.30 p.m. and most of the residents in need of care were made "ready for bed" at 6.30 p.m. at the latest even in summer months. When addressed by the NPM, the homes explained that care (on an hourly basis) in the late evening for persons with a dementia-related reversal of day/night rhythm was not viable or would require too much personnel in most cases.

For this reason, cross-institutional initiatives from the *Laender* regarding recommendations that were repeatedly addressed by the NPM in its reports and were reflected in the strategic planning of the *Laender* in 2018 are a very positive development.

In addition to a guideline on nursing and care published in 2017 ("*Handlungsleitlinien Pflege und Betreuung*"), which the NPM classified as good practice in the field of quality assurance, two further guidelines were completed in Vienna in 2018. The guideline on the "Management of aggression, violence and de-escalation" ("*Aggressions-, Gewalt- und Deeskalationsmanagement*") deals with preventive approaches on the primary, secondary and tertiary levels of prevention and is designed to create a nonviolent living and care situation in all settings. The second guideline on the "Dimensions of the quality of life" ("*Dimensionen von Lebensqualität*") emphasises that the quality of life of residents includes not just being satisfied with basic care in the strict sense of the word. It also implicates being able to maintain or build up social contacts and to take part in society, as well as having the highest level of self-determination. The guideline develops (care) interventions for each dimension that also involve self-determined and everyday activities. A harmonised understanding of what quality in care entails in Vienna is thus guaranteed. Since 2013, the Vienna Social Fund (*Fonds Soziales Wien*) has carried out a total of 102 audits to examine the structure and process quality in care facilities.

The *Land* Lower Austria can draw a positive balance in 2018 with regard to the early warning system installed at the Lower Austrian Patients and Care Advocates in 2017. The purpose of the early warning system is to detect problems in nursing homes as early as possible and initiate

measures in a timely manner. The Lower Austrian Patients and Care Advocates advises and supports nursing homes on contentious legal issues regarding residents and care. A total of 231 business cases were recorded in 2018. Commissions 5 and 6 responsible for Lower Austria regularly exchange information with the Lower Austrian Patients and Care Advocates in order to exploit synergies. The promotion of a person-centred culture based on a “conceptual framework for care and nursing” was advocated by the regional government for the *Land*-owned Lower Austrian care centres. This also includes a rethinking of the evening activities before bedtime, which the NPM frequently placed on the agenda in recent years. By the end of 2018, the presence of care personnel in the evenings was extended in more than 75% of the Lower Austrian care centres in order to help residents to pursue their interests and preferences, but above all, to offer a variety of activities in the evenings.

A geriatric consultation service for nursing homes in the Klagenfurt and Klagenfurt-Land districts was set up as a pilot project in Carinthia at the beginning of 2018. Geriatric specialists from the Acute Geriatric and Remobilisation Department of Clinic Klagenfurt (*Klinikum Klagenfurt am Wörthersee*) discuss health-promoting and preserving treatment options with fiduciary medical officers and the qualified caregivers of the residents in nursing homes in selected districts. This does not incur any cost for home operators. The geriatric consultation service includes geriatric visits, process coordination, coordination of medical, care-related and geriatric decisions, monitoring of risk patients and a guidance system for hospital admissions. The pilot phase already showed that stressful transport to and from hospital and poly-medication can be avoided. The project is therefore to be rolled out across the entire *Land*.

The recruiting of caregivers poses a massive structural problem in Tyrol, as was brutally evident in all of the nursing homes visited by Commission 1 in the year under review 2018. The regional government informed the NPM that a new remuneration system is to be introduced across the *Land* on 1 January 2020. The pay model makes a new salary classification for specialised and qualified social caregivers working in geriatric care possible as well as increased staff deployment in critical off-peak hours during changeover early in the morning and the evening. A service catalogue will also be introduced that makes “prevention, health promotion, social care and activation” of residents mandatory.

Together with the Upper Austrian Public Regional Health Insurance Office, the regional government of Upper Austria developed the concept of “Integrated Care Dementia” (“*Integrierte Versorgung Demenz*”). An initial evaluation indicates mainly positive results in all areas (see NPM Report 2017 p. 24). Measuring the quality of life using the “*Qualidem*” tool shows significant positive changes for residents. It is not yet clear whether other nursing homes will be included in the project because the completion of another study is pending. The results of the study on the perceived workload in the care of home residents suffering from dementia (“*Wahrgenommene Arbeitsbelastung in der Versorgung dementiell erkrankter HeimbewohnerInnen*”) should be available in spring 2019. However, a roll-out of the pilot dementia counselling centres for persons in need of care who are looked after at home is planned across the *Land* in 2019.

Regarding the increase in staffing levels in care facilities, which is considered necessary by the NPM, the regional government of Styria reported that this will take place gradually in mid-2019 and 2020. With respect to the minimum standards for night care, agreement has been reached that a compulsory minimum night shift provision should be included in the next staffing level regulation. This is planned to come into effect in mid-2019. The extensive scope that the standards would currently permit could be a problem for the new staffing level regulations: whilst a nursing home with 31 residents would have to provide two caregivers during the night (ratio

1 : 15.5), it would be possible for a nursing home with 100 persons in need of care to also have only two active night shifts (ratio 1 : 50). These threshold values could result in a considerable difference in the quality of the care.

The regional government of Burgenland reported about a strategic concept which focuses on an increase in rehabilitation and remobilisation programmes. An expansion of mobile and partial in-patient offers should also contribute to the customisation of care. As most private care is provided by relatives, this group of people should be offered relief through the continued expansion of day-care programmes.

In 2019, 40 out of 51 nursing homes in Vorarlberg are to be integrated in a project on gerontopsychiatric competence in Vorarlberg's nursing homes ("*Gerontopsychiatrische Kompetenz in den Vbg Pflegeheimen*"). The newly developed guideline of the regional government on dealing with violence to persons in need of care ("*Umgang mit Gewalt an pflegebedürftigen Menschen*") is designed to reflect on different forms of violence and make clear how to proceed in cases of suspected prosecutable violence to residents. The continued expansion of the care network in Vorarlberg is a focal point in 2019. This was initiated in the summer of 2018 with the "Day-care with gerontopsychiatric focus" project ("*Tagesbetreuung mit gerontopsychiatrischem Schwerpunkt*"). The target group is persons who, primarily due to dementia or other psychiatric or neurological illnesses, have increased care needs. In order to relieve their relatives, they are to be supported with memory training and remobilisation programmes, enabling them to continue living at home. "Transitional care" is being tested on a pilot project in the Dornbirn district. The primary objective is to give more scope for remobilisation to both those affected and the in-patient and out-patient services in order not to have to make a decision on staying in a nursing home permanently under time pressure. Furthermore, the "Geriatric remobilisation in nursing homes" project ("*Geriatrische Remobilisation im Pflegeheim*") was developed in cooperation with three hospitals to create the conditions for the possibility of returning to the home environment through needs-related therapy measures.

The recommendations of the NPM are often implemented directly after the experts' visit, and sometimes also as a reaction to the subsequent written requests. The NPM at least randomly evaluates whether change processes have taken place in the homes. Follow-up visits by the commissions are – depending on the problem and level of urgency – conducted several weeks or months after the initial visit, but sometimes after only one or two years. Often the respective regional government takes the criticism of the NPM as an opportunity to make priorities within the framework of their regulatory supervisory function and reports back accordingly. Supervisory authorities are always contacted if commissions have the impression that individual residents have already been harmed or that such can be expected. The commissions see positive feedback, indicating that the visits are perceived as enriching and supportive.

The following examples show just how differently the recommendations of the NPM were received:

In a Tyrolean home, a complicated lift call system that caused the unpermitted, unreported restriction of the freedom of the all residents in a dementia ward was rectified immediately after the visit by Commission 1.

On a follow-up visit to a home in Burgenland, Commission 6 observed that all of the previously found deficits had been rectified. The care records had been improved, instructions on how to deal with dementia and pain had been written, and staffing had been increased so that it was

possible to offer more leisure activities. These include, for example, a regular cinema matinee to which relatives are also invited. The work rosters in a home in Styria, which had been deemed non-transparent and incomplete on the initial visits by Commission 3, were revamped in accordance with the law. On-call duty is now clearly documented; the availability of the named persons was, as the Commission ascertained on a follow-up visit, also given.

In a nursing home in Lower Austria, screens were purchased, an additional recreation room set up as a rest area, and measures taken to ensure that a door in the outside area is easier to open for persons with restricted mobility. In another Lower Austrian nursing home, the fire doors that had been classified as difficult to open on the initial visit were adjusted such that they can even be opened by persons confined to a wheelchair or who use a walking frame. Staircases were fitted with a safety barrier. One Tyrolean nursing home made floor markings on landings and fitted non-slip thresholds. Furthermore, the repair of worn or broken barriers was organised and the installation of an automatic house door promised. In a home in Vienna, diverse refurbishment work was carried out, automatic locking systems for safety barriers fitted before stairs, and missing handrails installed on staircases.

The recommendation of the commissions to make an anonymous opportunity to lodge complaints available to the residents is often adopted by the homes. In many cases, complaints letter boxes were installed in the homes. Furthermore, in a home in Lower Austria, forms for positive and negative criticism that can be evaluated transparently were developed.

An evening programme that resembles the normal life of the residents (normality principle) requires the relevant staffing. Homes that have set up a late shift for the evening can thus prevent too early mealtimes and bedtimes. The NPM was able to effect improvements in this area too: the staffing at a Carinthian senior citizens' centre was changed in order to have more staff available in the early evening. Animation on one weekend day was also introduced on a trial basis. One Lower Austrian home introduced an evening roster up to 8.00 p.m. in order to be able to offer the residents more activities in the evening. According to the home, this also resulted in staff expressing a greater level of satisfaction and identification with their profession. One Tyrolean home promised to install a permanent night shift, a late shift until 9.00 p.m. and move the evening meal back by 15 minutes during the course of the visit. As a consequence of the criticism, a nursing home in Salzburg optimised the work roster so that at least two trained and professional nursing staff are available on day shift at the weekend. In a home in Upper Austria, the work roster model was also changed so that later sleeping times were possible for the residents. Furthermore, support duty was introduced to assist the night shift which had to care for 39 residents alone until then. In a senior citizens' centre in Lower Austria, an additional night shift was introduced as a result of the criticism expressed by Commission 5. A night cafe that is manned daily between 7.30 p.m. and 11.00 p.m. was also opened for the residents and different activities (e.g. bowling, music, storytelling, bingo) as well as a late meal are offered. The "Night Owls" project was initiated in a Vienna nursing home, which offers care and activities until 9.00 p.m. four days a week for restless and "nocturnal" residents. In a small, family-run home in Lower Austria, the evening meal was moved from 4.30 p.m. to 5.30 p.m. A late meal is also offered by the night shift between 7.00 p.m. and 7.30 p.m.

Residents often talk about personal issues in the interviews which, with their consent, are addressed by the commissions in the concluding meetings. A resident complained to Commission 2, for example, that no one heard her when she called for help after falling out of her bed. The lady was immediately given a call bell for her arm. Criticism by the NPM of the lack of adequate fall management was taken by many homes as an opportunity to make

improvements. Examples include fall prevention training and increasing the awareness of staff for documenting individual measures that prevent falls in nursing homes in Upper Austria and Styria.

Pursuant to Section 4 (1) of the Health and Safety at Work Act (*ArbeitnehmerInnenschutzgesetz*), the home operators are also obliged, as employers, to determine and assess the existing risks to the safety and health of employees. Caring for senior citizens undoubtedly poses a mental strain for the caregivers. The NPM therefore recommends regularly introducing supervision and emphasises its significance, as the care working environment is dependent to a considerable extent on successful cooperative relationships between employees themselves, between supervisors and staff, and between the staff and residents. Several homes adopted this recommendation and announced that supervision dates had been made. The same applies for staff training recommended by the NPM.

However, it was also evident from follow-up visits in the year under review that the recommendations of the NPM had not been implemented, or promised change processes had not been completed in some homes. In one Lower Austrian care centre, for example, the staff shortages criticised by the commission on the previous visits were unchanged. The lack of animation and early evening meal had not changed either. Call bells were still not within reach of bedridden residents and entrances were still locked before 8.00 p.m. In a home in Vienna, deficits were still evident despite two previous visits: there was no multi-professional team approach and no activity programme or adequate mobilisation of persons with psychiatric illnesses. The space situation remains very tense due to delays in the extension. Recommendations are usually expressly rejected because the additional cost is not covered in the allowances. This was the case in a nursing home in Upper Austria when it was suggested that more animation should be provided and the very early evening meal should be moved to a later time. Despite the considerable care needs of the residents, the night shift was only increased two and a half years after the initial visit by Commission 2 from one to two caregivers for approx. 80 residents in this home. This only happened because the supervisory authorities also intervened. The installation of on-call trained and professional nursing staff on the night shift which is considered necessary by the commission was also rejected.

- ▶ *National harmonised standards for the access and quality requirements of care in long-term care facilities must be defined within the framework of the Federal Government's "Care Master Plan" ("Masterplan Pflege") according to the NPM.*
- ▶ *A database should be set up in which evidence-based projects from the Laender can be invoked in order to increase efficiency and improve the quality of life of the residents.*
- ▶ *Caregivers must be permitted to apply their competence with full legal backing in the way they have learned by means of improved working and framework conditions.*
- ▶ *Health-promoting measures should be established for the staff in all homes in order to make work for trained caregivers and the profession for interested parties more attractive.*

### 2.1.3. Right to health in geriatric care

The right to health, as it is anchored in Article 12 of the International Covenant on Economic, Social and Cultural Rights (UN Social Covenant) guarantees every person the highest attainable standard of physical and mental health conducive to living a life in dignity. In essence, this is

about enabling a health-promoting lifestyle that must also be attainable for those in need of care living in homes. However, the right to health also encompasses the freedom to exercise self-determination over one's own body.

The UN Committee on Economic, Social and Cultural Rights set up in 1988 and entrusted with the interpretation of the UN Social Covenant, refers to special aspects regarding older persons in its General Comment No. 14. It mentions amongst others "preventive, curative and rehabilitative health treatment [...] aimed at maintaining the functionality and autonomy of older persons, and attention and care of chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity" (E/C.12/2000/4, 11 August 2000, Section 25). This addresses the entire spectrum of medical and nursing prevention, health improvement and preservation through to palliative medicine.

The physical and mental condition of geriatric patients varies considerably. They reach the limits of their capacity quicker and, unlike younger, mono-morbid patients, they are always in acute danger. This risk emanates, for example, from the decompensation of an organ system or the triggering of a cascade of illnesses. Their ability to adapt to change and new environments is – exacerbated by impaired sensory perception such as poor sight or hearing, for example, – limited. Social withdrawal, demotivation and disorientation can be the consequence.

The Society for Geriatrics and Gerontology pointed out in many media in December 2018 that procedures become established in the medical profession that are rarely questioned and may not (no longer) be appropriate. Geriatrician Thomas Frühwald, who is a member of Commission 4, therefore demands in the media better training of medical and care staff as well as more "attention time" in hospitals and nursing homes in order to get to the bottom of complaints (<https://science.orf.at/stories/2954111/>).

Austria is one of those European countries that guarantee a free choice of doctor, but has no national standards for medical care in nursing homes and does not require specific further training for doctors working in nursing homes. Assessments of prospective residents by qualified staff specialised in geriatric medicine, geriatric psychiatry and health care and nursing are not established in Austria either. These assessments should serve to recognise and remedy chronic illnesses and functional impairments as early as practicable in order to delay a possible admission to the nursing home.

The monitoring of measures that restrict freedom comprises the core mandate of the NPM. Heightened awareness in relation to avoiding both mechanical and medication-based measures that restrict freedom is an integral component of the NPM's work. The negative consequences of coercion (such as anxiety, loss of functioning of the movement system, peripheral circulatory disorders, pain, forced incontinence but also apathy and more frequent withdrawal) are ignored too easily. Supposed quick solutions, however, create subsequent health problems. There is consensus in care-related research that freedom-restricting measures are not an effective way of reducing falls. Conversely, not applying measures that restrict freedom does not result in an increase in falls or related events (Niederhametner [2016]: "*Verletzungen von Menschenrechten vermeiden*", p. 241 with further evidence). Measures that restrict freedom can even increase the risk of injury and result in those affected losing muscle power and their sense of balance. Implementing fall prevention through forced immobilisation or restricting freedom of movement is therefore counterproductive, not to mention the mandatory legal prohibitions and regulations.

In this regard it is gratifying to see that the Austrian Healthcare and Nursing Association – as promised to the NPM last year – has introduced an online training offer on the Nursing and Residential Homes Residence Act for the care professions. This training course consists of four basic modules, two in-depth modules and two practice modules with interactive learning units, videos, case studies and info cards on the legal background, the cause and dangers of measures that restrict freedom, the importance of milder alternatives and the powers and competences of residents' representatives. It also gives more information about legal reviews and liabilities. Participants who successfully complete this training, will receive certified "training points" from the Austrian Healthcare and Nursing Association.

A comparative study on the health condition of Austrian and Czech nursing home residents published in 2018 indicated that dementia illnesses and the cause of pain in particular are only detected at an advanced stage both at home and in nursing homes, and that dementia and pain prevention have to be expanded considerably (Auer/Höfler/Linsmayer et al., BMC Geriatrics [2018] 18:178, <https://doi.org/10.1186/s12877-018-0870-8>). The quality of life of home residents is closely related to their pain situation. Pain has to be regularly evaluated for the residents of retirement and nursing homes regardless of their cognitive abilities. The potential risk of undetected pain exists in all resident groups.

Successful regional projects in Vorarlberg, Carinthia, Upper Austria and Styria show the NPM that, by establishing cooperation between nursing homes and mobile geriatric care services or consultations, much can be done to preserve the health of the residents on the one hand. On the other hand additional cost for multiple hospital admissions and polypharmacy can be avoided. This also benefits the health insurance carriers and, in particular, the *Laender* as owners and/or operators of public hospitals. The NPM would also like to positively highlight nursing homes that recognise further need for action and, for example, regularly involve medically and technically qualified staff or external wound managers. All of these models build upon strengthened cooperation and communication between the involved occupational groups.

The free choice of doctors for residents of nursing homes requires that caregivers have to regularly adapt to their individual treatment scheme. In addition, the systematic documentation of the individual care needs in cases of multi-morbidity is very complex and time-consuming. If the NPM expresses criticism in this area, it is only because it considers necessary to be more patient-orientated for the reliability of care. Records must be conclusive in a clinical respect and usable for the development of individual care plans, but can also be concise and transparent and compatible with ICD 10.

The right to the highest attainable standard of health overlaps with the right to an adequate standard of living (Article 11 UN Social Covenant), which also includes the need of sufficient nutrition. It is important in this context to be familiar with and take the needs and preferences of persons in need of care (e.g. as part of biography conversations) into consideration. The organisation and structured nature of mealtimes is also vital against the backdrop of a lived normality principle and the preservation of the highest possible level of self-determination (cf. Aronson/Mahler [2016]: *"Menschenrechte in der Pflegepraxis, Herausforderungen und Lösungsansätze"*, German Institute for Human Rights, p. 34 et seq. with further evidence).

Because malnutrition is less noticeable in the early stages but difficult to cure after it has broken out, the NPM is critical when malnutrition screening in nursing homes is not performed or the use of validated screening mechanisms is not common. Geriatric patients often demonstrate marked symptoms of qualitative and quantitative malnutrition. The causes of this are an unbalanced diet,

in addition to the deterioration of the feeling of hunger and thirst as well as of the sense of taste and smell. Many malnourished persons have difficulty with chewing and swallowing or poor dental health, which has to be rectified. Positive effects can be achieved by providing adequate support when eating, but also by creating a pleasant eating atmosphere, appetising preparation of the meals and meal planning that accommodates the needs of older persons, such as smaller portions or several meals per day. The efficacy of measures taken must be monitored on a regular basis and adapted accordingly if the therapy is not successful. That this is not common is evident from a home in Lower Austria: residents were only weighed once a month; no intervention, such as more frequent weight monitoring or offering high-calorie supplementary food, was initiated even when residents had lost weight. The practice of a nursing home in Vienna on the other hand must be given praise, as a standardised nutrition assessment is carried out at the time of admission and repeated in a timely manner with the aim of preventing malnutrition.

Article 3 lit. c of the UN Convention on the Rights of Persons with Disabilities (CRPD) standardises the principle of "full and effective participation and inclusion in society". This basic idea is concretised by the right to "independent life and inclusion into the community" guaranteed in Article 19 CRPD and the right to "take part in cultural life and recreation, leisure and sport". In order to do this justice, the NPM recommends a varied animation and activity programme that is adapted to the needs of the individual residents and can be availed of both during the day and in the (late) evening.

Residents suffering from dementia and cognitive impairments require special support and attention in order to enable them to take part in social and community life. Dementia impairs their cognitive abilities on the one hand, and the way in which they experience things as well as their behaviour on the other. The latter aspect is described as "challenging behaviour" which can manifest itself as anxiety, depression or aggression. The use of non-medication approaches as measures with a high priority when dealing with non-cognitive symptoms is of considerable importance to the NPM. It was evident once again on the visits in the year under review that biography work and care planning that is adapted accordingly helps to activate residents and prevent conflict. Residents also said in interviews that the inclusion of tasks that they liked to perform at home enhanced their general sense of happiness. Validation as a form of communication helps to understand and respect the feelings of persons suffering from dementia. Dependent behaviour and social passivity in homes is exacerbated when residents are neglected. The risk of functional mental disorders increases for persons who have few social contacts and feel lonely in nursing homes.

The commissions repeatedly observe on their visits that the organisation of environmental conditions varies greatly, and thus catering to psychosocial needs in the homes differs accordingly. There are undoubtedly homes that have a "vibrant" atmosphere, where people treat each other with trust, affection and humour. The commissions always praise this.

However, homes were visited in which there was a completely different atmosphere. In a home in Burgenland, for example, residents were left sitting in the recreation room for hours unattended; the activities offered were not adapted to their cognitive abilities. In a Tyrolean nursing home, staff in a dementia ward seemed to be stressed; on one floor men and women sat alone at a table, did not speak to each other and stared into space. In a home in Upper Austria, Commission 2 encountered five women in the morning with impaired mobility in a basement illuminated with artificial light and radio music playing; they did not communicate with each other. Two ladies told the commission that they would like to be taken to their rooms as

they found sitting painful, and claimed that they had not seen any staff since breakfast. Even the commission found difficulty in finding anyone who felt responsible for these ladies. The same was perceived during the approx. two-hour stay of Commission 2 in the recreation area of another home in Upper Austria: residents sat (some of them in adult bibs) at the tables and waited silently for the next meal. In a home in Salzburg, there was as good as no structured activity or animation programme; singing and memory training were merely offered once a week.

During the visits to two homes in Carinthia and Upper Austria, the commissions put a special focus on how to establish suicide prevention. An increased risk of suicide and the likelihood of a fatal outcome to suicide attempts cannot be ruled out, in particular, if the residents are no longer able or do not want to communicate their inner pain. This also applies to persons with complex psychiatric diagnoses. Three areas contribute to the pathogenesis: vulnerability, traumatic life events and lack of social support. Psychiatric and psychotherapeutic care is advisable in such cases. The risk of suicide in Austria is twice as high at the age of 75, and more than six times as high from the age of 85 and older as it is in the average population.

As mentioned above, the right to the highest standard of health also includes the right to live as independently as possible. The coming into effect of the Second Adult Protection Law (*Erwachsenenschutzgesetz*) in summer 2018 replaced the hitherto applicable legal guardianship law and associated principle of proxy decision-making. The medical treatment is regulated in Section 252–254 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). These regulations apply to all legally defined health care professions. They therefore apply not only to doctors but also to the health care and nursing staff, technical medical special services and members of the therapeutic and psychological professions.

The new legal situation stipulates that the capability of persons with psychosocial or cognitive impairments of making a decision themselves regarding their consent to the respective necessary medical care or treatment must be checked in all cases. The legislator's intention is that the planned measures must be explained in simple language, including photos, symbols etc. If there is then still doubt concerning the decision-making ability, individuals must be consulted who support persons in need of care in making decisions. Nursing homes are also obliged to endeavour to contact such persons. This should be documented for evidence purposes. Consent to the treatment by a representative is permissible if, despite assistance, the person in need of care is still unable to make a decision. Information – at least the basics – must be provided even if the affected person is unable to make a decision, so that persons in need of care can exercise their right to refuse the treatment. If there is disagreement, that is, if the person in need of care and the representative make different decisions, court proceedings shall be initiated. The person to be treated shall receive medical legal counsel regardless of the seriousness of the medical procedure during court proceedings.

Questions surrounding the scope of the right to autonomy and self-determination in the area of geriatric care are also relevant where unhealthy behaviour is concerned. This is the case, for example, when medication is not taken, food not consumed or weatherproof clothing is refused. Excessive alcohol or nicotine consumption should also be considered here. It is the duty of the staff to help residents with physical, mental or cognitive impairments to make decisions that further promote their health. Regard for human dignity and respect for autonomy preclude issuing absolute bans against persons who can make their own decisions about taking health risks, provided that acute life-threatening situations do not require the contrary. In accordance with proportionality rule, supplementary therapeutic programmes or milder restrictions (perhaps

not completely banning alcohol but limiting the amount) must be offered and agreed to safeguard the success of medical treatment. In order to be able to take the best possible decision in the interest of the residents, employees in retirement and nursing homes must be given education and training (cf. Lake/Jox [2017]: *“Pflegekräfte im Spannungsverhältnis zwischen Autonomie und Schutz ihrer Bewohner, Rechtliche und ethische Überlegungen zum Thema Alkoholkonsum in einer Pflegeeinrichtung”*, *Pflegewissenschaft 1/2*, p. 61 et seq.).

Questions regarding palliative and terminal care also have to be examined in view of the right to health. Passing in dignity requires that the relevant person is accompanied and cared for, amongst others. Retirement and nursing homes are required to provide the necessary basic conditions (for details, see NPM Report 2017, p. 32 et seq.).

Finally, the State and care facilities are also bound by protection obligations in connection with the right to health, such as to prevent cases of violence, the restriction of freedom, maltreatment or abuse (see NPM Report 2016, p. 35 et seq.).

- ▶ *The (specialist) medical, nursing and therapeutic care in nursing homes must cover the entire range of preventive interventions, health improvement and preservation to palliative care due to the complexity of multi-morbidities.*
- ▶ *Measures that restrict freedom must be avoided as far as possible in order to prevent negative health consequences.*
- ▶ *Non-medication therapies are of great importance for persons with dementia and should therefore be used in homes.*
- ▶ *In order to strengthen mental health, biography work, validation and supportive care planning are helpful in reinforcing the identity of residents with dementia and activating their resources.*
- ▶ *Institutions have to take measures to implement the intended objective of the Second Adult Protection Law to enable persons with psychosocial or intellectual impairments to generally make independent decisions through appropriate forms.*

#### 2.1.4. Insufficient personnel

It is on the night shift that the commissions find staffing levels which are tolerated by the supervisory authorities but nevertheless appear alarmingly tight. Whilst in a care facility in Vienna, for example, three caregivers attended 100 residents at night, in a nursing home in Upper Austria three employees looked after 126 persons, in another even up to 137 persons. For 63 persons in a home in Salzburg, only one caregiver was responsible after 9.00 p.m.

The NPM is highly critical of concepts and staff requirement calculations from owners and/or operators of care facilities that offer in-patient places with combined assisted living and housing. In principle, assisted forms of living and housing are a positive development in view of the increasing number of elderly and very old persons. However, they only satisfy the care and support needs if the staffing levels are adapted to the new type of resident who can still be independent to a large extent at the time when they move in. If staffing is not increased, those working in the care unit are called to look after those in the residential area at night. There is a large number of such combined homes in Vienna; many complaints have been brought against them recently. For example, in a nursing home with over 42 care places, two caregivers also have to attend 207 apartment places on night shift. When there are emergency calls from the

apartments, the caregivers often respond together leaving the care unit unmanned. The calls to apartments – often located further away – are not limited to acute cases, but also regularly include care treatment (incontinence care, changing position, administering medication, changing bandages, blood pressure checks etc.).

Similar observations were made in a home in Lower Austria: At night, two caregivers had to look after 72 persons in need of a high degree of care and 33 senior citizens living in the assisted living facilities. In a Tyrolean retirement and nursing home, there was only one night shift for 45 care places and seven assisted living and housing units at the time of the visit by Commission 1. Confronted with this untenable situation during the concluding meeting, the home management assured that an additional permanent night shift would be set up.

In some cases (specialist) caregivers complain that it is not compatible with their professional ethos to recognise what is necessary in the given situation, but to only be able to handle the absolute emergency.

### **2.1.5. Ban on addictive substance depots hampers treatment of pain and palliative care**

Thanks to the recommendations of the special commission on the topic of “dignity at the end of life”, the hospice and palliative care movement in Austria gained vital recognition in 2015. The need to anchor this in health care and social services and to integrate it into basic care is undisputed. The NPM demanded the implementation of these programmes in all nursing homes last year (see NPM Report 2017, p. 32 et seq.).

Triggered by audits conducted by the Lower Austrian Court of Audit, the NPM, with the support of the Lower Austrian Hospice Regional Association, put the problems connected to implementation that is compliant with the guidelines from the perspective of care facilities forward for discussion in the ORF TV programme *Bürgeranwalt* (“Advocate for the People”) in February 2018:

The treatment of chronic pain, palliative symptom monitoring and pain therapy of residents is usually associated with the use of opioids. In addition to a calming effect, opioids also have a soothing effect on stressful side effects of a disease or when the patient perceives difficulty in breathing as life-threatening. The quick availability of suitable powerful medication that are usually an addictive substance in the sense of the Narcotic Substances Act (*Suchtmittelgesetz*) is necessary for pain management and palliative care.

Whereas hospitals can order the medication needed for wards themselves, hospices and palliative care facilities are not allowed to do this. It was not possible to implement cost-reduction measures that were agreed in the financial equalisation 2017 pact observing the security of patients and care. Section 57 (1) Medicinal Products Act (*Arzneimittelgesetz*) allows direct procurement from manufacturers, salespeople or pharmaceutical wholesalers including Federal Army facilities, correctional institutions or organised emergency medical services. Direct supply to nursing homes, hospices or doctors employed by homes is not permitted. Only when nursing homes are entrusted by the residents they can redeem doctors’ prescriptions at pharmacies as well as manage the proper storage and administration of the medication. They thus manage their residents’ medication and are obliged to protect the same from access by unauthorised persons. Medication added to and taken from stock as well as the amount in stock has to be documented per resident and monitored regularly. Addictive substances must be stored

separately from other medication in lockable containers and must be disposed of through the pharmaceutical laboratory of the Austrian Chamber of Pharmacists when they are no longer needed.

The needs of pain patients can change rapidly for a wide range of reasons including the sudden onset of difficulty in swallowing or frequent vomiting. Symptoms can also reach an unexpected level of intensity that requires acute medical intervention. Nursing homes in Austria are, however, not allowed to keep neutral (not for specific residents) stocks of common analgesics or addictive substances, not even for emergencies. The Narcotic Substances Act (*Suchtmittelgesetz*) and regulations enacted with it stipulate that medication containing addictive substances may only be procured for specific persons on the basis of a doctor's prescription through a pharmacy. Section 59 Medicinal Products Act subjects the supply of medical products to the pharmacists' restriction as a matter of principle insofar as other sales or supply channels are not expressly permitted by law.

Although no one questions that there is a human right to the treatment of pain in accordance with modern medicine in all phases of human life, and in particular at the end of life, the restrictive regulations of federal law prove to be an obstacle to implementing efficient and effective treatment of pain.

The reuse of already prescribed medication is forbidden by law, even if it's in perfect hygienic condition, inside the use-by date or the packaging has not been opened; unless the life of patients is in immediate danger. For this reason, analgesics or addictive substances may not be prescribed or administered to other patients after residents pass away or after completion of a therapy; not even to doctors in long-term care facilities or external fiduciary doctors who treat the residents. Nursing home management that does not want to come into conflict with mandatory legal regulations is compelled to prohibit the supply of an urgently needed addictive substance that has been prescribed by a doctor even if this can be borrowed from the existing supplies for other residents or from stock intended for disposal. This is even prohibited when both doctors and caregivers have additional qualifications (additional further training in palliative medicine and palliative care).

Similar problems also exist in mobile palliative care when specially trained doctors administer analgesics containing an addictive substance as part of out-patient care, but are not allowed to leave them to the patients due to the so-called dispensing limitations. Patients are thus left without the medication for example at weekends. This can result in a high, even mental, stress level for persons in need of care and their relatives in rural areas, which is why they prefer to have the patient transferred to hospital thereby making it impossible to pass away at home.

Section 707 (2) General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*) instructs the Federal Minister of Labour, Social Affairs, Health and Consumer Protection to create a basis for the preferential procurement and stocking of medical products by residential and in-patient care facilities by the end of 2017. To date, the new provision has not been drafted because clarification is also pending as to how pharmaceutical know-how for the welfare of the patients can be guaranteed when there are changes in legislation. The person responsible for the department informed the NPM in December 2018 that the results of a dedicated project group are expected in spring 2019.

- ▶ ***Efficient treatment with powerful analgesics must always be possible in a reasonable amount of time for care facilities, hospices and mobile palliative care services.***

- ▶ *A legal permit allowing non-personalised addictive substance depots or the transfer of prescriptions in emergencies would accommodate patients with acute or chronically intolerable pain in care facilities.*

### 2.1.6. Support by relatives

Family caregivers do not cease to be relatives when family members move into an in-patient facility. If the relationship was intact, the need for closeness continues to exist. This is, not least, because it was mainly relatives who previously made it possible for the person to live at home and they were in most cases involved in making the decision to move into a nursing home. For 71% of relatives it goes without saying that they continue to be present in the nursing home. 66% want to give those in need of care the feeling that someone is there for them only. For the commissions, they are welcome interview partners and it is often the relatives who – whether rightly or wrongly – report about tensions between the desires and needs of those in need of care and their own wants.

In an ideal situation, they offer emotional comfort and security for residents through their continuity. They can provide important information and details on the course of illnesses, the lifestyle to date and other habits, preferences and dislikes of those in need of care and help in “decoding” nonverbal behaviour.

Homes usually determine when and in which form visits are possible. If there are only shared rooms or there are no recreation areas, life together tends to take place more in public. At the same time, it is inevitable that relatives have to learn to surrender responsibility and become familiar with and adapt to the caregivers and routines and daily structures. Furthermore, the relatives are often confronted with their own feelings of guilt. Doubts and uncertainty result from a lack of knowledge about what they can expect in the nursing home. After a new admission, most nursing homes do a lot to make the adjustment easy and give relatives the feeling that they are welcome. Guided tours of the house, relatives’ evenings or guidelines for relatives help to build trust. The NPM sees it very positively that some nursing homes do not only express that relatives are an important resource in the mission statement. They actively involve relatives in events and address their worries by taking the initiative in openly discussing care-related assessments or offering overnight accommodation in crises. These measures can help to prevent potential irritation. The stance that informed relatives are usually understanding relatives matters if care-related aspects come to the fore. Many relatives want to be informed, and demand to have a say. However, a more defensive position can make the relationship problematic.

The NPM criticised that nursing homes succumb to pressure from relatives for mechanical measures that restrict freedom after falls because this appears easier than talking about it and implementing a founded care-related decision. It is important for relatives to understand what is happening and what they can contribute to the well-being of the resident. It is therefore also helpful to prepare them for signs of deteriorating health or imminent passing.

The wishes of the relatives in relation to in-patient long-term care amongst others were recorded in a current study of the Federal Ministry. In particular, an increase in staffing levels and an improvement in concrete care programmes were considered necessary by the relatives (source: Federal Ministry of Labour, Social Affairs, Health and Consumer Protection [published] [2018]: *“Angehörigenpflege in Österreich. Einsicht in die Situation pflegender Angehöriger und in die Entwicklung informeller Pflegenetzwerke”*, University of Vienna, p. 167). The results correspond to the findings from interviews conducted by the commissions.

- ▶ *As relatives can be a great support for residents and positively affect their quality of life, all facilities should seek cooperation with them in structured processes.*

### 2.1.7. Positive observations

Nursing homes occasionally allow trades to practice on their premises, which are also open to the local population. If these become vibrant places where people can meet such as a café or hairdresser, persons in need of care who otherwise have no visitors also benefit from them. House community models such as in a home in Lower Austria have proven to be positive. A daily manager is present from 7.00 a.m. to 6.00 p.m. and cooks meals together with the residents. Persons with dementia can be integrated very well within this structure. In a home in Salzburg, very flexible mealtimes are made possible by cooking in the respective residential groups (each with 12 residents).

A home in Lower Austria makes great efforts to cater to the individual needs of the residents: for example, one of the residents takes her meals – as she was accustomed to – in a coffeehouse. A workstation was moved closer to a resident because she does not like being alone. There is also a varied activity programme; regular visits from primary school children and clubs are organised. Evening animation and events are offered to avoid insomnia and other sleep disturbances. The caregivers in a nursing home in Upper Austria escorted residents to their former apartment/house so that they can take personal belongings to the nursing home and “bid farewell”.

What was positively noted in a Tyrolean home is that not only the daily state of the residents' health is documented but, also their participation in activities or going outside into the fresh air. In this way, mental and physical problems can be detected more quickly. Another home in Tyrol carries out regular care visits with the close involvement of the residents. The geriatric assessment is evaluated during the visits, which was met with great approval on the part of the residents.

Residents are encouraged to spend time outside in a home on the outskirts of Vienna. A large, well-tended garden is used regularly; many activities were moved to the garden. The home has its own minibus for excursions.

A home in Upper Austria has employed a counsellor for end-of-life support. If desired, nuns can sit with the patients in the terminal phase. Recently retired case workers and qualified social workers specialised in working with the elderly are available to cover peaks in the workload. An internal preventive health care project was initiated.

## 2.2. Hospitals and psychiatric institutions and facilities

### 2.2.1. Introduction

In the year under review, the commissions of the NPM visited 42 medical facilities including 26 psychiatric and 16 somatic clinics or departments. All of the visits were unannounced.

Toward the end of the year, the legislators encouragingly met a long-standing demand of the NPM within the framework of the 2018 amendment to the Hospital and Convalescent Homes Act (*Bundesgesetz über Krankenanstalten und Kuranstalten*) by stipulating that psychiatric hospitals and psychiatric departments have to keep a register to record measures that restrict freedom (see NPM Report 2012, p. 29 with reference to the relevant CPT recommendation on CPT/Inf [2010] 5, Section 139). This electronic documentation is designed to show, on a daily basis, the name of the placed person, further restrictions pursuant to the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*), start and end of the placement and additional restrictions, the prescribing doctor and possible injuries that the patient or staff has suffered.

The obligation to set up a register in which all of the measures that restrict freedom ordered in psychiatric facilities are recorded by type, reason and duration provides an effective mechanism for reducing restrictions of freedom. The CPT brought up the importance of this register in psychiatric clinics most recently in 2014 on the occasion of its last visit to Austria (see CPT/Inf [2015] 34). Within the framework of this visit, it was not possible for the commission to gain an overview of the frequency and duration of the application of measures that restrict freedom. It could also not be assessed whether the frequency of restriction to freedom had increased or decreased since the engagement of a private security company in 2008.

The registers guarantee prompt availability of the data on the ordered measures that restrict freedom. The owners and/or operators of hospitals can use this data to analyse how restrictions to freedom are handled and, in particular, the causes that result in further restrictions in clinic routine. The federal fundamental legislator expressly recorded in Section 38d (3) Hospital and Convalescent Homes Act that the AOB and its commissions as well as international visiting mechanisms shall have the right of inspection to these registers. A period of six months was granted for enacting *Laender* implementing laws, so that implementation on federal level can be expected during the course of 2019. Further processing of the data for statistical reasons may only take place if the guarantees set forth in Article 89 GDPR are assured.

The NPM is of the opinion that the regulation should be enhanced such that medical certificates for the placement and the reasons for ordering further restrictions must be recorded centrally in the register in order to improve transparency and guarantee the best possible comparability of the logged data. The inspection of the medical history required to this end would increase the effort involved unnecessarily. In addition to the prescribing doctor, the staff involved in executing the measure should also be recorded.

The Human Rights Advisory Council dealt with the problem of sexual harassment of patients by staff in detail, and drafted pertinent recommendations (see NPM Report 2016, p. 49 et seq.). At that time, the Human Rights Advisory Council recommended amongst others offering potential victims professional help as early as during the investigation of suspected cases but also beyond that. The NPM thus welcomes the involvement of an independent external person from the patient advocacies, for example, in the victim support groups set up in the hospitals as stipulated in the 2018 amendment to the Hospitals and Convalescent Homes Act.

In addition, endeavours to develop a comprehensive preventive concept for avoiding sexual harassment should be stepped up. Extensive training at which staff awareness of harassment in the care and communicative area is required in particular. This is not only important for the staff's

own work but also enables them to recognise warning signs of incorrect behaviour on the part of colleagues towards patients early on.

One of the focal problems facing continuous psychiatric care is, in the opinion of the NPM, that extramural institutions and facilities for the long-term care of chronically mentally ill children were not expanded in a needs-based way. This is at the cost of those who, due to their biopsychosocial starting situation, are already "on thin ice" (lack or loss of a sustainable interpersonal relationship, ambivalent social background, poverty, homelessness, migration background, substance addiction etc.). If these persons do not receive out-patient support, and other stress factors are added, this can result in repeated involuntary placements including long stays in acute psychiatric wards ("revolving door psychiatry"). Care research has developed the term "heavy user" for such cases. This designation implies that the reasons for the intensive use of psychiatric care services are a fault of the patients. But the causes could just as easily be imminent in the psychiatric care system or in the fact that there are not enough specialised housing and therapy programmes without a compulsory nature. Support programmes for homeless mentally ill persons and so-called "complementary care" approaches should also include psycho-educative treatment strategies. This is necessary because coercive measures – such as closed accommodation, isolation and restraints – are only ever the "solution" of last resort when there appears to be no other way to avert imminent serious harm to the person themselves or third parties.

In its report on the psycho-social offers in Salzburg and Styria ("Psychosoziale Angebote in den Ländern Salzburg und Steiermark", Reihe Bund 2019/9, Reihe Salzburg 2019/1, Reihe Steiermark 2019/2) of March 2019, the Austrian Court of Audit recommended that the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection establishes a secured basis of data (epidemiology, diagnoses, claimed services, effects of treatment) on the topic of mental health in Austria. In addition to this and in close cooperation with the public social insurance carriers and the Laender, greater importance should be given to mental health in target control treaties, the Austrian Health Care Structure Plan and the regional health care structure. Strategic goals should become more "implementation friendly" as well as impact oriented. Another aim is to review systematically whether health planning concepts meet these goals as well.

The current care situation is characterised by the fact that more resources are available in the health care system for psychiatric patients with better chances of recovery and improved behaviour in therapy than for persons who, due to self-care deficits and lack of compliance, are in urgent need of care. Another questionable trend is the tendency towards "forensification". There is actually evidence that persons who are considered difficult and disruptive in psychiatric clinics and communal psychiatric frames of reference systems are increasingly left uncared for over longer periods of time. Triggered by a predicate offence, they ultimately have to be taken care of in detention centres for mentally ill offenders, which is why the numbers of cases there are rising continuously.

The NPM observed again in the year under review 2018 that, due to cramped conditions in psychiatric hospitals, the privacy and personal space of patients is not adequately safeguarded. Patients are still cared for in shared rooms with up to six beds. The already tense situation is worsened by the fact that in some hospitals patients in an acute condition do not have the possibility to withdraw to their own space. This can result in escalating situations in which patients can seriously provoke or harass one another. There are no lockers or boxes in many shared rooms in which the patients can keep their personal belongings.

Cramped conditions also mean that restraints cannot be carried out in a humane manner. Commissions have been criticising restraints in hallways or shared rooms in the presence of other patients caused by the lack of space for years. They constitute a severe violation of the privacy of those affected. For patients who are forced to witness the restraint of others, this is perceived as a threatening demonstration of power, at the mercy of which they also see themselves.

The legal entities of the medical facilities contacted by the NPM are usually aware that, due to the existing cramped conditions, adequate care of the patients that complies with modern psychiatry is not possible. The construction of the required new buildings or the complete renovation of existing structures, however, goes hand in hand with long lead-times for planning and approval processes.

For example, the reconstruction of the Kaiser Franz Josef Hospital is given the highest priority by the Vienna Hospital Association in order to be able to guarantee an adequate infrastructure and quality of care. However, the NPM was informed that currently only documents for a pertinent planning application are being prepared.

In Carinthia, planned construction projects will also take a long time: the completion of the psychiatric ward and associated modifications of Villach and Klagenfurt Regional Hospitals is expected correspondingly in 2020 and 2021 at the earliest.

As visits conducted by Commissions 5 and 6 in Lower Austria indicated, in some psychiatric departments of medical facilities it is necessary to convert the existing shared rooms into smaller units in order to be able to protect the patients' privacy. However, on a positive note it is worth mentioning that the existing hospital beds in the *Land* Lower Austria are gradually being replaced by low beds. The use of these beds can help avoiding measures that restrict freedom.

In accordance with the *Süd 2020* ("South 2020") programme, the building structure of Graz Süd-West/Standort Süd Regional Hospital is being continuously improved. Shared rooms are to be done away and the rooms are fitted with bathrooms. But the planning horizon even for these improvements stretches into 2026, and that can only be complied with if a psychiatric department is transferred to Bruck in 2025.

The NPM thus continues to argue the case for quickly completing necessary new buildings for improving the care situation in the field of psychiatric hospitals and departments. Interim solutions in the interest of the patients must be found where delays are unavoidable.

It is still problematic for the NPM that almost only patients with mental illnesses or mental disorders are treated in the psychosomatic ward of the Department of Child and Youth Welfare of Hochsteiermark/Leoben Regional Hospital. Commission 3 also ascertained that a suitable atmosphere for children and youths in the ward is virtually non-existent. The two-bed to four-bed rooms only have bare hospital furnishings and fittings (metal beds, bedside tables, call systems with cable etc.). The balcony doors are locked and terraces secured with textile net giving the impression of a cage situation. There is a table football game in the room designated for leisure activities. The rest of the furniture (chests/boxes, table, chairs) make a very worn and unsuitable impression.

It was also noticeable to Commission 3 that all of the handles opening doors to the outside are mounted at a height of approx. 170 cm. It is thus not possible for children and small youths to open the doors. They cannot leave the ward without the help of another person. This is de facto equivalent to locking the door of the ward. This approach cannot be justified with the duty of supervision and violates the right to the protection of personal freedom.

The NPM reiterates its opinion that psychiatric illnesses should be treated by specialists in child and adolescent psychiatry. Child and adolescent psychiatry is an independent specialised discipline with guidelines and treatment concepts that cannot be covered by paediatrics and adolescent medicine, and goes far beyond the psychosomatics that are an integral part of the entire field of medicine. An environment adapted to children and adolescents must be set up to this end. Decentralisation in the area of child and adolescent psychiatric care in Styria in this context is also necessary insofar as it would help to avoid stressful transfers to Graz in the event of a required involuntary placement.

- ▶ *The registers for recording measures that restrict freedom, which are stipulated by law for the psychiatric hospitals and departments, should be set up nationwide without delay.*
- ▶ *The number of specialised after-care facilities for persons with chronic mental illnesses must be urgently increased in order to avoid frequent and longer stays in acute psychiatric wards.*
- ▶ *New buildings and renovation work must be completed quickly in order to be able to ensure modern psychiatric care.*
- ▶ *Special departments must be set up to provide adequate treatment in the field of child and adolescent psychiatry. Psychosomatic wards in paediatrics and adolescent medicine departments cannot replace these.*

## 2.2.2. Violation of human dignity through permanent video surveillance

Permanent video surveillance in psychiatric hospitals constitutes an infringement of the protected right to respect of privacy pursuant to Section 16 Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) in combination with Article 8 European Convention on Human Rights (ECHR). As there is no express legal basis for permanent video surveillance in the Hospitalisation Act, the opinion prevails in jurisdiction and theory that reference must be made to Section 50a Data Protection Act (*Datenschutzgesetz*) when examining the permissibility of such a measure. In addition to data protection, labour law regarding the protection of personal rights must also be observed when the employees of a health care facility are involved. Recorded data must be deleted after 72 hours at the latest insofar as it is not needed for the protection or preservation of evidence or for the purpose of submission to courts and authorities for a specific reason.

Video surveillance is generally permitted in health care facilities if it is in the interest of protecting the life a person or if those affected have given their express consent to the use of the recorded data. Whereas jurisprudence assumes a vital interest concerning the patients in intensive care, this term is interpreted very restrictively in Austrian jurisdiction with regard to human dignity. One verdict, for example, judged that the permanent video surveillance of a mentally ill patient, whose potential for self-endangerment could not be exhaustively assessed, as impermissible. Employees, on the other hand, have a justified interest in not having video surveillance used to monitor performance or conduct. Even with a mere real time rendering – without saving the monitored object or the monitored person – the proportionality principle must be observed. In places that are classified as a highly personal living areas (e.g. bathroom and toilets, changing rooms), continuous video surveillance that is for no specific purpose is not allowed in any case.

The necessity for video surveillance must be specified for each camera. In so doing, it must be clarified in how far the camera fulfils the specified purpose. Such a measure is always required if there is no equally suitable or milder means of achieving the specified purpose. Furthermore, it can be assumed that even the permanent video surveillance usually required for organisational reasons in the nursing field does not allow the continuous observation of psychiatric patients. If, however, the intended purpose of the video surveillance of the patients cannot be fulfilled, the measure in itself constitutes a disproportionate restriction of the privacy of those affected.

Besides, permanent video surveillance in psychiatric departments is not only unsuitable for achieving the specific purpose in many cases but is even counterproductive. Permanent video surveillance of patients with anxiety and delusion can, for example, reinforce already existing feelings of being at other peoples' mercy, being defenceless and being threatened. Thereby mental crises can be consolidated.

Permanent video surveillance per se may therefore only be deployed after carefully weighing up the interests regarding the protection of the patients and respect for their privacy. It has to be

verified, if there is no other milder measure available to achieve the intended purpose and, due to the available personnel capacity, the video surveillance is actually expedient and suitable. Where permanently installed video cameras are in use, it must be quite clear to the patients whether the cameras are in operation or not.

An example of the problems associated with permanent video surveillances became evident to Commission 6 in the Psychiatric Department of Neunkirchen Regional Clinic in Lower Austria. There is permanent video surveillance in all of the patient rooms as well as in the hallways and in the smoking area of the department. According to the observations made by the commission, this video surveillance filmed not only the involuntarily placed individuals but all of the patients.

It is true that patients were given a leaflet during admission that also contained a declaration of consent to the video surveillance which had to be signed. However, a lot of different types of information were printed on the leaflet, all of which had to be confirmed by signature. It was thus unclear for the NPM which choices the patients had during admission and in how far they were informed about other alternatives. The question also arises as to whether the large amount of information on the leaflet is understandable for patients in an acute situation. It transpired in conversations with the patients that many of them did not know that they are under video surveillance. There was no date on the signed leaflets. The Commission was thus not able to ascertain the mental state of the patients at the time when they gave their "consent".

The permanent video surveillance at Neunkirchen Regional Clinic was justified to the NPM by claiming that danger to the patient or third parties could be noticed faster, even by non-residents. This argument did not convince the NPM, as the recording is transmitted to the service stations, but the screens are not monitored all of the time.

As the intended purpose of the permanent surveillance of the patients cannot be fulfilled, the measure taken constitutes a disproportionate restriction of the privacy of those affected.

This critical assessment of the NPM was ultimately shared in a statement from the Lower Austrian regional clinics holding company and the rapid implementation of measures to ensure handling such situations in conformity with the law were assured. An obligatory guideline for the use of video surveillance and the legal limitations thereof should be drafted. A new, concise and easily understood form for consenting to video surveillance will make it clearly visible that the video surveillance can be refused or the consent revoked at any time.

- ▶ ***Video surveillance with a digital recording of picture data must be reported to the data protection authority.***
- ▶ ***The permanent video surveillance of patients is – even if only real-time monitoring – amongst others only permissible if it is of vital interest to the affected person and no other milder measures are possible.***
- ▶ ***The consent of the affected patients to permanent video surveillance as well as of employees of the health care facility must be obtained and documented.***
- ▶ ***Information about granting consent to permanent video surveillance must be understandable to patients even when they are in an acute situation. It must contain the information that granted consent can be revoked.***
- ▶ ***Places that are classified as highly personal living areas may not be permanently video monitored. The same applies to places of work if the surveillance can be used for the purpose of monitoring employees.***
- ▶ ***If there is video surveillance in a ward, there must be visible information indicating the same. Where permanently installed video cameras are used, it must be clearly visible whether these are in operation or not.***

### 2.2.3. Application of Nursing and Residential Homes Residence Act in hospitals

In medical facilities, the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) is only to be applied to those persons who “because of their mental illness or mental disability are in need of permanent nursing and care” (Section 2 (1) Nursing and Residential Homes Residence Act). This means that measures that restrict freedom for this group of persons have to be reported to the representatives of the residents even in non-psychiatric special hospital departments.

The NPM ascertained, however, that the employees had knowledge deficits regarding the scope of the obligation to report. Commission 3 determined in interviews with the staff of Hochsteiermark/Bruck an der Mur Regional Hospital that freedom-restricting measures are only reported to the representatives of the residents for patients with an existing psychiatric condition. Measures that restrict freedom for other patients, on the other hand, are only documented.

It is true that, according to the pertinent Supreme Court jurisdiction, the legal protection provided in the Nursing and Residential Homes Residence Act should only apply to patients who were generally in need of permanent nursing and care before being admitted to the medical facility, regardless of the health impairment being treated there.

If, however, patients progress to a final condition of permanent mental illness or mental disability during their stay in hospital, which goes hand in hand with probable permanent nursing and care, the Nursing and Residential Homes Residence Act is indeed applicable from the time when this condition is known. In the opinion of the NPM, the Nursing and Residential Homes Residence Act also applies if these patients are subsequently incurable and are (still) in a medical facility.

This means that, in addition to permanent nursing and care needs that already exist at the time of admission to hospital, the Nursing and Residential Homes Residence Act can apply to patients who develop the need for permanent nursing and care during their stay in hospital.

For this reason, careful examination is required on a case-by-case basis to determine whether a “final” condition of permanent mental illness or mental disability exists. The consequence would be the application of the Nursing and Residential Homes Residence Act. Conversely, the exclusive application of the Nursing and Residential Homes Residence Act to patients who already have an existing psychiatric illness at the time of admission to the medical facility is not covered by law.

The *Land* Styria conceded to the NPM that permanent training on the Nursing and Residential Homes Residence Act including the scope of the obligation to report measures that restrict freedom is necessary in order to ensure a procedure that is conformant with the law.

- *In hospitals measures that restrict freedom must also be reported to the representatives of the residents if they affect persons who, during their stay in hospital, progress to a final condition of permanent mental illness or mental disability with the probable need of permanent nursing and care.*

### 2.2.4. Caring for children and adolescents in adult psychiatry

A long-standing central demand of the NPM is not to treat children and adolescents in adult psychiatric wards. To this end, it is necessary to expand the treatment options in the out-patient and in-patient area using specialists in child and adolescent psychiatry (see most recently NPM Report 2017, p. 51 et seq.). The situation has improved considerably in Tyrol. The newly erected University Clinic for Psychiatry, Psychotherapy and Psychosomatics in Childhood and Adolescence at Hall Regional Hospital in 2018 is setting standards here (see chapter 2.2.9).

In the current year under review, the NPM observed that minors who require in-patient psychiatric treatment due a considerable risk of injury to themselves or others are placed in adult psychiatric wards because the departments for children and adolescent psychiatry do not have sufficient capacity. This is extremely stressful for young people because their needs cannot be adequately catered to in this kind of 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.

Jurisdiction stresses the right of patients to treatment in a department that is specialised in child and adolescent psychiatry as well as treatment by qualified specialists. The consequence is the rule of separation for children and adolescents in psychiatric hospitals. Observation of the rule of separation serves to protect children and adolescents from the harmful influence of (generally speaking stronger) adults and from isolation among ill adults. It is also detrimental for the success of treatment when minors experience how chronic illness affects the life and social behaviour of adults. Psychiatric illness in children and adolescents can still be successfully treated. However, early diagnosis and a continuous intervention that is suitable for children are particularly important to achieve this. If this is not the case, the long-term prognosis for minors deteriorates considerably. Article 1 of the Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*) entitles all children to the following rights: to the protection and care that are necessary for their well-being, to optimal development and self-realisation as well as to the protection of their interests. The child's well-being must therefore take priority in all measures that affect children in public and private institutions.

Housing children and adolescents together with adults can lead to attacks by adults and persons with chronic mental illnesses on minors. This risk would be considerably lower if there was full child and adolescent psychiatric care in special wards.

Every family can be affected by inadequate care in the area of child and adolescent psychiatry. It is thus difficult to understand why concepts for improving the situation are not implemented more resolutely and it is not recognised that the treatment of children and adolescents is significantly different to the treatment of mentally ill adults. Only a broadly based multi-method approach with the objective of better understanding developmental psychopathological processes makes it possible to recognise what comprises disorders in childhood and adolescence and what distinguishes them from those in adulthood.

During its visit to the Department of Child and Adolescent Psychiatry at Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel Commission 4 observed that admissions freezes of an average of 3.2 beds per day were reported almost constantly in the visited wards (from 1 January to 22 August 2017). Four of the total 15 beds are operated as "acute beds" (for the treatment of patients at risk of harming themselves or others) with appropriately high staffing requirements. For this reason, the facility would not have been able to fulfil the minimum staffing requirements in the event of an increase in intensive patients and the simultaneous absence of personnel. Admissions freezes were the reaction to this problem.

An average 10% reduction in bed capacity contributes to the fact that minors who cannot be admitted because of the lack of capacity have to be placed in adult psychiatry institutions and facilities.

The NPM confronted the City of Vienna once again in the year under review with structural deficits in the area of child and adolescent psychiatry prompted by an ongoing case, and called for general and case-related changes. An adult patient allegedly attacked a thirteen-year-old girl in the adult psychiatric ward of the Baumgartner Höhe Social Medicine Centre – Otto Wagner Hospital.

Even with the planned creation of additional beds for child and adolescent psychiatry in Vienna North Hospital and the planned capacity expansion in Vienna General Hospital and in Hietzing

Hospital – Neurological Rehabilitation Centre Rosenhügel, there will be only a total of 95 beds for child and adolescent psychiatry and 14 day-care clinic places available in Vienna in the foreseeable future. Although there have been recent efforts to expand child and adolescent psychiatric care, 128 hospital beds for minors are planned in the Health Care Structure Plan. The NPM continues to consider it necessary to win additional specialists in the area of child and adolescent psychiatry and to substantially increase the number of trainee places in child and adolescent psychiatry.

In a statement by the Chief Executive Office of the City of Vienna, it was presented to the NPM that the Baumgartner Höhe Social Medicine Centre pressed charges for the suspected sexual abuse of a thirteen-year-old girl by a mentally ill patient. Preventive immediate measures were taken by transferring the alleged victim to a department for child and adolescent psychiatry, initiating the investigation of the case, increasing staff awareness for violence to girls and young women as well as holding conversations with the affected managers of the hospitals and psychiatric departments.

Until the expansion of the child and adolescent psychiatry capacity in the Neurological Rehabilitation Centre Rosenhügel in 2019, 15 beds have been available for the exclusive care of mentally ill children and adolescents in the second Psychiatric Department of Hietzing Hospital since July 2018. In addition to specialists and caregivers, educative and psychological therapy programmes that are adequate for the target groups are available for the comprehensive care of minor patients.

One ward was reallocated to the care of adolescents from 16 years of age in the course of transferring two psychiatric departments from the Otto Wagner Hospital to the newly refurbished Pavilion 1 of Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel. In this way, improved care of patients under the age of 16 should be ensured in departments of child and adolescent psychiatry on the one hand. On the other hand adolescents are supported through the transition to adulthood in a more target-group-specific way. This measure also complies with the NPM recommendation to create independent care for adolescents in the transition phase from the age of 16. However, more than a physical care unit dedicated to this life phase is necessary to this end. Transition-related psychiatric programmes have to be established in training, further and advanced education which impart specific expertise to the relevant occupational groups. Adolescence and young adulthood are a particularly critical phase for the development and chronification of mental disorders; a phase during which the best possible care should be guaranteed. The necessary transition from adolescence-based care to adulthood-oriented care poses an additional challenge from the development-related perspective. During this phase, the special needs of mentally ill adolescents between the ages of 16 and 24 with differing maturing processes and development conditions have to be considered. Maturing processes are rarely linear. On the contrary, sometimes development setbacks or vigorous attempts to gain independence are observed in particular in young persons with mental disorders. In relation to delinquency and multiple social problems, adolescence and young adulthood also constitute a high-risk age. International data gathering (cf. Seiffge-Krenke [2015]: "Emerging Adulthood": Research on objective markers, developmental tasks and developmental risks. ZPPP 63(3), p. 165–174) shows an increasing extension of the transition phase between adolescence and adulthood in terms of psychological development. The psychiatric support system is faced with the challenge of managing this transition optimally and assisting the adolescents in finding solutions to the difficulties they will encounter along the way.

The University Clinic for Child and Adolescent Psychiatry of the General Hospital and the Medical University of Vienna will move to a renovated building on the grounds of Vienna General Hospital in the first six months of 2020. The new area will have a total of 9,000 m<sup>2</sup>, equivalent to a threefold enlargement. At the same time, the conditions for more intensive research and teaching in this area are being set up at the Medical University of Vienna. The NPM welcomes these measures. Another positive development noted by the NPM was the setting up of a professorship of child and

adolescent psychiatry and psychotherapeutic medicine pursuant to Section 98 Universities Act (*Universitätsgesetz*) for the first time in the development plan of the Medical University of Graz for 2019–2024. The purpose is to anchor child and adolescent psychiatry at the University Hospital Graz. The NPM has been requesting the establishment and financing of a clinical department by the Federal Government and the *Land* for years (see NPM Report 2016, p. 59 et seq.). Aligned planning processes between the Styrian Hospitals Limited Liability Company (*Krankenanstaltengesellschaft – KAGES*) and the Medical University of Graz began in 2018.

- ▶ *Children and adolescents may not be treated in adult psychiatry. The rule of separation serves to prevent attacks on minors.*
- ▶ *Further measures must be taken to increase the bed capacity in child and adolescent psychiatry and guarantee adequate care of minor patients including the partial in-patient and out-patient area.*
- ▶ *Adolescents need development-specific programmes in therapy and in the psychosocial setting. These care models must cater to the peculiarities in the transition from childhood to adulthood.*

### 2.2.5. Structural deficits in geriatric psychiatry at Graz Süd-West Regional Hospital

In July 2018, it became public that four caregivers in the Department of Geriatric Psychiatry and Geriatric Psychotherapy of Graz Süd-West/Standort Süd Regional Hospital repeatedly spoke to patients suffering from dementia in a humiliating and disrespectful manner, and physically abused them as well.

Commission 3 had repeatedly pointed out serious structural deficits in this department even before these incidents became known. These include an alarming shortage of staff, inadequate structural conditions, an insufficient further training programme and the lack of de-escalation strategies. The commission warned of escalations. In the NPM Report 2017 (p. 46 et seq.), the NPM pointed out the dangers of concealed violence in psychiatric daily routines that can be encouraged through structural deficits such as these.

On an unannounced visit to the Department of Geriatric Psychiatry and Geriatric Psychotherapy of Graz Süd-West/Standort Süd Regional Hospital in August 2018, Commission 3 of the AOB observed that the incidents had resulted in personal consequences, the public prosecutors' office and internal audit were informed and a temporary reduction in the number of beds was implemented to improve the staffing ratio. Apart from that, however, no structural qualitative improvements could (yet) be observed:

There was still an acute shortage of staff in the department meaning that the employees were chronically overworked. According to the commission, the focus was on psychiatric classification and the selective (predominantly medicinal) treatment thereof. A holistic treatment of the patients was not guaranteed, there were no supplementary programmes or stimulation, for example in the form of memory training or active use of the therapy garden. Standardised mechanisms with which to detect certain types of risk (for example, weighing the patients, checking calorie and liquid needs, or fall prevention) were not used. Some patients were given permanent catheters in order not to have to go to the bathroom even though the commission was unable to find an unequivocally traceable medical indication for this in the documentation. It was also noticeable that some patients' call bells – as on the previous visits – were still located out of their reach. The concept of primary nursing could not be implemented due to the shortage of staff.

The commission ascertained that the offer of (external) further and advanced education options for staff in the department was not sufficient; registration for individual advanced education measures was without any apparent stringency. The management was not sufficiently motivated to avail of supervision.

The commission also criticised the structural conditions in the department, as they did not comply with the patients' needs. Patients were still living in five-bed or six-bed rooms. Screens to protect the privacy of the patients are either not used enough or not at all.

The commission also considered the manner in which measures that restrict freedom are reported as worthy of improvement. The documentation was confusing; it was not possible to determine the actual time of reporting. The use of milder alternatives (e.g. low beds, sensor mats) could only be partially traced from the planning and documentation of the measures. Furthermore, these milder alternatives were rarely used.

Commission 3 also had the impression that patients in the department (in particular cognitively impaired or those with restricted perception due to medical therapies) were not properly informed about the course of their involuntary hospitalisation. The patients had neither the opportunity to have a conversation alone with the specialist assessing them nor were they able to react to the conclusions made in the advisory opinion.

The outlined structural deficits were reconfirmed on a follow-up visit conducted by Commission 3 in November 2018. The original recommendations made on the initial visits had to be repeated. The NPM considers an increase in staffing and specialised advanced education programmes, especially in dealing with persons suffering from dementia, as absolutely essential. Existing violence prevention and de-escalation concepts must be optimised. The NPM also suggested improving the cramped space situation as quickly as possible. It also recommended providing the patients information that takes their respective cognitive condition into consideration.

After initial criticism by the Styrian Hospitals Limited Liability Company of the examination by the commission and findings of the NPM, those responsible now recognise that the criticism is justified. Radical reforms are necessary in order to effect sustainable improvement. The *Land Styria* deployed an "independent expert commission for geriatric psychiatry" in order to be able to initiate qualitative improvements after analysing the status quo. In December 2018, in the presence of Ombudsman Günther Kräuter, the commission presented an initial interim report to the public, in which most of the NPM recommendations were also adopted. The Styrian Hospitals Limited Liability Company and the *Land Styria* announced far-reaching improvement measures:

As a first qualitative improvement, the position of a dedicated care manager for the Department of Geriatric Psychiatry and Geriatric Psychotherapy was created as of 1 January 2019. A substantial increase in medical and nursing staff was promised. Working time on day shift is to be reduced from a current twelve to eight hours. On the night shift, staff is to be increased from a current two to three employees. De-escalation training for the staff is also planned. Once the appropriate staff resources have been provided, the concept of primary nursing is to be implemented in practice in the future. Finally, the construction of a relief building was promised in view of an improvement to the structural conditions of the Department of Geriatric Psychiatry and Geriatric Psychotherapy.

The NPM welcomes the announced measures. Commission 3 will monitor their implementation in good time.

## **2.2.6. No obligation to wear institutional clothing**

Commissions 2 and 5 observed that patients in gerontopsychiatric departments often wear identical pyjamas even in recreation areas that are frequented by visitors. Furthermore, they are

often fitted out with adults' bibs in which case their individual abilities and wishes are apparently not taken into consideration.

In accordance with the normality principle, wearing day clothes should also be a matter of course in psychiatric wards. In the field of geronto-psychiatry and the treatment of persons with orientation problems in particular, a daily routine that is structured by changing clothes and the distinction between day and night clothes amongst others is important. In this way, a therapeutic setting that is closer to natural living conditions can be created.

The CPT standards (CPT/Inf/E [2002] 1 – Rev. 2006, German, p. 54, paragraph 34) also emphasise that wearing pyjamas and nightshirts all of the time is not conducive to strengthening the personality and damages self-confidence. The individualisation of clothing should thus be part of therapeutic care.

Section 34a of the Hospitalisation Act expressly entitles patients to wear "private clothing". This regulation refers to the patients' private clothing and not those provided by the medical facility. The type and use of the clothing is as insignificant as the question of who legally owns it. Private clothing is thus merely an antonym for institutional clothing.

Even in the event of a permissible restriction due to the potential harm to the patient or others, their own clothes can only be taken away temporarily, at most for the duration of the involuntary placement.

Caregivers should thus be aware and accept that permanently wearing institutional clothing should only be the exception. Attention should be paid to wearing clothes that suit the relevant time of day, as this is important for respecting the patients' privacy.

- ▶ ***Wearing private clothes is a patients' right. Permanently wearing institutional clothing is permissible in justified exceptions only.***

### **2.2.7. Impermissible restriction on going outdoors**

Pursuant to Section 34a Hospitalisation Act, hospitalised patients have the right to go outside for at least one hour every day. This right may only be restricted – at the risk of harm to the patient or others – in exceptional cases.

The Supreme Court concretised the relevant general conditions for this in a fundamental ruling. It must thus be possible to have an unobscured view of the sky and patients must have sufficient space to move freely when outdoors. Merely letting fresh air in through a grid and "apparently being outdoors" are in no way adequate. A veranda that is surrounded by walls and grating and roofed or closed is thus completely inadequate.

In this context, the Supreme Court also pointed out that restricting going outdoors is considered an infringement of a fundamental right and cannot be explained or justified by lack of staff or financial cover (Supreme Court 26.2.2014, 7 Ob 14/14f). The owners and/or operators of medical facilities are thus responsible for ensuring that enough staff is available to guarantee that hospitalised patients are accompanied when exercising their right to go outdoors.

The commissions of the AOB observed, however, that there were no relevant available or accessible areas in some psychiatric hospitals.

Commission 6 observed, for example, that due to construction work, a garden for the Psychiatric Department of Baden Regional Clinic was not available for a long period of time.

On a visit to Hall Regional Hospital, Commission 1 observed that there was no entrance to the garden from the closed area, which is why the hospitalised patients were dependent on the help of the staff or relatives.

In order to relieve the staff, patients should be given their own access to gardens to guarantee regular time outdoors every day in the event of a strained staff situation.

- ▶ *Psychiatric hospitals and departments are obliged to provide the opportunity for patients who are even involuntarily restrained to go outdoors for at least one hour every day, which serves to promote their health.*
- ▶ *The lack of staff required to accompany patients cannot be used to justify not allowing them to go outdoors.*

### 2.2.8. Delirium prevention and treatment in hospital

Delirium is a neuropsychiatric symptom that often occurs while in hospital, in particular in the post-operative phase in intensive care. Within a few hours or days, it leads to the loss of consciousness and attention, impairs cognitive functions and changes perception.

The fast pace of hospital life, daily routines, the sometimes highly technical and unfamiliar environment as well as the many strange people pose challenges that risk patients cannot overcome without the right support. The Austrian Society for Geriatrics and Gerontology estimates the proportion of patients suffering from delirium at 30% in acute hospitals. This proportion can rise to 50% after operations and to 87% in intensive care. Without the appropriate measures, there is a risk that the length of the hospital stay will increase and the quality of life will deteriorate permanently in spite of medical success. Delirium is a very unpleasant experience. Patients often feel harassed and threatened. For their relatives it is a very frightening and difficult situation too. Moreover, delirium means an added burden for the staff; the creation of specific structures, imparting of knowledge and strategies for action could reduce this considerably.

Besides old age, the most important factors that can induce delirium include existing illnesses (cardiovascular system, lung, digestive tract, diabetes, stroke etc.), taking several types of medication, depression and deafness. Withdrawal from substances with addiction potential (alcohol, drugs, sleeping tablets) can also trigger delirium. For persons suffering from dementia, the move to a hospital can be enough to trigger delirium. The mechanical restraint of risk patients can also trigger and aggravate delirium.

Comprehensive delirium prevention and treatment can avert the negative consequences of a stay in hospital. The delirium risk assessment tool (DRAT) has proven to be a very useful instrument in delirium risk evaluation during admission to hospital. Due to the large number of possible triggers, it is necessary to watch out for any possible new diseases during doctors' visits (infections, pain from different causes, electrolyte imbalances, blood sugar imbalances etc.). Standardised tests can detect early signs of a state of medical confusion. If such a state of medical confusion is diagnosed, medication-based, nursing, physiotherapeutic and occupational therapy measures must be re-evaluated daily.

Some affected patients are extremely restless. To keep the associated risk for these patients as low as possible, it is necessary to take protective measures (orientation aids, primary nursing with validating care, promoting movement and mobilisation, acquiring low beds, alarm mats etc.) in order to avoid subsequent complications and measures that restrict freedom. Relatives and professional caregivers are an important resource. If they are involved in the therapy concept, risk patients can build trust and they can better deal with unfamiliar situations. Every delirium suffered

by older persons means a significantly greater risk of subsequent increased out-patient or in-patient care needs.

The NPM observed in the year under review that adequate delirium prevention and treatment is not attributed sufficient importance in clinical practice. Commission 5 observed in a Lower Austrian hospital that individual appropriate measures were taken in the area of delirium prevention. However, an overriding concept with standardised guidelines was missing. The consequence is that the approach to the screening and interventions required for delirium prevention and treatment differs in the individual wards of this hospital.

In the opinion of the NPM, it is the responsibility of the owners and/or operators of hospitals to ensure that a defined, guideline-based, detailed procedure for delirium prevention and treatment is available and implemented in all hospitals. In this way, it can be guaranteed that an assessment of delirium risk can be made on the basis of the medical history and the existing risk factors of the patient. This procedure should also stipulate regular delirium screening.

- ▶ *A defined, close, interdisciplinary and inter-professional cooperation is necessary for the prevention, diagnostics and therapy of delirium in medical facilities.*
- ▶ *Relatives and past caregivers should be involved in the therapy concept of risk patients, if possible.*

## 2.2.9. Positive observations

Commission 1 viewed the newly erected University Clinic for Psychiatry, Psychotherapy and Psychosomatics in Childhood and Adolescence at Hall Regional Hospital. It was opened in January 2018, as a milestone in the further development of existing programmes. The Department of Child and Adolescent Psychiatry, Psychotherapy and Psychosomatics provides six wards, a day clinic and out-patient care in Hall as well as a day clinic and a consultation and liaison service in Innsbruck age-specific diagnostics and treatment for children and adolescents suffering from all kinds of mental, psychosomatic and psychosocial disorders. The clinic is also responsible for the obligatory care of children and adolescent psychiatric emergencies in the Tyrol catchment area in close cooperation with the Medical University of Innsbruck.

Planning and organisation were performed in close cooperation with the Child and Adolescent Psychiatry staff. The needs of minors can be ideally catered to in the now available area, which is flooded with light. The new building fulfils all of the conditions to provide a "health-promoting environment" with numerous open spaces, rooftop gardens, playing and movement facilities as well as an internal sanatorium school. There are only single and two-bed rooms suitable for children or adolescents; all have lockable cupboards. The consistent effort to involve the family environment and the support systems in extensive therapy programmes is noteworthy.

The staffing level is very good. Hall Regional Hospital places emphasis on modern therapy concepts. For example, patients with substance-related addictions (e.g. cannabis addiction) and non-substance addictions (e.g. internet addiction) are treated in a ward together. The psychotherapy training for doctors supported and paid for by Hall Regional Hospital should also be highlighted.

## 2.3. Child and youth welfare facilities

### 2.3.1. Introduction

The commissions of the AOB visited 97 child and youth welfare facilities in 2018. It is remarkable that public and private owners and/or operators did not only accept positive feedback but also recognised criticism by the commissions as a valuable view from the outside. Many promises to implement the recommendations of the commissions were already made in the concluding meetings in the year under review. The AOB was often informed in the responses that the criticised issues had already been rectified. On follow-up visits, the commissions observed substantial improvements in many facilities compared to previous visits. The recommendations were not implemented only in a few facilities; in some instances even a deterioration of the situation was evident. All in all, there is a definite willingness to recognise that the findings of the NPM are taken seriously.

Burgenland also fulfilled a long-standing demand of the NPM to reduce the group size in child and youth welfare facilities in the year under review 2018 with a draft regulation on the Children's and Youth Assistance Act (*Kinder- und Jugendhilfegesetz*). There was considerable resistance to this draft regulation on the part of owner/operator organisations. Some of them contacted the NPM because they feared being unable to fulfil the increased requirements. After an intense exchange of expertise with the private owners and/or operators of the child and youth welfare facilities, a viable consensus was found on how the recommendations of the NPM could be implemented. In addition to limiting the highest number per group to ten minors in socio-pedagogical and eight in socio-therapeutic shared accommodations, the new regulation also contains provisions amongst others that are designed to improve the quality of care considerably.

The qualification and composition of the care personnel was uniformly specified for all child and youth welfare facilities in Burgenland for the first time. In future, there will be only two qualification groups. Group 1 is composed of qualified social pedagogues and persons who can verify that they have at least a three-year tertiary education in the fields of social work, social pedagogy, pedagogy, psychology or another education that is recognised as a comparable qualification. Qualification group 2 was created for persons who have completed their education as social caregiver with a focus on family work or an education that is recognised as a comparable qualification. At least 50% of the qualified staff in a shared accommodation must have completed their education for group 1.

Another recommendation of the NPM not to allow staff without specialised education and training to work in child and adolescent care was also fulfilled. In the future, only persons who verify that they have already completed two thirds of their dual training can be employed for care purposes in Burgenland. Even then, they are not allowed to work alone but together with fully qualified colleagues. Education and training must be completed two years after starting work at the latest.

In socio-therapeutic and socio-psychiatric shared accommodation, the caregiving staff must have completed their education in accordance with qualification group 1 in the future. In addition, the staff has to have basic psycho-social training comprised of 100 teaching units with special content. There must be a multi-professional team in socio-psychiatric accommodation and care facilities, and cooperation with a consulting specialist for child and adolescent psychiatry has to

be verified. The child care ratio in Burgenland was specified as the equivalent of 6.5 full-time employees for socio-pedagogical shared accommodation and the equivalent of 7.5 full-time employees respectively for socio-therapeutic and socio-psychiatric shared accommodation. The NPM anticipates a substantial improvement in the quality of care in the facilities.

There is no regulation on the Children's and Youth Assistance Act yet in Carinthia even though this has been in force for six years. As the law does not contain a concrete definition of the necessary education and suitability requirements and does not specify the number of qualified employees required, the legislators stipulated the issuing of a regulation. The NPM also argued in this *Land* in the year under review that binding regulations which enable the modern third-party care of minors should be issued. According to the office of the regional government of Carinthia, work is currently being performed on a draft.

A long-standing demand of the NPM came into effect on 1 July 2018: the scope of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) was extended to include facilities for the care and education of minors with cognitive disabilities and mental impairments. The NPM – with the support of the Human Rights Advisory Council – succeeded in convincing the legislators that the same comprehensive protection of rights for minors whose freedom is restricted that has existed as for adults since 2005 must be established (see in detail NPM Report 2014, volume "Protection & Promotion of Human Rights", p. 73 et seq.). The amendment to the legislation calls for organisational measures. A prescribed procedure detailed in the law shall be applied to all restrictions to freedom that are not typical for a specific age. Pedagogically founded age-related restrictions to freedom are exceptions in this context and thus exempted from reporting and documentation obligations. As the commissions observed on many visits that the staff is uncertain regarding the new legal requirements, the NPM recommends that all state and private owners and/or operators of child and youth welfare facilities fully inform their staff. A brochure published by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice that deals especially with child and youth welfare facilities provides a clear overview. The admissibility criteria for restrictions of freedom as well as the relevant obligations to inform the patient, document, prescribe and report as set forth in the Nursing and Residential Homes Residence Act are explained in the brochure.

As a result of the criticism by the NPM that minors do not have sufficient opportunity to have their say, different facilities reacted by creating or improving methods that promote the involvement of children and adolescents last year. Complaints letter boxes were installed in all of the facilities of an owner/operator in Upper Austria. Out-dated house rules and sanctions were abolished in some shared accommodations after the NPM criticised them. The NPM considers it important that rules for living together are drawn up in a process in which the children and adolescents are involved. A facility in Vienna has stopped disciplinary measures such as not paying pocket money or banning sweets. The house rules of another shared accommodation in Vienna were evaluated involving the adolescents. New participative mechanisms were introduced for the first time with the consent of the minors in all of the shared accommodations of a Tyrolean owner/operator. To this end, the minors appointed group spokespersons who meet regularly with the management of facilities to assert the children's and adolescent's concerns.

Barrier-free accessibility was also improved in some facilities. Upon the recommendation of the NPM, a Tyrolean owner/operator took measures when planning and constructing new groups in order to be able to implement complete barrier-free accessibility, if required to do so. One shared accommodation was completely adapted to cater for admitting adolescents with physical impairments. Indications from the commissions that diets are not balanced were taken as an

opportunity to adopt meal plans. Notices about the free opportunity to contact the Ombuds Offices for Children and Youths were affixed in many shared accommodation facilities only after objections were made by the commissions.

The NPM often receives information from private owners and/or operators that the daily allowances paid by the child and youth welfare organisations no longer suffice. Large non-profit facilities have to rely on donations in order to be able to provide qualitative work. Owners and/or operators that cannot secure donations are often no longer able to fulfil the required standards. The United Nations Convention on the Rights of the Child (UNCRC), the Federal Constitutional Act on the Rights of Children and Article 8 of the European Convention on Human Rights (ECHR) stipulate the obligation to guarantee special care, assistance and welfare of children living in out-of-home care. The *Laender*, as competent authorities for child and youth welfare and protection, are obliged to provide the necessary funds if they entrust private owners and operators with the care and education of children and adolescents. The daily allowances must be such that the entrusted facilities can safeguard the rights guaranteed in the human rights conventions. If the daily allowances paid by the *Laender* do not suffice and the contractual partners are forced to provide their own funds, this is tantamount to the public sector passing its obligations onto the shoulders of the private sector. This is absolutely unacceptable. The NPM thus demands that the daily allowances are adapted to the services provided in this context.

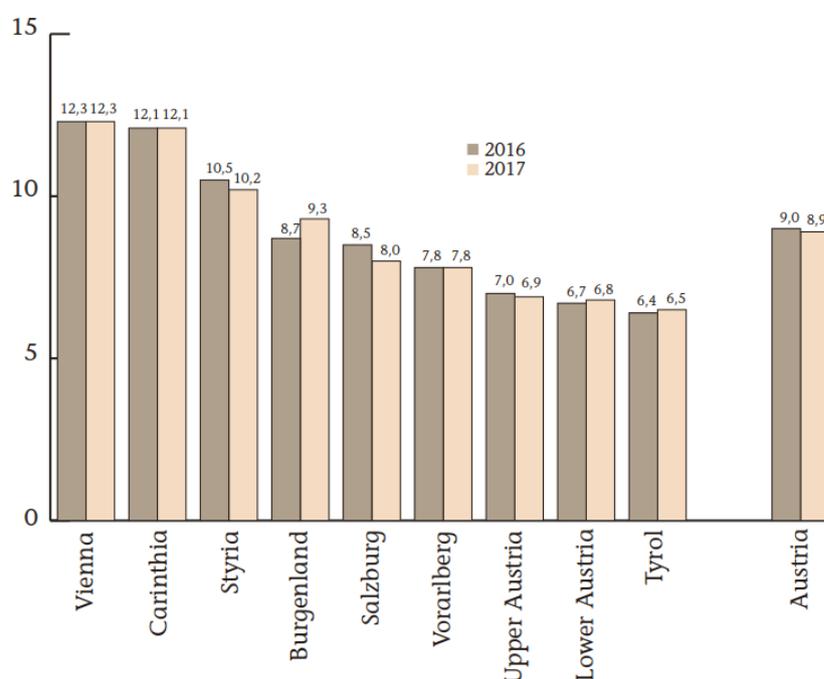
Compared with the rest of Austria, the daily allowances in Carinthia and Styria are particularly low. It is only possible for the operators in both *Laender* to cover their costs with the low daily allowances because in Carinthia up to twelve and in Styria up to 13 children and adolescents can be admitted to each group. This reduces the cost per child substantially. The NPM has been demanding a reduction in the maximum limit per group to ten minors for years, as the group size has a considerable effect on the quality of the pedagogical work.

The large groups have enabled the owners and/or operators in Burgenland to economise with the low daily allowances to date. As explained above, the maximum group sizes were drastically reduced with the new regulation; substantial additional cost is to be expected. The AOB has thus requested the *Land* several times to compensate for the higher cost with an appropriate increase in the daily allowances, which was promised by the Department of Child and Youth Welfare.

The special report on children and their rights in public institutions and facilities that was presented by the AOB to the National Council and the Federal Council at the end of 2017 received great resonance from the media. There was a lot of positive feedback from professional groups. It highlighted, in particular, that the number of minors living out of home in relation to the total number of minors living in the country varies greatly in Austria. The figures published in the special report were from 2016. As the recently published child and youth welfare statistics indicate, 13,617 children and adolescents were living out of home throughout Austria in 2017, roughly the same number as in 2016. The number of children and adolescents who were taken care of within the out-patient family support framework in 2017 changed only slightly.

At 1.2%, Vienna has the highest percentage of out-of-home children, closely followed by Carinthia. Once again, the lowest number of children, at 0.65%, living out of home is in Tyrol. In 2017 the numbers pertaining to "parenting support" were higher in six *Laender* than in 2016, but fell in three *Laender*. The NPM requested the *Laender* in the special report to determine the causes of these considerable differences and to increase the number of out-patient measures for supporting families.

## Out-of-home children and adolescents per 1,000 inhabitants under 18 years



Source: Statistik Austria, child and youth welfare statistics

The NPM asked the *Laender* most affected by children and adolescents living out of home (Vienna, Carinthia, Salzburg and Styria) in 2016 which initiatives they had started to improve the situation. All four *Laender* explained that they were working on expanding out-patient and mobile support. This is partly in the form of organisational change, and partly as additional programmes. The interviewed *Laender* agreed that situations in which children and adolescents are placed in out-of-home care can be substantially reduced through reinforcing preventive measures.

In Vienna, intensive crisis intervention work was introduced and mobile work with families extended. It is hoped that an organisational change that came into effect in July 2018 will improve the relation between full residential care and parenting support. Styria also initiated a system change with the project called “youth welfare revamped” (*Jugendwohlfahrt neu*). The concept is based on social space, community issues and case management. In this way, families should be supported with a suitable range of services. A lot of emphasis is placed on preventive measures. Carinthia has also expanded the early assistance programme and introduced a control mechanism for a comprehensive social-work-related, clinical-psychological, and children and adolescent psychiatric diagnosis. The expansion of mobile parenting support is – according to the regional government – one of the most important goals and still has top priority.

The regional government of Salzburg also reported that it has expanded out-patient support by a total of 20% since the Federal Children’s and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz*) came into force. Whether or not this has directly affected a reduction in children living out of home could not be answered. A wide range of assistance for the early prevention of extra-familial support is offered in the area of parental counselling. Compared to the previous year, the number of children and adolescents living out of home has only decreased

in Styria and Salzburg. It can be hoped that the positive effects of increasing out-patient services will bear fruit in the coming years.

As also discussed in the special report, there is a heterogeneous situation with regard to the standards in child and youth welfare facilities across the country. This affects, for example, the number of children per group, the required qualification of the staff and the staffing ratio. The NPM has requested nationwide standards several times. The UN Committee on the Rights of the Child also criticised on its most recent visit to Austria that there were no harmonised standards and that the programmes in the different *Laender* varied greatly.

The National Council decided at the end of 2018 to surrender the fundamental legislative competence of the Federal Government in child and youth welfare. This means that in future both the execution and the legislation in child and youth welfare will be the responsibility of the *Laender* only; the joint legal framework of the Federal Government hitherto covered in the Federal Children's and Youth Assistance Act 2013 no longer applies. Prior to this transfer of competence, the NPM expressed grave concerns in a written statement in the review procedure and in the media that this could increase existing differences for the operation of institutions and facilities. The same reservations were expressed by umbrella associations of owner/operator organisations, the Federal Association of Child Protection Facilities as well as the Association of Social Workers and the Ombuds Offices for Children and Youths. It is to be feared that it will become easier for the *Laender* to relieve themselves of the financial obligations for high-quality child and youth welfare.

It is regrettable that the result of the evaluation on the Federal Children's and Youth Assistance Act 2013 conducted by the Austrian Institute for Family Studies of the University of Vienna on behalf of the Federal Chancellery was not included in the considerations on the constitutional amendment. This evaluation could have formed the basis for more initiatives by the Federal Government to achieve a harmonised continued development of child and youth welfare. The study was completed in September 2018 – that is, several months before the resolution to amend the division of competence. The results show that through the Federal Children's and Youth Assistance Act impetus and pioneering steps for establishing nationwide standards for skilled work had been made. At the same time, the authors highlight deficits that make the continued development and harmonisation of the legal framework appear necessary.

To counter public criticism, the Federal Government and the *Laender* committed to concluding a national agreement pursuant to Article 15a Federal Constitutional Law before the division of competence came into force. In this way, the level of protection in child and youth welfare provided to date should be maintained and the data on developments in the individual *Laender* continue to be gathered. The NPM appeals to the *Laender* to not only enshrine the already applicable standards in this agreement, but to rectify the existing differences and to contribute to providing nationwide, high-quality superior child and youth welfare.

The cooperation with the Ombuds Offices for Children and Youths of the *Laender* was very valuable for both sides in 2018. There was a joint approach in attempting to prevent the amendment of the division of competence in the field of child and youth welfare.

- ▶ ***Preventive measures for avoiding out-of-home care must be expanded.***
- ▶ ***The reduction of group size to a maximum ten children is still recommended. The daily allowances agreed with the institutions and facilities must be increased on a needs-related basis.***

- ▶ *The Federal Government and the Laender are asked to stipulate harmonised standards for out-of-home care within the framework of the agreement pursuant to Article 15a Federal Constitutional Law, which still has to be negotiated.*
- ▶ *The personnel in the institutions and facilities must be informed about the legally compliant implementation of the Nursing and Residential Homes Residence Act.*

### 2.3.2. Quality development in in-patient child and youth welfare

*Laender* quality standards and cross-organisation quality standards for the accommodation and care of children and adolescents will become increasingly important with the new division of competence. Since the very beginning of its work, the NPM has taken the stance that all children and adolescents living out of home have the right to the best possible quality as a matter of principle regardless of the *Land* in which they are taken care of. In order to provide children and adolescents in socio-pedagogical facilities adequate, transparent and comparable care, socio-pedagogical facilities and owner/operator organisations need an objectively founded orientation and decision-making aid. This aid should enable them to develop central routines and care processes and develop internal quality management.

FICE Austria, the Austrian branch of the International Federation of Educative Communities, initiated a project "Quality development in in-patient child and youth welfare" ("*Qualitätsentwicklung in der stationären Kinder- und Jugendhilfe*"). The NPM has been invited to participate in publishing a manual. The invitation was gladly accepted because the process guarantees that the experience and recommendations made by the NPM across all institutions are widely debated and flow into the elaborations. A working group made up of twelve experts from public and private child and youth welfare from all over Austria has been meeting regularly since November 2017; their scientific support is secured. Several workshops with care leavers were held in autumn 2018 in order to take the perspectives of former youths into consideration too (see chapter 2.2.8). There were also work meetings with specialists from public child and youth welfare who had the opportunity to contribute their perspectives to the process from the view of technical supervision.

The objective of the jointly developed manual is to provide facilities and public control bodies, as well as the technical supervision bodies of the *Laender*, sufficient concrete and practicable orientation aids with which to structure care processes. Nevertheless, the manual does not limit the required scope for the individual organisation of the same. This is why necessary multidiscipline professional approaches were defined, which underlie the development of the standards and are considered relevant in all areas. These professional approaches are oriented on the child's well-being and the objective of ensuring the best possible encouragement, development, participation and inclusion of children and adolescents in in-patient child and youth welfare facilities. The manual was presented in May 2019.

- ▶ *The NPM recommends all private and state competent authorities for child and youth welfare and protection to consult the "Quality development in in-patient child and youth welfare" manual when implementing internal quality management systems.*
- ▶ *The technical supervision of the Laender is recommended to pay special attention to the quality areas described in the manual on inspections.*

### 2.3.3. Prevention of all forms of violence

Children who cannot grow up with their family are entitled to special protection and assistance from the State. The NPM considers it extremely important that facilities have not only a violence prevention concept but a sex education concept too. It is important that the whole team is involved in developing such concepts respectively. Profound knowledge of sex education as well as risk analyses and guidelines are necessary in order to be able to adequately support all children and adolescents through their sexual development and, at the same time, draw attention to problematic sexual behaviour. The whole team of a facility should agree on all of this in order to heighten their own sensitivity. If this is not the case, very different perceptions and viewpoints can collide, which promotes conflict in the team. In the worst case, these different perceptions can result in signs of sexual harassment not being recognised as such.

The commissions also observed in 2018 that violence prevention concepts and sex education concepts are still not implemented nationwide. In Vienna, Lower Austria and Tyrol, the existence of a sex education concept is a permit requirement for new residential groups and the restructuring of a facility. In Upper Austria, the owners/operators of the facilities developed a conceptual framework on sex education that can be used as the basis for facility-specific concepts. The facilities are obliged to draft these concepts. In accordance with a new regulation in Burgenland, a sex education concept is also compulsory. The *Land* Carinthia is currently working on a new regulation and was urged to stipulate a sex education concept as a permit requirement for the Carinthian facilities in the process. The NPM recommends the other *Laender* to adopt similar provisions.

The clarification of the terms in connection with sexual abuse is also important. The NPM considers the precise distinction between boundary violation, infringement and sexual violence to be important, as it was observed that public and private child and youth welfare owners/operators do not always have the necessary awareness of the problem.

Sexualised boundary violations are defined as actions that have a sexual component, that happen once or repeatedly, intentionally or usually unintentionally but are not a matter of criminal law. Sexual infringement is every form of sexually connoted verbal or non-verbal behaviour for the purpose or consequence of violating the dignity and/or sexual self-determination of a person. Such actions are not necessarily a matter of criminal law but can be a precursor to the same. Forms of violence covered by criminal law such as physical and sexual violence, torture, extortion or coercion are defined in legal regulations, in particular in the Austrian Criminal Code (*Strafgesetzbuch*) and in the notes to the Federal Children's and Youth Assistance Act 2013.

These terms are often used incorrectly by experts. There is thus the risk that events are trivialised which would be punishable under criminal law. The NPM therefore recommends using these terms precisely in order to avoid trivialising forms of sexual violence that are a matter of criminal law.

- ▶ *Sex education concepts must be a permit requirement for socio-pedagogical facilities.*
- ▶ *Sexual violence may not be trivialised by using the wrong terms.*

### **2.3.4. Crisis accommodation in cases of acute endangerment of the child's welfare**

Crisis accommodation should be available if emergency measures are necessary due to an acutely dangerous situation in a family. The purpose of this crisis care is the safety and the protection of children and adolescents, the de-escalation of the family situation and the development of solutions together with family. However, crisis de-escalation places are not available nationwide in sufficient numbers.

In Vienna, where the first crisis centre was opened in 1996, such facilities are located in every district, in some even several of them. They have been fully occupied for years; usually even overcrowded. The crisis centres that were originally designed for eight minors are used for up to twelve. The reasons for the overcrowding are the lack of crisis places and excessively long waiting times for follow-up care. There is no additional staff for overcrowding either. The NPM is of the opinion that this makes reacting appropriately to problem situations and effective crisis clarification considerably more difficult.

As an emergency relief measure, Vienna purchased five new family care units in 2018. Additionally, a temporary shared accommodation focusing on siblings that accepted children from crisis centres was opened. A private owner/operator opened a small shared accommodation for children and adolescents with acute support needs. In addition, municipal department 11 promised to expand the out-patient measures to relieve the crisis centres. Success stories are also anticipated from the intensification of the out-patient crisis clarification mechanisms such as mother and child homes. With the organisational change that began in July 2018, municipal department 11 wants to achieve a more effective and faster involvement of necessary in-patient and out-patient child protection mechanisms. This should help alleviate the situation in the crisis centres.

There is a further problem in crisis support with Vienna new-borns and infants, as there are too few places with crisis foster parents for children aged 0 to 3. Due to the decreased number of crisis foster places, children under the age of three often had to be accommodated in crisis centres even though these are not designed for children in this age group. An increase in the number of potential crisis foster parents is expected from a major advertising campaign with an information evening and a new engagement model with which they are offered improved conditions when fulfilling their duties.

The recommendation of the NPM to set up a dedicated crisis centre for children and adolescents with psychiatric diagnoses and posttraumatic stress disorders has not yet been implemented. Commission 4 observed on a visit that a psychotic girl who had to be taken regularly to a psychiatric ward was housed in a crisis centre. When she lost control of her impulses, the young girl repeatedly tried to injure smaller children, insulted them, hit social pedagogues several times and kicked them in the stomach. The police had to be called to all of the documented violent outbursts to ensure safety.

This example illustrates the need for a dedicated crisis centre for mentally ill minors. From a human rights perspective, it is untenable that other minors are triggered by such situations and traumatised once again. Furthermore, frequent police operations can bring back associations with traumatic memories for some children and show them that even a crisis centre is not a place of refuge. The staff interviewed by the commission was of the opinion that a crisis centre is not the right place for accommodating adolescents with massive psychotic disorders.

In Lower Austria too, there are not enough crisis places and the waiting time for follow-up care is too long. Socio-therapeutic places above all are rare. The planned length of stay in crisis centres is thus exceeded. In 2018 minors even had to be sent home and wait there for a place in a shared accommodation. The NPM firmly rejects such an approach. As out-of-home care is only permissible if the child's welfare is at risk at home, the competent authorities for child and youth welfare and protection accept that risks continue to exist and the protection of minors cannot be guaranteed. Furthermore, it is extremely stressful for affected children and adolescents to be separated from the family twice. The NPM sees an urgent need for action to create new care and crisis places in Lower Austria.

Crisis de-escalation places are stipulated for the first time in the new facility regulation in Burgenland. In addition to looking after the children and adolescents, the responsibility of the crisis centres should be to develop recommendations for continued care inside the family or in a form of full residential care. Recommendations should be elaborated by means of crisis intervention and social, psychological and pedagogical diagnostics. The staff in such crisis centres is multi-professional; seven full-term employees and a permanent position with an education in clinical psychology are planned. The group size in the crisis centre is limited to eight children. In order to safeguard the welfare of the children, this number may only be temporarily exceeded with the consent of the regional government.

- ▶ *The expansion of crisis de-escalation places is urgently necessary.*
- ▶ *In Vienna, a crisis centre for children and adolescents with psychiatric diagnoses and massive loss of impulse control should be erected with multi-professional staff.*
- ▶ *Children may not be sent back to the family home where their welfare is at risk. They should not have to wait there for a vacant place in shared accommodation because there is a lack of suitable follow-up care facilities.*

### 2.3.5. Inadequate care of traumatised minors

Because of their diagnoses and the severity of their impairment, some minors require special care and do not fit in to the care setting in a socio-pedagogical facility. Nonetheless, many minors with severe traumatisation live in this kind of shared accommodation with an inadequate pedagogical programme. The teams are not sufficiently multi-professional and no clinical psychologists are employed there. However, this kind of expertise is required when working with children and adolescents with such disorders.

The number of children living in socio-pedagogical accommodation is higher than in socio-therapeutic. The child care ratio is thus too low. As the caregivers have to spend more time looking after children with behavioural disorders, too little time remains for the other children. Both the affected children and adolescents and their housemates are left short.

The size of the group can be a cause of problematic behaviour in traumatised minors if it is too much for them. The range of ages can also be a cause if minors are living in a residential group but are far below the age limit designated for the respective concept. No other place could be found for them due to their problems.

The children and youth assistance laws of all *Laender* stipulate that aid planning is to be evaluated regularly and adapted, if required. If then in the course of the care process it transpires

that the type of accommodation is not (no longer) suitable, action must be taken quickly. However, it is very difficult to find suitable new places, as there is a lack of socio-therapeutic and socio-psychiatric places in all of the *Laender*. The responsible facility often has to wait a long time until a solution can be found. In the meantime, the facility is left alone with the problem of guaranteeing the protection of the other children and adolescents. Often the facility sees no other alternative than to place the minors in psychiatric wards, provided there is a vacant place.

The commissions repeatedly see examples of this on visits to shared accommodation. In a shared accommodation in Lower Austria, eleven-year-old boys were housed together with adults even though the accommodation is designed for adolescents from the age of fourteen and older. Places could not be found for the young boys in another facility, as they had been offensive and acted violently towards other children and the staff in previous shared accommodation. The older adolescents also had to leave their previous facility because they were delinquent. During conversations with the children and adolescents, the commission gained the impression that the younger boys are afraid of the older ones or are mobbed by them. The older adolescents, on the other hand, find the younger boys annoying. In light of the different background experience with maltreatment and sexual abuse, it is difficult for the staff to effectively prevent attacks by the older boys on the younger ones due to group size and age difference.

The SOS Children's Village has developed a model with which children can remain in shared accommodation despite having care problems, and a socio-therapeutic place can be set up if required. If this is approved by the competent authorities for child and youth welfare and protection, the facility receives a higher daily allowance for the relevant child and can employ an additional caregiver. The advantage is that problematic breaks in relationships can be avoided in this way.

However, these permits are always only granted for a fixed period. In a facility in Vienna, the additional position could no longer be filled because the permit for the socio-therapeutic place had expired. Even though the facility had applied for the permit extension in time, it had to wait three months because permits are always only granted at the end of the quarter. The NPM recommends beginning the permit procedure earlier in the future in order to avoid vacancies.

Commission 2 observed that the care ratio is too low in an Upper Austrian facility in which very difficult male adolescents who have experienced traumatic events are looked after. There had already been cases of arson in the building, theft from the office and incitement of an adolescent to commit crimes.

The NPM thus recommended adapting the staffing ratio to the existing concept to ensure the best possible development of the children and adolescents and guarantee their protection. The facility agreed with this assessment but asserted that the care ratio is specified through the overall economic guidelines of the *Land*. It claimed that it is the concern of the regional government of Upper Austria to examine these guidelines and adapt them to the given requirements.

- ▶ *The Laender must expand the amount of socio-therapeutic care places.*
- ▶ *The care ratios must be adapted to requirements.*
- ▶ *Minors for whom a socio-pedagogical care setting does not (no longer) suffice must be transferred to more suitable, multi-disciplinary oriented socio-therapeutic or socio-psychiatric facilities without delay.*

### 2.3.6. Placement in other *Laender*

As already reported many times in recent years, many children and adolescents in Austria live in out-of-home facilities that are located far away from the place of residence of their family. This is attributable to the lack of special care places on the one hand, and to the different daily allowances in the *Laender* on the other. These are substantially lower in some *Laender* than in others.

At 29.22%, Burgenland had the highest proportion of minors who are accommodated outside the *Land* in 2017. At the same time, there were many places in Burgenland that were only one-third filled with children from the same *Land*. Upon the recommendation of the NPM, Burgenland adopted an amendment to the Children's and Youth Assistance Act according to which a maximum of 15% of the total number of minors in a Burgenland facility may be from other *Laender* in the future.

Such a regulation has existed in Upper Austria for several years. It is only possible to exceed this total number in exceptions such as when admitting siblings, and only with the approval of the Department of Child and Youth Welfare of the regional government. It can be necessary in isolated cases to consciously remove minors from hardened detrimental environments. The NPM welcomes this amendment and calls on the other *Laender* to follow this example.

- ▶ *All Laender should follow the example of Upper Austria and Burgenland and introduce a quota system for admitting minors from other Laender.*
- ▶ *Children should be looked after in their Land insofar as no other solution is more advisable in the interest of the child's welfare.*

### 2.3.7. Poor observations on the part of technical supervision

The observations made by the commissions often coincide with those of the technical supervision of the *Laender*. It is reported to the NPM in the reactions of the *Laender* that they are already aware of the problems observed by the commissions and that orders have been issued to rectify the same. However, other reactions gave the impression that only formal necessities were examined on announced visits by the respective *Land*. Sometimes the problems described by the commissions were recognised and addressed but the measures ordered by the technical supervision soon petered out or did not show the desired effect. The NPM considers it important that the *Laender* increase the efficiency of their technical supervision with additional personnel and by shifting to unannounced visits to "problematic facilities" in particular.

A particularly gross example of the lack of efficiency of the technical supervision was evident in three shared accommodations in Lower Austria, which had to be shut down in 2018. It transpired during the course of *ex-officio* investigative proceedings by the AOB that staff had already reported inadequate restraint measures and impermissible sanctions in 2012. According to witnesses, minors were thrown to the floor, pressed into the ground and held this way for hours. The penalties ranged from reducing meals to bread and water for days, shaving the minors' hair, cold showers, speaking bans, walking to heel when outdoors to being forced to eat with the face to the wall. The technical supervision contented itself after this report with making a call to the manager but never inspected whether and which sanctions are used or whether there is inhuman and degrading treatment.

There was also no reaction to the fact that staff working in the shared accommodation was either not qualified as specified in the legal regulations and the permit notice or had not completed any form of training. One contented oneself with assurances that changes would be made. However, this was never monitored. In another shared accommodation, security staff was deployed in the care area and even carried out restraints without an approved permit for the same.

Although there were acute staff shortages and above-average fluctuation in all of the shared accommodations since the very beginning, the technical supervision consented to exceeding the maximum number of minors per group and accepted long-term placement of minors under the specified age limits. It was tacitly accepted that the compulsory permanent double shifts stipulated in the permit were never worked.

The above average daily allowances which were only justified by the higher staffing ratio and/or reduced group size were still paid despite the violation of conditions of the permit notice. The facility charged EUR 1,100 per day for individual care even though the relevant staff had no training. The correct use of the daily allowances was also not investigated when it was reported to the regional government that salaries were regularly paid late and sometimes even the housekeeping money for day-to-day purchases was missing or had to be pre-financed with the staff's own money.

The child and youth welfare closed all of the facilities immediately after the deficits were discovered. However, the children and adolescents were transferred to other facilities without observing key children's rights. The children were neither involved in the decision process nor informed about the plans or prepared for the change. Commissions 4 and 5 visited the "new" facilities and interviewed the children and staff there. Concurring statements showed that the minors were not able to bid farewell to the caregivers and their former housemates, as the transfer came as a complete surprise to them. They were frightened at being collected from what was their home by a total of fifteen strange people with the help of the police.

The caregivers in the new shared accommodation reported that the minors were shocked in the beginning. Two of the children in this state of shock should have been admitted to a child and adolescent psychiatric ward. They said that they had received no advance information, not even about required medication. One adolescent who had only had individual care to date was to be integrated in a group, which was not possible because of his mental illness.

The commissions observed a marked posttraumatic stress disorder in the children interviewed. The ambush-like removal of the children in the presence of the police caused further traumatisation. Children and adolescents with existing mental problems, fears and reactive attachment disorders become more distraught and insecure after such massive interventions. The NPM ascertained a case of maladministration.

- ▶ *The effectiveness of technical supervision in "problematic facilities" must be increased. Visits there should also be unannounced.*
- ▶ *Minors must be prepared for moving when facilities have to be closed. As far as possible, it must be ensured that supportive relationships to schools, training centres and the circle of friends are not lost.*

### 2.3.8. Continuation of support after reaching legal age

Commissions of the NPM repeatedly observe that adolescents living out of home feel restricted in their choice of education and profession because it is not clear that they will continue to receive support after reaching legal age. All of the *Laender* Children's and Youth Assistance Acts stipulate that parental/educational support can be extended after reaching legal age up to the age of 21 if this is absolutely necessary to achieve the objectives defined in the assistance plan. Despite multiple demands by the NPM, private owners/operators of child and youth welfare facilities as well as Ombuds Offices for Children and Youths, a legal entitlement to the continuation of support after the age of 18 is still not anchored in the law. Relevant permits regularly have to be obtained from the regional government, which is always associated with uncertainty and stress.

Care leavers are defined as young persons who have spent some of their life in state care – for example, in residential groups or foster families – and are at the transition to an independent life. Unlike children who grow up in their original family, many of these adolescents and young adults have hardly any stable networks and sufficient material resources. Nonetheless, it is expected of them in current practice that they can live independent lives once they reach legal age. In 2016, the University of Klagenfurt (*Alpen-Adria-Universität Klagenfurt*) initiated a research project with the support of the Anniversary Fund of the Austrian National Bank as well as the SOS Children's Villages and *Pro Juventute*. The report systematically examines the education and employment situation of this group of young adults in Austria. To this end, representative, quantitative data on education, training and the employment situation of 20 to 29-year-old care leavers was gathered. In addition, interviews and network analyses were used to find out what impeded or helped them during their education. The final report "Educational pathways and the influence of social context conditions on educational biographies of care leavers" ("*Bildungschancen und Einfluss sozialer Kontextbedingungen auf Bildungsbiographien von Care Leaverrn*"), which was published in 2018, identifies an educational disadvantage for children and adolescents living out of home in Austria too.

Compared with the total population of the same age, the proportion of care leavers with compulsory schooling and apprenticeship qualifications is considerably higher. The more often facilities were changed, the lower the level of education, whereas the duration of the placement out of home does not seem to be relevant here. Friendship and relationships with peers also play a critical role for care leavers in promoting education. This shows how important it is that in-patient educational aids actively contribute to enabling young people to experience "normality".

Those responsible for facilities also pointed out to the NPM during the course of the study that many adolescents have a mental crisis when they realise that support will stop on their 18<sup>th</sup> birthday and it is uncertain whether they can stay in the facility. Those who leave shared accommodation shortly before or after their 18<sup>th</sup> birthday have little or no chance of being accepted back, if they experience difficulty in continuing their education without support thereafter. The completion of formal education in the form of school qualifications, vocational training and tertiary or post-secondary courses of education is considered today as a basic requirement for leading a life according to one's own capabilities.

Child and youth welfare facilities must support children and adolescents in acquiring a school education and vocational training. This is reinforced by the law on the obligation to facilitate education introduced in Austria in 2017. This stipulates that persons entrusted with the care and upbringing of young persons should ensure that these can participate in education or training

courses up to the age of 18. If courses of education are discontinued before then, specific measures (including job coaching, youth coaching, specific vocational training measures) must be taken so that adolescents do not detach themselves from the education and training sector. The care leaver stigma is the fear of being unable to complete training alone and ending up in a downward spiral after leaving the child and youth welfare facility at 18 or 21 at the latest. Whilst other adolescents who grow up with families can rely on their support in critical situations, the failure of post-school training questions the support of child and youth welfare. It is therefore urgently necessary to anchor a legal entitlement to continued support in order to avoid phases of uncertainty and to create the possibility to extend educational support after the age of 21.

Through their work on the mentioned study, care leavers have since joined together and drafted a position paper that they presented to the AOB amongst others. They want equal opportunities for themselves in the areas of care, education and social integration in order to rule out the disadvantages for out-of-home children. The option of returning to care by child and youth welfare organisations should be protected. The support after the age of 18 should be provided regardless of whether there were previously measures from the child and youth welfare organisation or not. They also demand the legal entitlement to financial aid and socio-pedagogical, psychological and therapeutic support up to the age of 26. The NPM supports these demands.

- ▶ *The legal entitlement to continuation of support by the child and youth welfare organisations to safeguard the completion of education after reaching legal age must be anchored in the law.*
- ▶ *Socio-pedagogical support should be possible for the duration of education (maximum up to the age of 26).*

### 2.3.9. Facilities for unaccompanied minor refugees

In November 2017, the NPM also dedicated a point of focus to unaccompanied minor refugees with the special report on "Children and their rights in public institutions and facilities". In this report it was clearly voiced that unaccompanied minor refugees, some of whom have experienced an odyssey lasting years to get to Austria, require special protection. It was also emphasised that unaccompanied minor refugees must be treated in the same way as Austrian orphans. They have a right to special support and assistance from the state. This is clearly defined through legal norms.

The necessity to specially protect unaccompanied minor refugees was explicitly recorded in the EU Reception Conditions Directive (2013/33/EU) by standardising special regulations for this group. In addition to the UNCRC, the EHCR, the EU Charter of Fundamental Rights and the Federal Constitutional Act on the Rights of Children, the Directive acts as assessment criteria for the fulfilment of state obligations.

Therefore, EU Member States must ensure that services for asylum seekers enable an appropriate living standard that guarantees the applicants a livelihood as well as the protection of physical and mental health. Where minors are concerned – as emphasised in Article 3 UNCRC – the well-being of the child must have top priority. The programmes must therefore be appropriate for the physical, mental, spiritual, moral and social development of the children.

The NPM observed also in 2018 that these regulations were not consistently complied with. The unequal treatment of Austrian children and unaccompanied minor refugees is already evident from the fact that facilities for unaccompanied minor refugees under the Basic Provision Agreement receive a substantially lower daily allowance for the care of minors than other child and youth welfare facilities.

The care of unaccompanied minor refugees is accordingly inadequate in basic provision facilities if special needs are not taken into consideration or voluntary aid systems do not intervene to provide support. The NPM criticised that in several facilities the unaccompanied minor refugees are left to their own devices. Although the unaccompanied minor refugees need support in everyday practical situations, there is, for example, no guidance on how to shop and cook in terms of a balanced diet or instruction on the correct use of cleaning agents. The commissions thus encountered very dirty kitchens and living areas. The eating habits of adolescents left to their own devices deviated considerably from what is generally considered to be a healthy and balanced diet. Local fruit and vegetables were not explained to them and they were not shown how to prepare them.

The NPM supports providing guidance to becoming independent. To this end, a suitable framework and assistance by the staff are required. In reality, adolescents are obliged to perform household duties without being adequately able to do so.

The NPM also criticised that in several facilities the children are not clearly shown the consequences of breaking the house rules.

The deficits in the pedagogical area were, in the view of the NPM, attributable to the lack of qualifications on the part of the staff in several facilities. In a facility in Vienna visited by Commission 5, only one out of six caregivers was suitably qualified. This contradicts, amongst others, the regulations of the international Quality4Children Standards. Qualification deficits on the part of the staff often result in the unaccompanied minor refugees being merely supervised by an adult as opposed to supportive or pedagogic guidance work being done with them. This is completely inadequate for traumatised unaccompanied minor refugees in particular.

Instead of providing unaccompanied minor refugees in need of intensive support with the necessary closely meshed multi-professional care, they are sometimes stigmatised in public. In November 2018, several unaccompanied minor refugees in Lower Austria were, on the instruction of the responsible regional minister, thus taken to a "special facility for adolescents who displayed negative behaviour or become criminal". The facility was guarded by barbed wire fencing, guard dogs and security personnel. All of the unaccompanied minor refugees were designated by him in the media as notorious troublemakers, violent and criminal even though some of them have no criminal record. The special facility created for them was closed within four days of opening, after an inspection report by the Ombuds Office for Children and Youths declared it unsuitable and at the instigation of the Governor of Lower Austria. Some of the adolescents who had been placed there returned to their former facilities; nine were transferred to a new facility. Undoubtedly, some unaccompanied minor refugees have and make problems that are a challenge for the youth welfare system. It is with good reason that the legal system forbids setting up prisonlike basic provision facilities, as well as the isolation of problematic unaccompanied minor refugees by restricting their freedom, threats or coercion.

In a further case in Lower Austria, unaccompanied minor refugees were transferred to another facility within a few days after a violent death in their facility. Although it is clear that after such a

serious incident the general situation is subject to a precise investigation and risk analysis, Commission 6 was of the opinion that the move was not adequately prepared. Minors were not involved in this decision and only informed about it at short notice. The quickly implemented move meant considerable mental stress for them – particularly for those who had psychiatrically diagnosed illnesses. Furthermore, the new facility was not adequately informed with regard to medical histories, medication-based care and documentation.

The NPM observed in 2018 that facilities for unaccompanied minor refugees were closed all over the country as they are no longer needed. It is true that the number of applications for asylum made by minors is falling rapidly. Large facilities were thus no longer required. At the beginning of December 2018, Commission 5 visited a recently opened facility in Lower Austria with a capacity of 48 places. This size alone poses a risk for structural violence and aggression directed against it. The commission learned from adolescents that uniformed security personnel is present from 5.00 p.m. who, according to the statements made, are instructed to stop unaccompanied minor refugees under the age of 16 from leaving the facility. This and the routine searching of their personal belongings – without reasonable grounds – which is strongly criticised by the adolescents, is an impermissible infringement of their fundamental rights (protection of the right to personal freedom and privacy) in the opinion of the NPM. There was no reaction to these observations from the regional government of Lower Austria at the time of completing this report.

- ▶ *Unaccompanied minor refugees must be offered integrative care that is oriented to professional requirements and needs instead of reacting to problems with impermissible measures that deprive of or restrict freedom.*
- ▶ *Daily allowances for accommodation for unaccompanied minor refugees must be adapted to the level of child and youth welfare facilities, in order to be able to guarantee sufficient and adequately qualified staff required for needs-based support.*
- ▶ *Unaccompanied minor refugees need practical support in mastering everyday tasks and must be involved in decisions that affect their lives in as much as possible.*

### 2.3.10. Positive observations

In 2018 the commissions once again found many examples of what they defined as good practice on their visits to child and youth welfare facilities.

In a facility in Lower Austria, Commission 6 praised a very clear, well-structured crisis report that was qualified as first-class. The sex education concept was also implemented in an exemplary manner. In a residential group in Styria, the care plans were positively highlighted by Commission 3, as they were individualised and detailed. The development plans were structured comprehensively and clearly, described the yearly development of the minors and also contained development goals for the following year that had been drafted together with the children. It was also seen as positive that all of the minors are involved in the critical processes and the adolescents are included in preparing for leaving the facility.

There was also praise from Commission 5 for the introduction of participative mechanisms in a home in Lower Austria and its external residential group. The relevant initiative goes back to a project on participation with the St. Pölten University of Applied Sciences. The children can draw up a list of topics for the weekly children's team and take the minutes of the meetings

themselves. They appointed a girl as group spokesperson and her deputy who represent them as delegates in the children's parliament of all external residential groups.

The external residential group located outside the home stood out due to the lovingly designed interior of the house and the large garden with natural pond offering plenty of leisure activities for the minors. The high level of staff presence in the residential group was given a special mention. An increased daily allowance of EUR 250 makes it possible to employ three social pedagogues and two group assistants during the day in this external residential group. It also helps to pay the animal-supported therapy. In addition, there are three trained therapy dogs and two other dogs which are currently being trained. The presence of the pedagogical manager on two and a half days a week is also remarkable. The commission observed that due to this presence the management knows all of the children personally, is informed about group dynamics and can estimate and deploy the strengths of the respective employees well.

Commission 4 also praised the high level of staff presence in a Vienna facility. There are always three to four caregivers present during the day, and there are double shifts at the weekend. In total, 19 social pedagogues are employed in the facility, which is composed of two shared accommodations. That the development reports are available in both handwritten and electronic form was also considered good practice. The sex education concept of the facility showed a high level of expertise.

In a Vienna crisis facility for adolescent girls, the commitment to individual supervision in the first year of service was highly praised by Commission 4.

Lovingly designed books of life which are made by the children themselves with the help of the responsible coordinators and which document meaningful events and developments impressed Commission 6 in a facility in Lower Austria. These books of life should provide emotional support in crises as they look back at everything the child has achieved. They can also help to remind them of formative development phases after they leave the facility.

## 2.4. Institutions and facilities for persons with disabilities

### 2.4.1. Introduction

In 2108 the NPM visited 84 institutions and facilities for persons with disabilities in order to reinforce protection of these persons from torture and other cruel, inhuman or degrading treatment or punishment in a preventive way. A fundamental part of the mandate is to not only document obvious cases of maladministration but, above all, to identify circumstances that pose a risk in this respect. It is clear to the NPM that a view of the overall situation is necessary here. When persons cannot exercise their rights, are treated like supplicants and not as equals, the risk of their human rights being violated also increases. Regrettably, this is reality in several institutions and facilities.

There are still employees who treat persons with disabilities like infants, deny them basic needs and thus make them "second class" citizens. This does not preclude that many actions are made with the best of intentions. Many cases of maladministration can seem harmless at first glance; the problem only becomes evident after closer examination. For the NPM, it is important that the autonomy and self-determination of persons with disabilities are supported in the best way possible thereby reducing the risk of maladministration.

The NPM has been criticising for years that there is still no comprehensive, nationwide plan for deinstitutionalisation. This means: less homes for persons with disabilities and more types of accommodation that are also normal for other people. Individual, well-intended but uncoordinated steps do not suffice here.

The comprehensive expansion of personal assistance is fundamental for a serious strategy of deinstitutionalisation and the promotion of self-determination. Putting persons in the position to decide themselves how, where and from whom they receive support services increases the possibilities they have to exercise self-determination. The UN Committee on the Rights of Persons with Disabilities also confirms this in its General Comment No. 5 on Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD). Personal assistance must be oriented on individual needs and enable persons with disabilities to exert control over the support services. The Committee considers, as does the NPM, an action plan for deinstitutionalisation as legally necessary. In this context it is not only the size, location or construction type of institutions and facilities that is important but, in particular, having the opportunity to make decisions oneself. Certain basic conditions are necessary to this end.

In this context, the NPM would also like to point out the risks involved in the ministerial draft for a new Social Welfare Fundamental Act (*Sozialhilfe-Grundsatzgesetz*, 104/ME XXIV.GP) which is being hotly debated at the time of writing this report. This draft legislation stipulates amongst others the preclusion of special payments as well as a maximum social welfare payment of 175% of the net compensatory allowance in common households and shared accommodation for unmarried persons. These regulations are targeted at those who live in assisted group homes allocated to work with persons with disabilities. According to the explanatory notes, the planned reduction in benefits serves to "reduce the incentive to set up arbitrary adult common households (...)". Persons with disabilities already have to bear higher costs to maintain their subsistence. It can be argued here: where support is needed for reasons of disability, households and shared accommodation provide a way of distributing the care costs and still being able to remain autonomous. This also prevents those persons in in-patient institutions and facilities from being

repressed amongst others. As the NPM and lobby groups for persons with disabilities made clear, in the same way the Monitoring Committee of the Federal Government did in the written statements during the review procedures, benefit cuts for this group of persons must be categorically rejected.

Persons who are cared for in institutions and facilities must be guaranteed that they have a say in what affects their lives. Strictly regulated mealtimes and bedtimes, shower days, the lack of a possibility to withdraw into their own space or lack of privacy are indications of not having the opportunity to have their sufficient say. On the other hand, participatively run institutions and facilities promote self-representation, channels for lodging complaints, team meetings with residents and thereby taking responsibility. Commission 5 found a good example of participation in a daily structure. Clients were involved in deciding which external orders are accepted and the price to be demanded for the same. The motto of "nothing about us without us" is clearly implemented in this facility. In contrast, in another case asylum seekers with disabilities were hastily moved from one facility to another without preparing them or asking their opinion. They were refused their right to have a say.

Consideration of the overall situation is also fundamental for the examination of and risk analysis associated with measures that restrict freedom. Even though the application of measures that restrict freedom is highly regulated by the law, the NPM observed that this occurs more frequently when specific risk factors exist. Such factors are, for example: a shortage of staff, high personnel fluctuation, size of the institution or facility, inadequate pedagogical concepts, unsuitable building structures, insufficient opportunities to withdraw into one's own space, lack of psychiatric diagnoses, absence of therapy plans, few opportunities for occupation and, above all, inadequate communication channels.

It is primarily the responsibility of the owners and/or operators of the institutions and facilities to minimise these risk factors. At the same time, provisions should be put in place by the State in order to reduce risks as far as possible. These provisions are missing in many cases. But even when there are regulations, such as for staffing ratios, these vary from *Land* to *Land*. This alone is a reason why different standards for persons with disabilities from a human rights point of view are created. This cannot be satisfactory.

The NPM would like to highlight yet again that it is often not possible for persons with disabilities to freely choose a doctor and that their self-determination is compromised. This is attributable to the fact that specialists are rare in many regions. Besides, doctors' surgeries are often not equipped for dealing with special needs. Pertinent legal framework conditions and raising of awareness of this topic are therefore urgently necessary.

The UN Committee on the Rights of Persons with Disabilities will visit Austria in 2019 to perform an official country review of the implementation of the UN CRPD. For this reason, increased endeavours should be undertaken to rectify legal inadequacies or maladministration-related shortcomings as soon as possible. The AOB already presented the UN Committee a statement on the situation in Austria and answered related questions at a joint preparatory meeting with civil society.

The AOB also had the opportunity to report on improvements. For example, after demands by the NPM, facilities for minors were also included in the scope of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), and the protection of rights for minors improved with regard to measures that restrict freedom. With the Second Adult Protection Law

(*Erwachsenenschutzgesetz*), legal guardianships were abolished and replaced by a model of gradual, assisted decision-making. Simpler access to a pension was made possible for persons with disabilities who were victims of abuse in homes in the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). Finally, the autonomy of the Monitoring Committee was increased. It now has its own budget, control over personnel and its own offices. The NPM would like to take this opportunity to give a special mention to this valuable work.

During and directly after visits, the NPM attempts to motivate owners and operators of facilities to quickly remove risk factors. For example, upon the recommendation of the NPM, in a number of facilities time-out rooms were removed, measures that restrict freedom were immediately stopped or reported, medication management improved, privacy screens fitted in bathrooms and toilets, regular supervision introduced, violence protection concepts developed and persons with disabilities given more freedom in general.

#### **2.4.2. Fundamental protective factors for avoiding violence**

Time pressure, overwork and their own helplessness cause employees to behave inappropriately or to fail to do what is required. After over six years of NPM activity, it is clearly evident that the conditions and framework, in particular, under which the staff has to work determine the likelihood of unlawful measures that restrict freedom and the occurrence of violence. Based on its observations, the NPM was able to identify several protective factors that are discussed in more detail below.

##### **Sufficient and sufficiently qualified personnel**

In many institutions and facilities the commissions observed that the number of caregivers per person is not sufficient. There is thus little time if any left for individual care in the day-to-day running of the facility. Persons with multiple disabilities, in particular, need special assistance in order to be able to lead a self-determined life. This affects, for example, personal hygiene, assisted communication, identifying and achieving goals, personal assistance inside and outside the facility or providing help in dangerous situations.

These problems intensify in the evening and during the night. The commissions observed many times that only one or two night shifts are operated in institutions and facilities. The consequence is that residents are prepared for the night early, the evening meal must be eaten in the late afternoon followed by evening care or taking medication and the residents are then "put to bed". Commission 3 reported of a case in which there was no staff present during the night. A resident panicked because of this and called the crisis line.

The staff shortages also cause problems in connection with vacation and sick leave. The NPM thus recommends major owners/operators in particular to deploy stand-by staff to compensate for unplanned absence.

Criticism expressed by the NPM is often countered with the argument that owners and/or operators already comply with the standards stipulated by the respective *Land*. However, the NPM is of the opinion that these standards – also for budget reasons – are often set too low. They also vary from *Land* to *Land*.

Whereas the compulsory quota for qualified specialists is only 50% in Salzburg, this is 100% in other *Laender* – for example in Styria. Despite this, Commission 2 criticised a facility in which 56% of the staff had a specialised qualification. The facility fulfilled the provisions of the *Land*, but in the opinion of the NPM not the provisions of the UN CRPD. Both Article 4 (1) lit. i and Article 26 (2) UN CRPD include the obligation to promote the qualification of specialised staff and then deploy sufficient numbers of them in institutions and facilities.

In another case, Commission 6 criticised a facility in which the officially prescribed number of employees was not complied with. Only after the intervention of the NPM did the authorities become active and demanded compliance with the regulations.

Quotas for specialised staff alone are not meaningful. The type of qualification also has to be aligned to the needs of those in care. In one facility, the staff had primarily pedagogical expertise while almost no one had any basic medical knowledge. This had a negative impact on the medication-based monitoring of several residents with ICD 10 F diagnoses because blood levels were not measured as prescribed or ECGs were not carried out. The staff were not aware of the associated health risks. In one of the facilities visited by Commission 4, no one had care competence even though 50% of the residents required intensive assistance and support with personal hygiene.

In another facility, the NPM criticised that not enough pedagogical staff was employed. The focus in this case was on care support processes. The residents were thus well cared for; however, the absence of pedagogical support obstructed development opportunities. In a facility visited by Commission 3, individual and group therapy was offered by persons, some of whom had not even completed a psychotherapeutic propaedeutic qualification. The supervisory authority did not undertake anything until the NPM intervened.

It is clear for the NPM that the knowledge of qualified staff must be up to date. Additional competence in violence prevention and de-escalation should, furthermore, be a basic condition for working in institutions and facilities.

### **Emergency call – night shift**

Usually, less personnel is deployed in the evening and at night. It is thus even more important that the residents ideally have the best possible ways to report emergencies. Commission 2 reported about a facility in which a single person worked night shift on one floor but residents on a different floor were barely able to reach them – except by shouting. Rounds were not planned for the permanent night shift, which made the situation even worse. Staff in training worked alone on night shift in a facility visited by Commission 6.

In another facility, one member of each residential group was selected to inform the “sleeping night shift” by mobile phone in case of emergency. In this way, great responsibility for others was transferred to the unqualified residents. At the same time, the selected residents were also theoretically able to exert power over other housemates. The facility consciously took the risk of failing to render assistance with this approach. For the NPM it is indisputable that sufficiently qualified staff must be deployed on night shift too in order to guarantee the right and timely reaction in emergencies.

## Supervision

Supervision is indispensable in health and social care professions, in particular, due to the constant emotional and mental stress experienced in daily work. It is now undisputed that supervision is a key component in improving working ability in the helping professions. Supervision helps to bring about a change of perspective, and is just as important for mental hygiene as for the prevention of burnout, mobbing and violence. The constant confrontation with illness, suffering, ageing and death makes supervision relevant in every care or assistant team.

Supervision is not or not correctly implemented in many facilities. The reasons for this vary. Some owners and/or operators see supervision critically. Others dispense with supervision (allegedly) for financial reasons. Often the rejection of supervision comes from the staff. The argument is that supervision was not needed years ago or that it is not expedient. For the NPM, it is understandable that employers do not want to compel their staff to accept supervision. It is, however, indispensable in the interests of the best possible care.

Management must use information to motivate their team for supervision and, if necessary, compel them. This must be offered by external qualified specialists regularly.

- ▶ *To secure the livelihood as well as the assistance needs and living standards of persons with disabilities endeavours must be made by recognising their increased needs. The much debated new social welfare regulation ("Sozialhilfe Neu") stipulates upper limits that do not take the actual additional disability-related needs into consideration.*
- ▶ *Sufficient and extensively trained staff for persons with disabilities must be available in all institutions and facilities.*
- ▶ *Safety in institutions and facilities must be guaranteed during the night by suitable staff.*

### 2.4.3. Occupation in sheltered workshops

The NPM has already criticised the legal framework conditions and practice in daily structures in the past (see NPM Reports 2012–2017). There was hope that far-reaching changes could be implemented through the Governmental Programmes for 2013–2018. This has regrettably not happened yet. On the contrary, the current Governmental Programme for 2017–2022 retains the "pocket money model" as "pay" for work performed in sheltered workshops.

In 2019 the United Nations will conduct a comprehensive review of the implementation of the rights of persons with disabilities in Austria. The NPM would therefore like to once again draw attention to the violation of human rights evident in the current working conditions for persons with disabilities in daily structures. Therefore, the NPM demands a change of system.

Approx. 20,000 persons with disabilities are occupied in daily structures in Austria. These are designated occupational therapies, sheltered workshops or ability-oriented activities. What these persons have in common is that expert opinions have classified them as incapacitated. This means that their capacity is less than 50% due to their physical or mental condition.

Division by "capacity" violates the basic principles of the UN CRPD (non-discrimination, equal opportunities, and full and effective participation), and is therefore impermissible. Regardless of the work performance, such work does not qualify as an employment contract, which is why affected persons have no social insurance cover.

In daily structures, the affected persons manufacture products or provide services. Instead of receiving pay for their work, those employed are given pocket money of a few euros, and calculation is often not transparent. The “pocket money model” is justified with the argument that cost-intensive care is provided in the daily structures. This may apply to some institutions and facilities. The NPM observed several times, however, that the visited daily structures produced surpluses or were *de facto* managed by profit-making companies. Those employed only participate in the profits to a very limited extent if at all. The NPM rejects the “pocket money model” as discriminatory for this reason.

The NPM also criticises that in some institutions and facilities the affected persons are not encouraged to develop individually and there is no integration into “normal jobs”. All that is offered is mere occupational therapy.

In short, two problems emanate from these framework conditions: first of all, those affected are at risk of being exploited. Second, they cannot acquire their own pension claims through their work, which is why they have to rely on orphans’ pension payments after their parents pass or on needs-based minimum benefits. They are barred from earning an income requiring full compulsory social insurance all their life.

This means that recipients of needs-based minimum benefits cannot save anything up to the low threshold values of approx. EUR 4,200 (or planned EUR 5,200). They can neither improve their situation through their own will and their own work nor through inheritances, gifts etc. They are forced to live on the minimum subsistence level to the end of their days. The NPM therefore rejects this legal needs-based minimum benefit logic for this group of persons.

Recipients of orphans’ pensions share a similar fate. Their standard of living is derived from their parent’s entitlements to benefits and there is nothing that they themselves can do to influence this. This not only contradicts basic human rights principles but also the “often propagated” performance principle that places the individuals and their responsibility in the foreground. Persons with disabilities who would like to assume responsibility are largely bereft of this opportunity and are turned into supplicants who receive support.

The difficult situation of those affected is exacerbated by the fact that places in daily structures are scarce in many regions of Austria. Long waiting times are accepted by *Laender* and municipalities, and affected persons have to sometimes wait years without subjective legal claims to a vacancy. In the case of a complaint in Upper Austria, this resulted in a woman with disabilities having to be taken care of by her mother during the day. The mother was thus unable to work and was therefore unemployed for years.

The goal of a human rights-based disability policy must in any case be the inclusion of persons with disabilities in all areas of life. Furthermore, inclusion goals must be formulated and pursued for all those affected.

Pursuant to Article 27 UN CRPD, persons with disabilities have the same right to work as everyone else. The competent UN Committee criticised this kind of occupation outside of the regulated employment market. The UN Committee on Economic, Social and Cultural Rights stipulated in Comment 5 that the right of the individual to the opportunity to earn their livelihood from freely chosen or accepted work is not implemented where the only real possibility for persons with disabilities to work is a so-called “occupational therapy” under substandard conditions (see statement of the Monitoring Committee of 24 March 2018).

- ▶ *The NPM calls on federal and regional legislators to completely re-structure the current support system for persons with disabilities.*
- ▶ *Until the existing support system has been changed, sufficient places must be provided in daily structures at least.*

#### **2.4.4. Measures that restrict freedom**

The special importance of the right to freedom is demonstrated by the fact that it is protected as one of the highest legal interests in constitutional law through the Federal Constitutional Law on the Protection of Personal Freedom and Article 5 EHCR. Restrictions to freedom are only permissible within the framework of strict legal regulations and may only be implemented using strict formal procedures. Excessive use or inadequate documentation of measures that restrict freedom is unlawful.

According to observations by the NPM, the number of ascertained cases of maladministration relating to measures that restrict freedom in the disability area has been decreasing since the visits began. Generally speaking, the level of knowledge in the visited institutions and facilities about the applicable Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), the reporting obligations and the permissibility of measures that restrict freedom has improved.

Despite this, however, the NPM observes that unlawful measures that restrict freedom are still applied. This often happens in connection with medication.

##### **Medication-based measures that restrict freedom**

The assessment of medication-based measures basically depends on whether the primary therapeutic objective is the treatment of a diagnosed illness. A freedom-restricting measure that is necessarily connected with the treatment is an unavoidable side effect of the primary therapeutic objective. It is therefore not a measure that restricts freedom in the sense of the Nursing and Residential Homes Residence Act.

If, on the other hand, the primary objective is the restriction of freedom, this constitutes a reportable measure that restricts freedom. The demarcation is not always easy here. A psychiatric diagnosis is necessary to estimate the therapeutic objective. If this does not exist, it must be assumed that the primary objective of potentially sedating medication is the restriction of freedom.

The NPM can identify three particular problem areas in connection with medication-based measures that restrict freedom:

First of all, the staff in institutions and facilities often do not have the required knowledge about the legality of measures that restrict freedom. It is sometimes not known what constitutes a measure that restricts freedom or under which conditions it is lawful. Thus, the stipulated reports to the representatives of the residents are not made in many cases.

Second, there is often a lack of required knowledge about the effect and indicated application of medication. Persons without adequate medical nursing competence still administer medication. This is problematic as, depending on the situation, this can be impermissible *per se* pursuant to Section 50a Act on the Medical Profession (*Ärztegesetz*) or Section 3a Federal Act on Healthcare

and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*). Furthermore, prescriptions are often too imprecise or medication is administered inaccurately.

Sedating PRN medication is thus often prescribed with inadequate indication information such as "in case of anxiety" or "as needed". Diagnoses are also sometimes not recorded in the documentation so that the necessity of therapeutic measures or the possible excessive effect cannot be assessed.

The prescribing doctors are responsible for the exact prescription and indication information. However, the reports that may be required when administering medication must be submitted to the representatives of the residents by the institution or facility. The NPM therefore recommends that institutions and facilities examine the prescription practice together with the doctors and adapt it to the legal provisions, if required. Otherwise, it can happen that, as observed by Commission 1, reportable medication is not reported whereas non-reportable medication is.

The NPM demands that staff who administer medication must have training in the support of basic medical care regardless of the requirements of the Federal Act on Healthcare and Nursing Professions or the Act on the Medical Profession.

Third, medication is often consciously used as a measure that restricts freedom without trying or looking for milder measures first. The use of sedating medication in individual cases can thus be unlawful, even in the event that it is reported to the representatives of the residents, if milder measures were not tried or were not sufficiently documented.

A personal crisis plan for the individual affected persons is thus important for a correct procedure and effective prevention. This plan documents which measures are effective or purposeful for the individual. Measures should be ordered by intensity of infringement. For example, a change of location, distraction, playing relaxing music or the like should be tried as far as possible before resorting to a measure that restricts freedom. As a preventive measure, crisis plans should be regularly evaluated in order to be able to apply measures that are as gentle as possible but, at the same time, effective in the future.

If milder measures are inexpedient in the situation, this must be explained in the documentation of the measure that restricts freedom. The reason why the freedom-restricting measure in itself was unavoidable in this form and for this duration must be traceable.

Commissions also observed repeatedly in 2018 that sedating medication was used as a measure that restricts freedom without the necessary (documented) considerations or without the prior application of milder measures. The reasons for this are amongst others the rapid, intensive effect and simpler application. A tendency towards increased use of medication-based measures that restrict freedom can be observed in institutions and facilities with staff shortages in particular. Affected persons are "kept quiet" during the night, in particular, under these conditions.

### **Mechanical measures that restrict freedom**

In addition to medication-based measures that restrict freedom, mechanical freedom-restricting measures continue to be unlawfully applied. The conditions for legitimating measures that restrict freedom are also flawless documentation, the use of milder measures and reporting to the representatives of the residents. The NPM observed shortcomings in each of these areas. The

disproportionate nature of mechanical measures that restrict freedom was often criticised, for example, locking persons in time-out rooms.

Knowledge about violence prevention is necessary to minimise the likelihood of both medication-based and mechanical measures that restrict freedom. Persons with disabilities have a right to trained staff that can deal with challenging behaviour professionally. Staff also have a right to a safe workplace and relevant training in dealing with dangerous situations. The NPM therefore demands pertinent knowledge about violence prevention in all institutions and facilities.

- ▶ *Caregivers must be familiar with the formal and material regulations of the Nursing and Residential Homes Residence Act in order to avoid impermissible measures that restrict freedom.*
- ▶ *At the least, training in the support of basic medical care should be a basic requirement for care work with persons with disabilities.*
- ▶ *Crisis intervention plans and increasing of awareness with a view to milder measures must be implemented.*

#### 2.4.5. Sexual self-determination

The NPM already addressed cases of maladministration in connection with the sexual self-determination of persons with disabilities in last year's report. In 2017 commissions complained that sometimes the perception prevails that persons with disabilities are quasi gender-free beings. This was evident from the fact that needs regarding this matter were often "not an issue" in institutions and facilities. But even in more open-minded institutions and facilities it was evident that exercising the right to sexual self-determination is limited or made impossible. The NPM therefore decided to determine a nationwide monitoring priority with regard to the observance of sex-related human rights. The Human Rights Advisory Council was involved in the development of relevant standards for the commissions and supported the project.

In 2018 the NPM asked all regional governments what concrete contribution they were making to ensure that the right to sexual self-determination for persons with disabilities in institutions and facilities is guaranteed and which relevant standards exist in their sphere of influence.

It is clear from the statements submitted that the individual *Laender* deal with this topic very differently. Just three *Laender* (Vienna, Upper Austria and Styria) support associations that develop concepts with and for institutions and facilities and also offer sexual guidance for persons with disabilities. The regional government of Salzburg emphasised that further education with a focus on observing sex-related rights are offered by the *Land* itself. Operator organisations in Vienna, Lower Austria and Styria have to present sex education concepts to the supervisory authorities. This is not officially prescribed in other *Laender*. The regional governments of Burgenland and Salzburg assured the NPM that they intend to plan relevant standards.

The NPM assessed initiatives on the part of the regional government of Upper Austria very positively. In cooperation with persons with disabilities, the *Land*, the association Senia, operator organisations and parent representatives, it developed a seal of approval for "Sexuality and impairment" that is subject to the Equal Opportunities Act. Furthermore, a brochure in simple language was published on the topic to inform persons with disabilities of their rights.

It is beyond dispute that information and sex education not only promote the right to self-determined sexuality but also impact violence prevention. Empowerment can therefore protect against sexual violence. It is necessary for girls and women with disabilities in particular that teams are informed about and can recognise the symptoms of traumatic experiences (also through concrete guidelines).

A sex education concept in an institution or facility is the basis for a common understanding of and dealing with topics surrounding love, relationships, partnership, sexuality and physicality. It should contain jointly defined guidelines on how to deal with sexual boundary violations, sexual assault and grievous forms of sexualised violence. A guided and preventive approach to these topics enables persons with disabilities to find adequate and safe information as well as contact persons; it also increases staff confidence in their own actions. The way in which sex education is addressed and how a jointly borne concept is created is almost as important as the final result.

In a joint press conference with the association *liebenslust*, the NPM emphasised that not only children and adolescents living out of home but also persons with disabilities have to be protected against sexual boundary violations. Staff shortages, a lack of qualifications, unfavourable structural conditions but, above all, the absence of suitable sex education concepts also foster the possibility of assault, and obstruct sex education and a fulfilled sex life. The WHO sees sexual health as inseparable from general health, well-being and quality of life. The NPM hopes to expedite the breaking of taboos with targeted (media) work and thereby promote the guarantee of the human right to self-determined sexuality.

- ▶ *The Laender should create standards and guidelines on the framework conditions of sexual self-determination in institutions and facilities.*
- ▶ *Participatively developed sex education concepts should be the basis for the approval and operation of institutions and facilities for persons with disabilities and for children and adolescents.*
- ▶ *Persons with learning difficulties must have the possibility to receive sex education and information in institutions and facilities. The staff must be motivated and trained for this important task.*

#### **2.4.6. Challenging care of persons with multiple disabilities and increased potential for aggression**

Dealing with aggression and violence is part of everyday working life for staff in care and support facilities. The NPM very much appreciates individual owners and/or operators and their teams who are committed to looking after persons with severe disabilities and challenging behaviour. The NPM is aware that this is no easy task. The tightrope of providing space for residents with a high potential for aggression and frequent loss of control of their impulses and, at the same time, guaranteeing the protection and safety of the residents, and of the staff, poses considerable challenges for any team.

Aggressive behaviour is usually not just a symptom of the existing impairment but an expression of inner needs and uncertainty. The feeling of unintentional overload (e.g. through accidental bodily contact or noise that is perceived as bothersome) can suffice to trigger considerable inner tension and aggressive behaviour. These persons have other needs, their care requires

substantially higher personnel deployment levels as well as specially qualified, multi-professional teams.

An empirical study on experience and prevention of violence against persons with disabilities (*"Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen"*) commissioned by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection in 2017 is due to be completed in April 2019 and should be of help to institutions that have to deal with violent incidents. It was already reported last year that the Human Rights Advisory Council had issued a statement emphasising the importance of victim protection measures for residents but also for the staff (see <https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring/human-rights-advisory-council>). At the same time, the Human Rights Advisory Council also emphasised the necessity to practice effective violence protection and not to only respond to supported impaired persons displaying an increased potential for aggression with criminalisation, detention for mentally ill offenders and the cancellation of contracts for their care. The public sector bears the main responsibility for this and must provide the necessary resources to the owners and/or operators of the institutions and facilities. Here are two examples of this from 2018:

24-year old N.N. has multiple disabilities and has the approximate mental age of a five-year old. He had been living for several years in a residential facility with adjacent sheltered workshop in Lower Austria that was visited several times by Commission 6. Due to his disability, he displays behavioural problems and sometimes reacts aggressively if he feels uneasy, bothered or harassed. The loss of control of his impulses sometimes resulted in assaults on other residents and the staff. After an incident in 2018, a police barring order and a 14-day prohibition order to enter the facility were imposed for the first time. The contract with facility was cancelled and new accommodation had to be found for the young man quasi over night. On the next visit by Commission 6 and after viewing current incident records, it was evident that violence prevention and victim support continue to be central challenges in the facility, as there were further violent incidents even after Mr N.N moved out.

The recommendations made on previous visits had therefore to be reiterated and elucidated. The NPM recommended intensifying specific training with regard to persons displaying a high potential for aggression and developing a joint approach in the team with the help of external de-escalation counselling. Effective violence prevention can only be practiced after the possible causes of violence (pain, lack of opportunity to withdraw into one's own space, no sexual self-determination, and insufficient medication, amongst others) have been understood. Personalised development plans should therefore record the needs of those affected, develop hypotheses as to their aggressive behaviour and explain individually adapted de-escalation measures. Further training in the areas of sex education and sexualised violence as well as pain evaluation for persons who are unable to communicate verbally and assisted communication are helpful.

In summer 2018 the NPM sought human rights expertise from the Human Rights Advisory Council on police-imposed barring orders and prohibitions to enter facilities against persons with multiple impairments. What is problematic here is that persons who live in specialised facilities due to their considerable care requirements have to leave their accommodation without notice because of prohibitions to enter the facility, but they have no legal right to adequate care in another institution or facility. The statement of the Human Rights Advisory Council was not available at the time of completing this report. It is in any case clear for the NPM that police mechanisms can never replace effective violence prevention.

The fact that dedicated facilities were set up in Lower Austria for persons displaying aggressive behaviour towards themselves and others must be welcomed. An example from Carinthia, however, shows that the problem of missing structures in the care of impaired persons who display a high potential for aggression continues to exist.

The 24-year old Carinthian, N.N., was diagnosed with autism in early childhood and had been living in a residential facility in Carinthia for several years. On an excursion where six persons with multiple disabilities were accompanied by just two caregivers, Mr N.N. bit a child injuring it seriously. The owner/operator of the facility was sentenced to pay damages and compensation for organisational neglect. Mr N.N. was let off being committed to a "special facility for mentally ill offenders" for a probationary period of five years if he complies with the court ruling of accommodation in an adequate facility with the required 1:1 care and regular medical checks.

He attacked other residents and staff several times in 2018. A new doctor who had not been consulted before discovered that the physical and sexual development of Mr N.N. had resulted in considerable stress and the loss of control over his impulses, and medication that had been administered to him for years was not working sufficiently anymore. In the course of changing his medication, Mr N.N. suffered a serious pharyngospasm and bit a female resident in the day workshop. He was then admitted to the psychiatric department of the clinic and released home to his mother after a few days. The owner/operator of the facility cancelled the care contract and refused to re-admit Mr N.N. to the facility.

Efforts on the part of his mother to obtain help from the office of the regional government of Carinthia in finding continued care for her son in his former facility or another suitable one were to no avail, which is why she contacted the NPM. Within the framework of individual investigative proceedings, the *Land* Carinthia communicated that there is currently no facility for persons with disabilities in Carinthia that cares for individuals with such diagnoses and specific anomalies. The authorities take the view that the care of this person is not the responsibility of the services for persons with disabilities, as clinical and medical care forms are necessary.

The NPM is aware of the fact that the care of persons with multiple serious disabilities and behavioural disorders poses an enormous challenge. However, this may in no way result in not providing programmes for them and in the public sector increasingly reducing services to exclusively cater to "cases that are more attractive and easier to manage". Relatives despair under the strain of the responsibility and lack of support in looking for alternatives. Persons with disabilities themselves lose any form of stability, do not receive adequate support in spite of the enormous effort made by their families and lead a life that in no way corresponds to the fundamental principles of the UN CRPD with regard to normalisation and inclusion in society.

And yet there is a positive development in this case: after Mr N.N. lived at home with his family for months, it was possible for him to move into a facility in Styria at the beginning of 2019. In 2020, a new facility designed to cater to such special needs is to be created for a total of four persons in Carinthia, to which Mr N.N. can be admitted.

- ▶ ***The public sector must provide sufficient personnel with the required competence as well as suitable framework conditions to the owners and/or operators of facilities so that these can also care for persons with multiple disabilities and an increased potential for aggression in accordance with the principles of the UN CRPD.***

- ▶ *Recognising possible triggers of aggression (pain, lack of opportunity to withdraw into one's own space, no sexual self-determination, insufficient medication etc.) is a requirement for effective violence prevention.*
- ▶ *Hypotheses regarding aggressive behaviour should be developed and individually adapted de-escalation measures described in personalised development plans.*

#### 2.4.7. Deficits in the care of persons with chronic mental illnesses

The adequate care of persons with chronic mental illnesses is a recurring topic for the NPM. In recent years (most recently, NPM Report 2017, p. 96) it reported its criticism of centres for psychosocial rehabilitation in Carinthia. The *Land* Carinthia has since been working on improving the situation and implementing the recommendations of the NPM.

With the implementation of the Psychiatry Plan 2017, out-patient care structures located close to the communities and a *Land* monitoring facility to implement the UN CRPD are thus to be established at the Office of Carinthian Ombudsman for Persons with Disabilities. The preparatory work for the legal amendment to include centres of psychosocial rehabilitation in the Carinthian Equal Opportunities Act (*Kärntner Chancengleichheitsgesetz*) and thus to eliminate discrimination criticised by the NPM is also underway.

The evaluation of the wishes and needs of younger residents in centres for psychosocial rehabilitation in particular, which was called for by the NPM, was completed in the year under review. A total of 207 persons under the age of 50 were interviewed in 23 centres for psychosocial rehabilitation and the results evaluated. It was ascertained that around 22% of those interviewed could be transferred to a more independent way of life. Some persons have already been discharged; others are to be transferred gradually to alternative types of accommodation and out-patient care structures that have yet to be set up. The resultant vacant places in centres for psychosocial rehabilitation are not expected to be filled. The *Land* also announced that it will support all of the interviewed persons in the future with rehabilitation measures and define additional quality improvement measures for centres for psychosocial rehabilitation.

It is difficult to find adequate care structures for persons with chronic mental illnesses in all of the *Laender*. In Styria, around 80 persons are accommodated in "psychiatric family care" places. Commission 3 visited some of these care places in the year under review, including a department in Graz Süd-West Regional Hospital to which the psychiatric family care function is allocated.

Psychiatric family care places are in-patient facilities in which a maximum of two persons with chronic illnesses and/or mental disabilities who primarily require psychiatric care are looked after and supported. The legal objective is living within the framework of family care and integration, promoting personal relationships with the foster family and ensuring psychiatric care in accordance with their needs.

For the NPM, it is highly debatable whether these objectives and the fundamental principles of the UN CRPD – individual development, inclusion and self-determination – can be fulfilled through the concept of psychiatric family care in its current form.

Most of the residents of the visited family care places have chronic mental illnesses relating to low intelligence. However, no psychiatrically trained staff is available to them in their everyday lives. The weekly visits by the psychiatric family care team seem to be in no way sufficient either. Specific therapies or rehabilitative measures that foster autonomy appear not to exist; medical psychiatric visits are only sporadic.

Many of the residents of psychiatric family care places have disabilities. However, – unlike other persons with disabilities – they cannot avail of daily structure facilities or sheltered workshops, as the cost is covered exclusively by social welfare funds. The job opportunities which are restricted to work in the house, the garden and the family workshop are limited accordingly. There are also apparently no job offers or measures for promoting the autonomy of those affected. In addition, the family care places are in relatively remote locations meaning that contact opportunities to the outside are few and far between. This has a negative impact on younger persons in particular. Of the 80 persons currently living in psychiatric family care, twelve are under 50 years of age; the youngest are 28 and 36 years old.

The NPM confronted the *Land* Styria with these points of criticism. Essential points remained open in the statement by the Styrian Hospitals Limited Liability Company so that the NPM requested a statement from the *Land* again. No response had been received by the editing deadline for this report.

- ▶ *Increased efforts must be made to promote the equal participation of persons with serious illnesses or mental impairments. Adequate psychiatric care and specific support must be ensured.*

#### 2.4.8. Positive observations

An important component of the work of the NPM is also the identification of positive examples in work with persons with disabilities. Good practice examples can serve as models for owners and/or operators and authorities. But they also enable the NPM to learn which measures and approaches are effective for the prevention of torture and violence.

In several of the facilities visited, the commissions praised the extensive participation of persons with disabilities. In a day workshop in Lower Austria, for example, the residents decide whether and which external orders are accepted and how the prices are calculated. The goods produced are sold through a public shop and all of those affected are involved.

In another facility in Vienna, needs and wishes are discussed in regular meetings with the residents in order to fulfil them in as far as possible. In this way, those affected decide on the care they receive, the daily routine, joint activities and holidays.

The basis for extensive equal participation is also a highly present, active self-representation. Commission 1, for example, considered a facility in Tyrol very positive in which the residents' representatives take part in team meetings, a jour fixe is held with caregivers and regular group sessions are organised to discuss suggestions for improvement. In addition to the election of spokespersons every two years, there is also a house parliament that is elected every four years.

Commission 5 in Lower Austria confirmed a particularly high level of participatory self-determination at an art studio for persons with disabilities. Persons with and without disabilities

share an art studio, all of the artists can move freely and are under no pressure to produce anything. If their works are sold through galleries, the artists receive half of the proceeds.

In a recycling business for waste and high-quality residual material in Lower Austria, the residents are organised through elected representatives like in a works council and are trained in seminars in the observance of the right to participatory self-determination.

To cater to the needs of older persons in particular, a model with variable time-based care options was introduced in a facility visited by Commission 4 in Vienna. This needs-based support enables the residents to decide themselves how much time they want to spend in the daily structure and in the residential building. Due to the constant presence of caregivers in the shared accommodation, residents can alternate between the daily structure and the residential building. Despite the special orientation towards older persons for whom all-day attendance in a daily structure would be too much, the age structure is mixed and heterogeneous. Furthermore, persons who need palliative care can stay in the facility until the end of their life. It is not necessary for them to move into a hospice or a nursing home.

Commission 5 reported about a good example of dealing with sexuality. Relationships between the residents were encouraged in the visited facility. Conversations about sexuality and contraception were actively held.

The fact that mechanical and medication-based measures that restrict freedom are flatly rejected in a facility in Lower Austria was remarkable. This position, which is jointly supported by management and teams, makes it possible to dispense with such measures even when the parents of those affected repeatedly demanded them for safety reasons. Commission 5 concluded that it was possible to solve potential conflict through persuasion.

A facility in Lower Austria stood out because the objective and intervention planning was individually formulated and there was a clear distinction between goals and measures. The involvement of the residents in creating the plans as well as the regular evaluation of the same are pivotal to success. In another facility, the documentation is completely taken care of by the residents themselves or with them.

The residents had single rooms in several of the facilities visited in 2018. These are an important condition for leading a self-determined private life. The residents also had their own keys. In a facility in Vienna, two studio apartments are also available, if required, to enable couples to live together.

The commissions often observed that staff dealt with the residents in a very respectful way and catered to the individual needs of the cared for persons. The cost-intensive adaptation of a facility to the special needs of one resident was remarkable. Even though institutions and facilities for persons with disabilities have to be barrier-free in general, the NPM praised the individual measures. In this way, the resident was able to continue living in the facility and did not have to move.

## 2.5. Correctional institutions

### 2.5.1. Introduction

The NPM visited a total of 52 facilities of the penitentiary system and facilities for the detention of mentally ill offenders in the year under review.

The NPM also maintains a dialogue with the management of the facilities. Two meetings were thus held with the management of facilities of the penitentiary system and facilities for the detention of mentally ill offenders in 2018 with the support of the Correctional Services Academy (*Strafvollzugsakademie*). Representatives of the general directorate for prisons and for the enforcement of measures that deprive liberty also took part in these meetings. The very open exchange of ideas provided the opportunity to discuss the maladministration ascertained by the NPM and questions pertaining to the implementation of recommendations for improvement with the representatives of the authorities. The brochure published by the NPM in May 2018 was very popular. It provides an overview of the recommendations regarding facilities of the penitentiary system and facilities for the detention of mentally ill offenders formulated so far.

To date, the NPM has issued 632 recommendations and suggestions to the prison administration. 32% of these were implemented, in 13% of the cases implementation was promised and just 8% of the recommendations were rejected. For the remaining cases, either final statements have not yet been received from the Ministry or talks on the implementation of the recommendations are still in progress.

The NPM also actively took part in the international and bilateral exchange of experience and ideas with other NPM organisations in 2018. The NPM has been a member of the South-East Europe NPM Network (SEE NPM Network) since 2013. The meeting in May focused on the topic of "Prevention of suicides and overdoses in detention centres". Valuable impetus could be gained from sharing ideas with representatives of other NPMs for the monitoring priority of "suicide prevention". The treatment of detained persons with substance use disorders was the topic of an international convention in Krakow, at which an expert reported about the observations of the Austrian NPM. Within the framework of the bilateral contacts, the correctional institutions Brno (Czech Republic) and Korneuburg were visited together with a delegation from the Czech NPM in September 2018. A Hungarian delegation visited the Eisenstadt correctional institution in December 2018 together with representatives of the Austrian NPM. The – now regular – exchange with the Slovenian NPM was continued whereby a follow-up care facility in Graz was visited in autumn 2018.

In 2018, the NPM also collaborated with educational institutions in the area of facilities of the penitentiary system and facilities for the detention of mentally ill offenders. In 2017, a training module in which career starters learn more about the responsibility of the NPM and its commissions was implemented in the basic training for prison guards. The prison guards are thus informed about the duties of the NPM and know about the course of a commission visit even before starting service in the respective correctional institution. Additional training courses are already scheduled for 2019. It is important – as a next step – to also enter into a dialogue with the second management level and the special services.

Special attention was paid to the following three focal areas in facilities of the penitentiary system and facilities for the detention of mentally ill offenders in close cooperation with the Human Rights Advisory Council during the commission visits in 2018: health care (chapter 2.5.2), living

conditions (chapter 2.5.3) and women in prison (chapter 2.5.4). The subject matter of all three chapters are problems that are attributable to insufficient human resources. This is followed by accounts of the right to privacy (chapter 2.5.5), contact to the outside world (chapter 2.5.6) as well as access to information (chapter 2.5.7). This part of the report finishes with positive observations (chapter 2.5.8).

## **2.5.2. Health care**

Health care in prison was one of the most urgent topics in recent years. In 2018, the focus was placed on the care and treatment of persons who suffer from a substance use disorder (chapter 2.5.2.1). The relevant observations are followed by reports on the psychiatric assessments in the detention of mentally ill offenders (chapter 2.5.2.2). The ensuing chapters cover other general deficits in the area of health care (chapters 2.5.2.3–2.5.2.8). As far as quality assurance is concerned, the commissions are pressing for harmonised documentation with access authorisation for special services and a nationwide valid regulation according to which only psychotherapists with a specific forensic qualification should be deployed in facilities of the penitentiary system and facilities for the detention of mentally ill offenders. For more on health care, see also Annual Report 2018, volume “Monitoring public administration”, chapter 3.9.4.6.

### **2.5.2.1. Treatment of substance use disorders**

Within the framework of the focal area of health, the NPM paid special attention last year to the treatment of persons who are suffering from a substance use disorder. It was emphasised in last year’s report that substance addiction is a chronic illness that requires therapeutic treatment (NPM Report 2017, p. 120 et seq.). Effective therapy is also indispensable for the successful social rehabilitation and the prevention of addiction-related crime. A concept that applies to all correctional institutions for the treatment and optimal committing of detainees with a substance use disorder is thus necessary.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice already promised in 2017 to set up a nationwide department for admission diagnostics, that is, a clearing centre for persons with a substance use disorder in Vienna-Favoriten correctional institution. However, said department has yet to be established.

According to the existing concept, the clearing centre of Vienna-Favoriten correctional institution is intended to essentially fulfil two tasks: first, the execution of admission examinations including providing treatment recommendations, and second, the placement of detainees for whom a transfer to another institution is recommended. At the time of the editing deadline for this report, it was not known how many places in Vienna-Favoriten correctional institution are to be allocated to the department for admission diagnostics.

The NPM doubts that the psychiatric service of Vienna-Favoriten correctional institution has sufficient capacity for performing the admission diagnostics. This assessment is primarily based on the fact that just one consultant psychiatrist has three surgery hours per week in Vienna-Favoriten correctional institution. A tendering process for a consultant psychiatrist to work 14 hours per week has been fruitless so far.

The question has been raised in the past as to how the currently unoccupied area of the correctional institution can be used for the assessment department. Placement in this section

seems to be unsuitable for detainees who are to be diagnostically examined. If the nationwide assessment centre is actually to be set up in this department, structural refurbishment is absolutely essential (Annual Report 2017, p. 75 et seq.).

It remains to be seen in how far the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice will take the reservations and recommendations of the NPM regarding the next planning steps for establishing the nationwide clearing centre into consideration.

- ▶ ***A nationwide department for admission diagnostics for detainees with substance use disorders who are in need of treatment must be staffed with a sufficient number of medical specialists.***

The guidelines for the counselling, support and treatment of persons with a substance use disorder stipulate that every correctional institution must establish a multi-professional team. The interdisciplinary cooperation of internal and external specialist services as well as the prison guards must be guaranteed within the framework of this multi-professional treatment team. However, during the course of the visits within the focal areas it became evident that in some correctional institutions no multi-professional treatment team for persons with a substance use disorder had been set up or that this was insufficiently staffed. This applies to Stein correctional institution, for example. The management of the facility reacted to the criticism of the NPM and deployed an internal interdisciplinary working group to implement the guidelines in a practice-oriented way. The completion of the concept is planned for the middle of 2019.

It was also evident in the second largest correctional institution in Austria that the care of persons suffering from a substance use disorder varies from department to department. The treatment setting and communication in the so-called Substitution Department of Stein correctional institution is considerably better than in the other departments where persons with a substance use disorder area also detained. As demanded with regard to Innsbruck correctional institution in the previous year's report, there should be sufficient places that meet the special counselling, support and treatment needs of persons with a substance use disorder (see NPM Report 2017, p. 120 et seq.).

During a visit to Schwarzaau correctional institution in March 2018, the newly created Therapy Department for treating female inmates with a substance use disorder was judged positively in general. The department can accommodate nine to twelve women. A total of 29 inmates were undergoing substitution therapy in the correctional institution at the time of the visit. Discrimination of care was ascertained for those who did not receive a place in therapy for whatever reasons. In particular, there was absolutely no support concept for female inmates with serious illnesses.

The observations made on a visit by the NPM to Feldkirch correctional institution at the beginning of March 2018 were also grounds for criticism. The viewed documents did not indicate whether the focus is on psychiatric comorbidities when creating the addiction treatment plans. There was also no record of a psychopathological status or a medical history of previous psychiatric treatments or symptoms. None of the viewed addiction treatment plans showed a comorbidity beside the addiction diagnosis either. The complete lack of comorbidities most likely does not reflect reality, as prisoners with addictions often have mental comorbidities. The NPM emphasised that the treatment of comorbid illnesses should be an integrative part of the

respective treatment concepts. The correctional institution promised to fulfil this recommendation and to document this in the patients' file in the future.

All of the interviewed detainees at Feldkirch correctional institution also claimed that only those who were already on a substitution programme at the time of being detained received an opioid substitution therapy. This means that persons either sometimes obtained the substance illegally or had to endure "cold turkey".

These accounts of the detainees were refuted by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice and Feldkirch correctional institution. However, it was objectifiable for the NPM that in November 2017, 87 out of a total of 125 detainees of Feldkirch correctional institution directly or indirectly had a substance use disorder of some sort (alcohol, drugs, medication, Heptadon, substitute drugs), and some 18 persons were taking part in the opioid substitution therapy.

The NPM emphasises once again that patients with opioid addiction require a suitable substitution therapy. The objectives of the therapy go beyond the physical and mental stabilising of persons with opioid addictions. They should also support containing drug-related crime and avoiding debt, reduce intravenous drug use and needle-sharing, thereby also preventing the spread of hepatitis B/C and HIV/AIDS. Furthermore, it must be considered that an indication for an opioid substitution therapy is not only available if the patient was already in extramural substitution therapy when admitted to the correctional institution. The basis for the indication for an opioid substitution therapy is a diagnosed opioid addiction.

Withholding a substitution therapy can constitute a violation of Article 3 ECHR (prohibition of inhuman and degrading treatment) (Wolfgang Adam Wenner versus the Federal Republic of Germany, European Court of Human Rights case no. 62303/13, see also NPM Report 2017, p. 120 et seq.). The NPM also recommends that patients who discontinue an opioid substitution therapy are verifiably informed that the risk of mortality increases considerably as a consequence.

Complete abstinence was the only reasonable treatment objective for a long time. In accordance with the treatment method of the time, Section 68a was added to the Penitentiary System Act (*Strafvollzugsgesetz*), which has been applicable unchanged since 1 January 1975. This provision contains the directive that prison inmates (under certain conditions) must undergo withdrawal treatment. The abstinence paradigm lost significance with the introduction of substitution treatment. Accepting drug work and the so-called acceptance paradigm have since become the focus of treating persons with a substance use disorder.

As the penal system is required to keep pace with these developments, it was recommended to revise Section 68a of the Penitentiary System Act and thus reflect this progress in the law by stipulating that realistic and appropriate treatment objectives must be formulated and pursued in the treatment of persons with addiction-related illnesses.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice has not followed this recommendation to date. Rather, it holds the view that it is sufficient that the guidelines and minimum standards stipulated by the Federal Ministry define the acceptance paradigm.

- ▶ ***Every correctional institution must establish a multi-professional treatment team for treating substance use disorders.***

- ▶ *In addition to the addiction-based medical programme, the detainees with a substance use disorder should also be offered group therapies or clinical-psychological treatments.*
- ▶ *With the relevant indication, an opioid substitution therapy must be carried out. This must not only be the case when the patient is already undergoing extramural substitution therapy at the time of admission to the correctional institution, rather a diagnosed opioid addiction is the basis for the same.*
- ▶ *Patients who discontinue an opioid substitution therapy must be verifiably informed that the risk of mortality increases considerably as a consequence.*
- ▶ *The reliability and the entitlement to a substitution therapy should be clarified in the law.*

### **Inmates housed in shared accommodation**

The minimum standards for determining the detention conditions for persons suffering addiction in facilities of the penitentiary system and facilities for the detention of mentally ill offenders pursuant to Section 22 of the Austrian Criminal Code (*Strafgesetzbuch*) and Section 68a of the Penitentiary System Act (*Strafvollzugsgesetz*) stipulate that persons with a substance use disorder must be housed in shared accommodation. In the beginning, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice stated that this decree shall be applied to all persons with a substance use disorder. This stipulation was subsequently revised. Nevertheless, the NPM still favours shared accommodation as a basic rule for all detainees with a substance use disorder. Deviation from this basic rule should only be in justified exceptions (for example, in the event of threat to the safety and order in the institution, offences etc.) in order not to endanger the functioning of the shared accommodation.

- ▶ *As a rule, all persons with a substance use disorder must be housed in shared accommodation.*

### **Addiction screening and initial psychiatric examination**

The NPM recommended making a nationwide harmonised rule for admission interviews with the psychological service and the initial psychiatric examination. Regrettably, this is not currently planned according to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice states that due to the large number of detainees and the many admissions on day and night shift the capacity is not sufficient to hold a psychological admission meeting with every new arrival. It said that inmates, however, have the opportunity to contact the psychological service upon request. An initial psychological interview is mandatory, however, for all newly admitted adolescents. An admission interview with the psychological service is also compulsory in the event of an acute risk of harm to the detainee themselves or to others, and for detainees who have committed murder or a serious violent or sex offence.

With regard to the initial psychiatric interview, it became evident that the general practitioner asks the patient during the admission examination whether they had any previous illnesses or sleep disorders, suicidal thoughts etc. at the time of admission. Based on the recorded data, the admitting doctor decides on the necessity of transferring the patient to the consultant psychiatrist.

Addiction screening should also be conducted as part of the admission examination. This is also stipulated in the guidelines for the counselling, support and treatment of persons with addiction in pre-trial detention as well as in facilities of the penitentiary system and facilities for the detention of mentally ill offenders, which the correctional institutions had to implement in 2015. These guidelines stated that the first addiction screening must be conducted by the general practitioner during the admission examination (addiction screening I). The second addiction screening should be carried out by the social service during the admission interview (addiction screening II). If there is a suspected addiction-related illness, the patient should also present to the psychiatric or psychological service.

The NPM demands that detainees undergo individual screening for a possible substance use disorder carried out by the medical staff as soon as possible on arrival day, within 24 hours at the latest. In this way, the health risk that exists with untreated withdrawal syndromes or “cold turkey” and which can be life-threatening with certain substances can be contained.

As no medical staff is in any court prisons from Friday afternoon until Monday morning but admissions are made at the weekend, the NPM asked the question as to who conducts the screening during this time. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that an on-call (emergency) doctor is consulted immediately if a possible substance use disorder is suspected.

According to the information gathered by the NPM, the decision as to whether there is the possibility of a suspected substance use disorder and whether the inmate should be transferred to a hospital or a doctor is to be consulted is taken by the prison guards in the infirmary.

In the view of the NPM, this responsibility cannot be transferred to the law enforcement officers of the infirmary without the relevant training. To the best of the knowledge of the NPM, no training that enables staff to carry out an initial anamnesis with regard to the possible existence of a substance use disorder and to decide on further medical steps is required to work in the infirmary. In the event that medical staff is not present, the specially trained health care and nursing personnel of the respective correctional institution should perform an initial anamnesis on the existence of a substance use disorder and decide on further measures.

It was observed while visiting the Graz-Jakomini correctional institution that “one-size-fits-all medication” is usual in the infirmary for persons with withdrawal symptoms. It was pointed out that administering “one-size-fits-all medication” without prior assessment and adjusting the dose by a doctor poses a risk, as both an overdose is possible and interaction with other medication is not taken into consideration. Consultation by telephone before administering the “one-size-fits-all medication” does not appear to be sufficient either if the symptoms are not given by medical staff over the phone. In any case, a doctor should be consulted or the inmate should be transferred to a hospital.

- ▶ ***The examination to determine whether a substance use disorder exists must be performed by the medical staff during admission, at the latest, however, within 24 hours; this also applies on weekends and public holidays.***
- ▶ ***If there is no medical staff available, the on-call (emergency) doctor must be consulted or the detainee transferred to a hospital if there is a suspected substance use disorder. The relevant decision may only be taken by law enforcement officers if they have appropriate additional qualifications.***

- ▶ *The administering of “one-size-fits-all medication” for withdrawal conditions always requires a doctor’s prescription.*

## Hepatitis C virus therapy

Several new proprietary medical products from the group of direct acting antivirals have been approved for treating chronic hepatitis C in recent years. Taking this medication resulted in a complete recovery from the infection in almost all of the treated patients with chronic hepatitis C. Both with individual cases and during the NPM visits such as to Graz-Karlau, Linz or Graz-Jakomini correctional institutions, the hepatitis C virus (HCV) therapy programme with direct acting antivirals (DAA) was monitored in detention.

Treatment with DAA has been provided in the penal system since 2017. The head doctor in the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice decides who receives the therapy. Just for the record, persons in detention have the same right to medical care as persons in freedom (equivalence principle). The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that the selection criteria for the therapy comply with those of the Main Association. Information gathered by the NPM as well as individual complaints indicated, however, that the affected persons were additionally subjected to a strict so-called compliance check. There is no such check for persons who are not in detention; they are also not excluded from therapy with DAA due to lack of compliance.

Furthermore, there is the nationwide applicable guideline of the medical superintendent at the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice that detainees must be continuously free from benzodiazepine for quite some time before undergoing therapy with DAA. In the view of the NPM, detainees who are receiving a benzodiazepine therapy should not be categorically excluded from a HCV therapy. Precisely this group of persons must – to reduce medication – have a functioning liver. The current practice constitutes an unjustified different treatment or discrimination of this group of persons. The NPM thus recommended that, as a matter of principle, it must be possible for detainees with a valid benzodiazepine therapy to also receive a HCV therapy, and that this is to be guaranteed.

It appeared that requests by patients in pre-trial detention are refused despite an absolutely certain therapy indication. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice justified this with the argument that in the event of being released from pre-trial detention, it cannot be guaranteed that the (former) detainee will continue taking the medication. For administrative as well as legal data protection reasons, it is not possible for prisoners awaiting trial to appear as entitled persons in the documentation of the relevant social insurance directly after they have been released. It is not permitted to give them the medication to take away when they are released for legal reasons (as the correctional institutions are neither pharmacies nor do they employ pharmacists). Since it cannot be guaranteed that the 30-hour deadline will be met, the start of a therapy with DAA for detainees awaiting trial is not approved by the medical superintendent as a matter of principle.

In the context of the equivalence principle, it must be ensured that detainees awaiting trial are not disadvantaged vis-à-vis prison inmates and have the same access to therapy with DAA as persons in freedom. The NPM demands that a solution is developed as quickly as possible to remove this discrimination.

On the occasion of the visit to Graz-Jakomini correctional institution in January 2018, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice stated that in the future the documentation of HCV therapy as well as the request including the response and the reason given by the medical superintendent will be recorded both in the Electronic Patient Record Module and the respective patient file. A recommendation of the NPM in this regard was thus implemented.

- ▶ *Persons in detention have the right to the same medical care as persons in freedom (equivalence principle). Detainees may thus not be excluded from therapy or medication due to lack of compliance.*
- ▶ *The request for a specific therapy, the approval of the same and/or care as well as the course of the treatment must be documented in the Electronic Patient Record Module and in the patient file.*
- ▶ *Nationwide harmonised rules for the initial interview with the psychological service and the initial psychiatric examination are required.*

#### **2.5.2.2. Poor quality of psychiatric assessments in the detention of mentally ill offenders**

Last year's report placed special emphasis on the living conditions of persons who have committed crimes due to mental illness and whose freedom is deprived for special preventive reasons (see NPM Report 2017, pp. 101 et seq.). The addressed deficits in the detention of mentally ill offenders continue to exist. The urgently needed reform of the detention of mentally ill offenders is long in coming. Improvements should take effect as soon as possible in order to guarantee a treatment-based and humane detention of said persons.

The commissions are repeatedly confronted with complaints about the quality of assessments on their visits. They are a deciding factor in determining whether a person is committed to detention for mentally ill offenders in criminal proceedings; thereafter, whether and when conditional release can be recommended. The AOB thus set up a working group in February 2018 for the purpose of addressing the issue of the quality of psychiatric assessments and defining minimum requirements that these assessments should fulfil. The members of the working group drafted a report after viewing relevant documents on the subject and holding discussions with an internationally recognised expert and with practitioners from all areas of expertise. The report will be made available to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice in advance and published within the framework of the AOB series of publications so that it is accessible for all those interested.

#### **2.5.2.3. Lack of medical staff**

A definition of new nationwide solutions to combat the problem of medical staff shortages in the relevant area is urgently needed. A monetary incentive to win medical staff for positions in prisons is missing, in particular. Vacancies remain unfilled for a long time because no doctors apply due to the low pay. The financial incentives must therefore be improved in order to guarantee medical care in the medium and long term and remedy existing maladministration.

Stein correctional institution is a prime example of the massive shortage of staff in the medical area. An enquiry made in April 2018 indicated that one fulltime general practitioner position has not been filled for a long time. A fulltime position for a psychiatric consultant is also vacant. This means that a psychiatrist who works a mere eight hours per week in the correctional institution is responsible for the psychiatric care of about 600 detainees.

The vacant fulltime position in the psychiatric and general medical service inevitably results in severe stress situations for the only fulltime employed general practitioner. Time for the patients is very limited due to the staff shortage; time-consuming examinations and discussing results are almost impossible.

There is a similarly tense situation in Graz-Jakomini and Feldkirch correctional institutions. The psychiatrist at Graz-Jakomini correctional institution works five surgery hours every week and ten hours every two weeks. The correctional institution has 513 places. There was no official substitute at the time of the visit in January 2018. The psychiatrist at Feldkirch correctional institution works three to four surgery hours per week. He cares for some 60 to 80 patients during this time.

It must also be taken into consideration that, in addition to the psychiatric care, time-consuming diagnostics also require time resources in order to maintain the cooperation and exchange with other specialist services. This large number of obligations can only be fulfilled with adequate personnel cover in the psychiatric service; this is currently impossible in many correctional institutions due to the lack of staff in the medical area.

- ▶ ***The problem of staff shortages in the medical area must be solved urgently. A monetary incentive is required, in particular, in order to win doctors for a position working in prisons.***

#### **2.5.2.4. Visits by the medical officer**

The case of neglect of a detainee in Stein correctional institution in 2014 led to the compulsory official monthly visit by the medical officer to all of the sections of the correctional institution. During these visits by the medical officer, the detainees are visited on a random basis in their inmate cells in order to monitor the hygiene amongst others in the cells.

The visit by the NPM to Korneuburg correctional institution in January 2018 showed that these medical visits were not carried out. The medical officer had to be reminded of this obligation. Regular visits are particularly important in order to guarantee adequate support and care.

- ▶ ***A visit must be carried out by a medical officer to the sections and inmate cells of the respective correctional institution once a month and documented in the Integrated Prison Administration.***

#### **2.5.2.5. Medical emergency sheet**

The medical emergency sheet contains the most important medical data on the patient. In addition to the name and the date of birth, all prescribed medication and the relevant dosage is provided. There is a dedicated section for medical diagnoses. Apart from the emergency sheet, prison guards are not able to call up medical information on the detainees. In case of a medical emergency, the prison guards must print the medical emergency sheet from the computer system (Integrated Prison Administration) and give it to the patient.

Several emergency sheets without diagnoses were found in Gerasdorf and Hirtenberg correctional institutions. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice explained that it is of no relevance for acute treatment whether a patient has a specific diagnosis.

This argument failed to convince the NPM. Emergency sheets are the only documents that are given to patients in acute situations requiring in-patient treatment. Diagnoses provide key information in the event of acute treatment outside of the correctional institution. Furthermore, the existence of a dedicated "Diagnoses" section on the emergency sheet leads to the conclusion that an entry is generally required and should therefore also be made.

The NPM recommended – not only due to the legal obligation to document for doctors but also in the interest of the entrusted patients' well-being – entering the diagnoses of the patients in the emergency sheet.

- ▶ *Diagnoses must be entered in the emergency sheet.*

#### **2.5.2.6. Presence of prison guards during medical examinations and/or doctors' appointments**

The NPM recommended already in early 2017 that only trained health care and nursing staff should work in the infirmaries and surgery hours of correctional institutions (see NPM Report 2017, p. 126 et seq.). Calling upon prison officers in medical examinations or consultations is only permissible, in the view of the NPM, in exceptions due to a dangerousness assessment and if requested by the doctor. If, due to the dangerousness assessment, prison officers have to be called upon, female detainees may only be guarded by female and male detainees only by male officers.

During the visit to Feldkirch correctional institution in September 2017, the NPM observed that prison officers are present for the duration of medical treatments. The presence of prison guards does not depend on the actual dangerousness of the detainee but is the general rule. This was justified (as in many other correctional institutions) by the fact that the workplace of the prison officers in the infirmaries is located inside the treatment room. The NPM recommended separating the prison officers' workplace from the treatment room in the infirmary during the course of the planned conversion of the surgery rooms and moving it to a new anteroom that has yet to be built.

On a positive note, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that the recommendation will be adopted. The workplace of the prison guards should be moved to the hallway area with the adaptation of the surgery rooms. The conversion work is expected to be completed in the first six months of 2019.

- ▶ *Calling upon prison officers during medical examinations or consultations is only permissible in exceptions due to a dangerousness assessment when requested by the doctor.*
- ▶ *The workplace of the prison officers must be physically separated from the treatment room.*

### 2.5.2.7. Documentation of placement in a specially secured cell

The documentation of the placement in a specially secured cell was viewed on the visit to Innsbruck correctional institution in March 2018. The NPM observed that the reason for the threat was not given in cases of danger to the patient themselves or to others. It is also not mandatory that the exact time of the first medical visit (in the "Doctor within 24 hours" section) has to be entered. However, the exact time must be entered for follow-up examinations (visits).

The NPM recommended that, in the event of acute "danger to the person or to others", the concrete dangerous situation must be explained in more detail and the time of the first medical check must be noted. The prison guards were, according to the feedback from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, required to comply with the recommendations of the NPM. Furthermore, the office of the medical superintendent at the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice will address this issue at the next doctors' meeting.

- ▶ *If a person is placed in a specially secured cell in the event of acute danger to themselves or to others, the dangerous situation must be described exactly and the time of the first medical check noted.*

### 2.5.3. Living conditions

#### 2.5.3.1. Lack of occupational opportunities and excessive lock-up times due to staff shortages

One of the focal points of this year's NPM work was the lack of staff in the penal system. This deficit manifests itself in the long lock-up times and the lack of occupational programmes for detainees in particular.

The existing nationwide structural problems have been repeatedly pointed out since the beginning of the NPM work in July 2012 (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.; NPM Report 2017, p. 135 et seq.). It is regrettable that in many court prisons the setting up of an appropriate work programme as well as sports and leisure activities continues to be an unsolved problem).

The NPM considers it particularly objectionable when workshops and operations of companies providing occupational opportunities remain closed due to staff shortages meaning that jobs, which are actually available, are not permanently filled. Considering the, in part, high staffing rate of permanent positions in the law enforcement service, it must be urgently scrutinised which structural change or optimisation of personnel resources is necessary to be able to keep the operations and workshops permanently open.

On a follow-up visit in 2014, the CPT again expressed grave concern "(...) that, despite a specific recommendation made after the 2009 visit, major staff shortages were once again observed in the prisons visited, which inevitably had a negative impact on prisoners' access to out-of-cell activities." (CPT Report, visit to Austria of 22 September to 1 October 2014, CPT/Inf [2015] 34, German, p. 7 and p. 33).

On a visit to Gerasdorf correctional institution in December 2017, prison guards complained that positions are not permanently occupied. They said that workshops and operations of companies providing occupational opportunities often remain closed because there was no staff. This was the case, even though at the beginning of March 2018 just four law enforcement permanent positions were unoccupied in Gerasdorf correctional institution.

Criticism of the low number of work opportunities and excessive days when the operations in the Graz-Jakomini court prison remain closed was also expressed in the last two reports. When the main institution is fully occupied, there are only jobs for approx. 39% of the detainees. Despite this low rate, operations were closed on a total of 59 full days and 102 half-days (samples from 10 operations) in Graz-Jakomini correctional institution in the first quarter of 2018, which had 64 days. 94% of the permanent positions in the law enforcement service were staffed, some eleven permanent positions were not occupied.

The low number of occupational opportunities available in the largest court prison in Austria, Vienna-Josefstadt correctional institution, is particularly objectionable. The constantly overcrowded institution accommodated approx. 1,200 persons in November 2018, even though maximum capacity is 920 persons. Of these, only approx. 22% had work. There is a total of 320 jobs available to detainees in Vienna-Josefstadt correctional institution, of which 265 were occupied in November 2018.

The NPM has been highlighting the inadequate work opportunities and excessively long lock-up times in Linz court prison for many years. In February 2014, only 83 detainees had a work opportunity; projected to the existing number of detainees (219 inmates), this resulted in an employment rate of some 38%. At the time of the visit in December 2015, just 25% of the 220 detainees were employed. In October 2017, the employment rate was somewhat higher, at around 40%.

Only 40% of the detainees had a job in Ried im Innkreis court prison in February 2018. No improvement in the employment rate was observed compared to previous visits.

The situation in the adult male pre-trial detainee section (level 4) of Innsbruck court prison was also grounds for criticism. Only four out of 109 detainees had a job. For the remaining 105 unoccupied detainees this means that they have to stay in partly overcrowded and small cells for multiple inmates for up to 23 hours a day. When fully occupied, Innsbruck correctional institution has jobs for approx. 50% of the detainees.

The situation was similar in Leoben prison. In January 2018, only nine out of 81 inmates had a job in the male detainee regular detention section.

There are 58 workplaces in the main Feldkirch court prison, which has a capacity of 121 detainees. The correctional institution was overcrowded at the beginning of March 2018. Of the 125 detainees, just 25 persons had work. Some 89% of the detainees are in regular detention and are usually locked up for 23 hours per day in cells (for multiple persons).

Detainees in relaxed detention benefit from longer cell opening hours and can spend part of their day outside their cell. At the beginning of March 2018, however, just four persons in the relaxed detention section and nine persons in the women's section were housed in shared accommodation.

The operations of companies providing occupational opportunities and workshops in Stein correctional institution have remained closed during the holidays and the peak holiday seasons (Easter week, in the summer etc.) since the beginning of 2018. The lock-up times in certain sections were also extended in July and August 2018, as working times were not extended. Stein correctional institution justified this with the argument that, with the 2017 Services Law amendment (*Dienstrechtsnovelle*), the prison guards are entitled to additional holiday for every night shift they work; this is the only way they can make use of it.

In concrete terms, the time credit was increased from one to 1.5 hours per worked night shift. According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, this increase in the night shift time credit, which came into effect on 1 January 2018, results in additional effort equivalent to around 30 permanent positions. However, no additional permanent positions are included in the personnel plan 2018.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that it repeatedly indicated in its permanent positions negotiations that the implemented increase in the night shift time credit will require additional law enforcement permanent positions. Despite this, no additional law enforcement permanent positions are planned, which is why the number of “planned permanent positions” could not be increased.

The NPM considers it critical that no additional permanent positions were made available to compensate for this measure. Despite approx. 97% of the law enforcement permanent positions being staffed, operations of companies providing occupational opportunities had to be closed during the summer months, resulting in longer lock-up times in Stein correctional institution. This clearly shows that the allocated permanent positions do not suffice.

The NPM therefore recommends filling the vacant law enforcement permanent positions as soon as possible and again requesting additional law enforcement permanent positions (or increasing the “planned permanent positions”) at the next permanent positions negotiations.

In addition, more areas must be created for relaxed detention. The cell doors must be opened during the day shift in as far as possible so that detainees can spend eight hours per day outside their cells and occupy themselves meaningfully.

Best practice examples should not be left unmentioned. For example, the new Salzburg/Puch court prison constructed in 2015, which has an employment rate of 84%. At approx. 70%, Korneuburg court prison has a high employment rate. The NPM was informed at the end of 2017 that approx. 85% of the detainees at Graz-Karlau correctional institution had work.

The existing lack of personnel could also be offset by the more frequent employment of non-law-enforcement external skilled workers (from the so-called “craftsman service”). A total of 18 external skilled workers are currently deployed around the country.

On a positive note, the NPM was informed that the employment of external skilled workers in Graz-Karlau correctional institution, for example, has proved to be very successful. Currently, eight external skilled workers are employed in the companies of Graz-Karlau correctional institution (including the Lankowitz satellite facility). In Graz-Jakomini correctional institution, three employees of Post AG have been deployed for driving duties and the carpentry, an additional employee was seconded. Three external skilled workers are currently working in Gerasdorf correctional institution. Although the management of the correctional institutions would like more

employees in this category, this is not envisaged by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice for budgetary reasons.

In conclusion, let it be said that, on the one hand, sufficient personnel is needed to increase the level of occupation of the detainees and keep operations permanently open. On the other hand, the relevant space is required to be able to build sufficient operating areas for the companies. Many court prisons are located in old buildings and the occupational opportunities are very limited because of the space situation. Considerable structural measures (conversion, extensions, new construction) are necessary in most cases in order to be able to set up sufficient operating areas for the companies in these buildings.

- ▶ *Additional personnel resources are required to comply with the legal requirements and those set forth in the minimum standards. Additional personnel is necessary, in particular, in order to reduce lock-up times and increase the employment rate.*
- ▶ *Operations of companies providing occupational opportunities and workshops in the correctional institutions should be continuously open. The employment of external skilled workers must be expanded in the companies.*

### **2.5.3.2. Cramped cell situation due to old building structure**

The NPM visited Feldkirch correctional institution in February 2018. The correctional institution is located in a historic art nouveau style building that is under preservation order. Many structural deficits that were again observed are attributable to the old building structure, for example, the long lock-up times, the low number of occupational opportunities as well as the few leisure and sports activities.

The correctional institution has a capacity of 121 detainees; 125 persons were being detained in March 2018. It is very stressful for the detainees when they are locked in the cell for 23 hours per day. The already very oppressive situation is exacerbated by the small cells.

The question of the necessary private living space of a detainee depends amongst others on whether they are occupied and how much time they can spend outside the cell. A balanced occupational programme, the opportunity to spend time outside in the fresh air as well as sufficient individual living space have a positive influence on the behaviour of the detainees in prison and contribute to reducing conflict between detainees. Irritability and dissatisfaction are breeding ground for both verbal and violent assault. The likelihood of aggression between detainees increases in cells for multiple inmates due to the cramped detention situation, lack of privacy and the long lock-up times.

It must be ensured that the cells are at least as big as stipulated in the decree of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice and the CPT standards. Measures must be taken to rectify the cramped conditions in the cells and to guarantee the detainees more privacy. Generally speaking, the NPM considers placing more than four persons in a cell critical.

Cramped conditions were also evident in the women's section of Feldkirch correctional institution. The building is designed for a maximum of eight inmates and has no general areas for common use, such as a kitchen or recreation room, for example. Only one cell with an occupancy of three detainees is equipped with a kitchen and is jointly used during the cell opening times.

The NPM emphasises to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice that, in accordance with the minimum standards for women in prison, shared accommodation must have areas for common use. Due to the structure and the cramped capacity in the correctional institution, the creation of common areas in the women's section would, according to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, be at the expense of the already low number of available places. An adaptation is therefore not currently planned.

The construction of a new building or extensive conversion of the old building is necessary to implement modern prison conditions. The NPM has therefore emphatically repeated its recommendation to implement the planned extension and conversion. Regrettably, to no avail as yet, even though a site was set aside for the new building years ago and the plans for the same exist.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice points out that the funds for implementing these plans are still not available. Therefore, a time horizon for the implementation of the new construction or conversion of Feldkirch correctional institution cannot be announced.

The NPM also deemed the building structure of Graz-Karlau correctional institution worthy of improvement. It was observed in November 2017 that the detention of those housed in sections A, B and C violated the rule of separation between detainees in facilities of the penitentiary system and mentally ill offenders. It was also criticised that there were not enough cells in the section to be able to respond quickly to conflict situations or incidents by moving persons.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice does not contest that the section in which the areas for the detention of mentally ill offenders are set up are no longer contemporary. An overall refurbishment of the cell section is planned. Construction work is due to begin in 2019 depending on the budgetary conditions. A minimum construction time of three years has been projected. The insertion of suspended ceilings, the extension of recreation rooms, the creation of central service rooms as well as the installation of a new lift system and the required fire protection systems are planned.

It is also viewed with concern that, due to the rising number of commitments to detention for mentally ill offenders and the high occupancy rate, often not enough cells are available to be able to react in conflict situations or incidents at short notice by moving detainees.

- ▶ *A maximum of four persons should be accommodated in cells for multiple inmates.*
- ▶ *The size of cells required by the CPT for two to four persons should not be undercut.*

### **2.5.3.3. Violation of rule of separation between convicts and detainees awaiting trial**

With regard to pre-trial detention, special care must be taken that the presumption of innocence applies for the accused, and the outcome of the criminal proceedings should not be anticipated. Housing detainees awaiting trial together with convicts may have a negative impact on those awaiting trial due to the direct contact with persons who have already been convicted in a court. Accordingly, provisions in the Austrian Code of Criminal Procedure (*Strafprozessordnung*) stipulate that the accused should not be accommodated together with convicts and the pre-trial

detention should be the same as general living conditions insofar as possible. This rule of separation is also found in the European Prison Rules as well as in the UN Standard Minimum Rules for the Treatment of Prisoners.

The NPM repeatedly observes in court prisons that convicts and detainees awaiting trial are accommodated together in a cell. This was recently the case in Linz correctional institution. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that endeavours are undertaken as a general rule in Linz correctional institution to observe the separation of convicts and detainees awaiting trial. However, in the section for working detainees there are only limited possibilities to house persons awaiting trial separately. If there are no free places, a detainee awaiting trial would have to be refused the opportunity to work in order to strictly comply with the rule of separation. This would mean the discrimination of the detainee awaiting trial. At the same time, it is assured that a detainee awaiting trial is only accommodated in a cell with a convict if the former consents to the same and, as a general rule, only if the detainee awaiting trial is not being detained for the first time.

The criteria set by the Federal Ministry for accommodating convicts and detainees awaiting trial together are not convincing. Agreement or "consent" is a weak corrective in a facility that deprives persons of liberty and must be viewed critically, as voluntariness does not exist in hierarchical structures that are also characterised by a marked power imbalance. The second argued criterion "no detention for the first time" is not convincing either, as this worsens the situation of exactly those who are accused but blameless. Those who were previously convicted are made look better. This is not convincing either from the educational perspective or the proportionality aspect. Insufficient capacity is also no justification for violating the rule of separation.

The NPM therefore recommends taking measures to increase the occupational opportunities in Linz correctional institution as well as to create sufficient space so that detainees awaiting trial do not have to be housed in a cell with convicted prison inmates.

- ▶ *Detainees awaiting trial and convicts must be accommodated separately (rule of separation).*

#### **2.5.3.4. Electronic cell allocation**

There is currently no way to distinguish gender, age, detention status and detention type when querying free places in correctional institutions. This deficit in the electronic Integrated Prison Administration system can cause overcrowding in individual sections. If a correctional institution reports free capacity, for example, because there are ten vacancies in the women's section, it is possible that ten men will be allocated even if the men's section is already full.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice is aware of the problem. This shortcoming is to be rectified during the conversion of the Integrated Prison Administration in the course of programming electronic prison management. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice was not able to announce when the new programming will be performed. The NPM recommended expediting the programming of electronic prison management so that vacancies in correctional institutions can be queried by gender, age as well as detention status and detention type as soon as possible.

- ▶ *It must be possible to query the occupancy in correctional institutions by gender, age, detention status and/or detention type.*

### 2.5.3.5. Range of goods and pricing

Once a week, detainees are entitled to purchase certain foods, body care products and other products of daily need at their own expense. The goods are usually bought in the canteen or from shopping lists. The NPM repeatedly observed criticism from detainees about the range of goods and pricing in the past (see NPM Report 2015, p. 106) as well as in the reporting year during visits. Many detainees also contacted the AOB by writing individually and complained of the lack of choice, high prices and inferior quality of the fresh goods sold. Purchasing food and other necessities was also an urgent topic during the consultation days, which the AOB carried out in Stein, Graz-Karlau and Suben correctional institutions.

The discontent regarding the high prices and the unsatisfactory choice of products in prison supermarkets can have a negative impact on the atmosphere in general. It is thus considered important to react to the criticism of the detainees and to evaluate the pricing and the range of goods in prison kiosks at regular intervals. The prices for groceries and consumer goods should not be higher than in local supermarkets. To ensure that no expired goods are in the product range, it was also recommended to regularly check the products in the prison kiosk.

Due to the recurring criticism, a nationwide tender process was initiated for the supply of consumer goods including the operation of kiosks. A new nationwide sole supplier should thus be found in this way. The nationwide conversion was completed at the end of January 2018.

The concept stipulates the product range and price level of the *Nah & Frisch* retail chain (a well-established grocery store chain in Austria) as the basis for all of the kiosks to be operated. The weekly *Nah & Frisch* product promotions are passed on to the kiosks too. The prices of the products are entered centrally, are valid for all correctional institutions and safeguarded through a standardised checkout system. The appropriateness of the prices is guaranteed through the obligation of the company to use the sales prices of the regular market and also pass the sales promotions on to the kiosks.

The new nationwide assortment list provides the product framework for all correctional institutions. The product selection from the nationwide assortment list is at the discretion of the respective prison management and depends on the needs and the possibilities of the respective institution (preparation of frozen products, size of sales/kiosk area etc.).

There was often criticism that there were no inexpensive products in the basket of goods. It was thus recommended to expand the range of goods from the supplier's own discount brand. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that in addition to brand-name articles the reasonably priced products under the discount brand "*Jeden Tag*" were included. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice also agreed to examine the expansion of the range of low-price products in individual cases. The goods will be included in the selection, provided the desired goods are offered by the operator and there are no reservations on the part of the prison administration. It is also possible to determine sales figures through the central operator. After a consolidation phase in 2019, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice promises to examine whether the nationwide product list will be adapted.

- ▶ *The prices for consumer goods should be the same as those in local supermarkets.*
- ▶ *The price and product lists of the prison kiosk must be accessible for all detainees.*

## 2.5.4. Women in prison

The NPM also focused on women in prisons in 2018. Noticeable were the long lock-up times (chapter 2.5.4.1), staff shortages (chapter 2.5.4.2) and training and continuing education for employees (chapter 2.5.4.3). Further topics were occupational opportunities (chapter 2.5.4.4) as well as the supervision and housing of adolescent girls (chapter 2.5.4.5).

### 2.5.4.1. Inmates housed in shared accommodation and lock-up times

As already mentioned in last year's report, the Federal Ministry enacted the "Minimum standards for women in Austrian correctional institutions" ("*Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten*") (see NPM Report 2017, pp. 117 et seq.) in February 2016. These set forth standards for housing and providing support for female detainees awaiting trial and female prison inmates. The individual correctional institutions were subsequently asked to develop corresponding suggestions on how these standards should be implemented in the institutions. The implementation should have been completed by 30 December 2016 at the latest.

The minimum standards state, as a general rule, that both female detainees awaiting trial and female prison inmates must be detained in shared accommodation. The Penitentiary System Act (*Strafvollzugsgesetz*) describes inmates housed in shared accommodation as detention without locking the recreation rooms or the doors during the day. Detention in shared accommodation requires assuming social responsibility and thus promotes reintegration into society after release from prison. The norms and values that enable a tolerant living together, non-violent conflict resolution strategies, mutual tolerance and responsibility for one's own area of life should be imparted and practiced in the shared accommodation. Even if steps were taken to implement this decree, the NPM observed that in many correctional institutions minimum standards for the establishing of inmates housed in shared accommodation had not been fully realised.

In the past, it was criticised for example that of the total three wards of the women's section in Vienna-Josefstadt court prison just one was operated as shared accommodation, and that only part of the time (see NPM Report 2017, pp. 117 et seq.). This situation has improved. In February 2018, at least one area for shared accommodation was set up in all three wards of the women's section of Vienna-Josefstadt correctional institution. This means that cells are open daily – including Saturdays, Sundays and public holidays – from 7.00 a.m. to 10.00 p.m. The ward that houses the mother-child area, the non-smoker shared accommodation and the cells of female adolescents was, according to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, restructured and has been completely operated as shared accommodation since mid-2018.

There is still room for improvement with regard to the number of places in shared accommodation for inmates. A maximum of 25% of female detainees awaiting trial in the ward for the same, and only half of the detainees in the ward for female prison inmates can be housed in shared accommodation. It is still objectionable that those detainees awaiting trial, in particular, who are not detained in shared accommodation are largely locked in their cells for 23 hours per day.

According to the concept for the women's prison in Linz correctional institution, the section is operated as shared accommodation for inmates and the cells must be kept open as a general rule during normal working hours on the day shift (from Monday to Thursday from 7.00 a.m. to

3.00 p.m., Friday from 7.00 a.m. to 11.30 a.m.). The cells are also open on Saturdays, Sundays and public holidays from 7.00 a.m. to 11.30 a.m. Supervised leisure activities are offered every Monday from 3.00 p.m. to 6.00 p.m.

It is encouraging that Linz correctional institution has promised to install video surveillance in the women's section and to fit "inmates' locks" in the cell locks in order to comply with the NPM recommendation to extend the cell opening times. Cell locks with an "inmates' lock" are a double locking system by means of which the inmates can lock their cell themselves during the cell opening hours so that it is not possible for other detainees to enter the cell on the one hand. On the other, it should be possible for the employees to lock and open the cell doors, if required. The installation is expected to be completed by the end of 2018 or the beginning of 2019.

The lock-up times for the female detainees in Feldkirch court prison were objectionable. The women's section has a total of eight places. According to the concept for the women's section, the cells must be open during normal working hours on day shift (from Monday to Thursday from 7.00 a.m. to 2.30 p.m., Friday to Sunday from 7.00 a.m. to 11.30 a.m.). According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, an extension of the cell opening hours is not implementable before the planned extension and new construction of Feldkirch correctional institution due to the lack of space, and is thus not currently envisaged (see chapter 2.5.6.1).

Schwarzau correctional institution is the only prison in Austria exclusively responsible for the detention of women. A visit to the institution in March 2018 showed that about a third of the women were detained in the regular detention section. This section is operated as a closed ward and the cells have restricted opening. In the view of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, operating the entire Schwarzau correctional institution as shared accommodation is not possible due to the structural conditions, personnel resources and the different groups of inmates detained in the correctional institution.

At the beginning of March 2018, the NPM visited the women's section of Innsbruck court prison with 35 places for female detainees. The six places in the mother-child section and day release prisoners section are operated as shared accommodation. The cells are open 24 hours a day in these areas. The remaining 29 places are operated as closed detention (regular detention).

According to the concept for the women's section of Innsbruck correctional institution, the regular detention cells should be open for one and a half hours every day and the women should be able to move freely inside the section. It was observed, however, that not all regular detention cells are open for one and a half hours daily but that only six detainees are allowed to leave the cell at the same time.

In response to the criticism of the NPM, the warden of Innsbruck correctional institution ordered that additional staff be deployed on the night shift (Monday to Thursday from 3.00 p.m., Friday from 12.00 p.m.), meaning that the cell doors have been open for all inmates in regular detention for one and a half hours every day since mid-April 2018 according to the Federal Ministry. The NPM supports this as an initial measure. It does not, however, comply with the minimum standards.

The NPM recognises that expanding the areas in which inmates are housed in shared accommodation can be challenging for a number of reasons, such as structural conditions, personnel capacity, separation of accomplices, non-homogeneous groups of inmates or even

those displaying symptoms of a mental disorder. Nevertheless, the objective is to expand detention in shared accommodation all over the country and to shorten the lock-up times and reduce the number of female inmates detained in regular detention. Housing female detainees in shared accommodation should be the norm; female detainees should only be detained in regular detention in justified exceptions. The NPM recommends complying with the minimum standards as soon as possible such that the section reserved for the regular detention of female detainees is operated as shared accommodation and the cells are open all day on weekdays, weekends and public holidays as a matter of principle.

- ▶ *All women's sections must be normally operated as shared accommodation in accordance with the minimum standards for the detention of women. Only in justified exceptions should female detainees be in regular detention.*
- ▶ *The cells in women's sections must be kept open on weekdays, weekends and public holidays.*

#### **2.5.4.2. Staff shortages**

The employees of the women's section of Vienna-Josefstadt correctional institution considered the shortage of staff as the most serious structural problem where the detention of women is concerned. Normally, two officers should work in each section. However, in the past one out of four officers was usually called upon to perform other duties. The examination of an attendance list of prison guards in the status log of a section during the visit to Vienna-Josefstadt correctional institution in November 2017 showed that over a period of five months on only 20 out of 120 days all of the prison guards were present during working hours.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice repeatedly points out that all of the permanent positions for prison guards in Vienna-Josefstadt correctional institution are occupied or even overstaffed (staffing rate of 102%). The prison warden made reference to the numbers of persons on (long-term) sick leave in this respect and the frugally calculated permanent positions for the duties of the correctional institution. (Long-term) sick leave is not considered when calculating the numbers for permanent positions, as it is unforeseeable.

Examination of the sick leave situation in Vienna-Josefstadt correctional institution showed that the large number of persons on sick leave make work schedules difficult to plan. The attention of the prison warden of Vienna-Josefstadt correctional institution was drawn to this matter, and from now on return-to-work meetings will be held with those employees who have been on short-term sick leave more often than usual.

The NPM emphasised that additional personnel resources are still required for the women's section of Vienna-Josefstadt correctional institution to fully comply with the minimum standards. It is encouraging that during a follow-up visit to Vienna-Josefstadt correctional institution in December 2018 an additional fulltime position for a social pedagogue had been allocated to the women's section. Furthermore, the prison guards reported that now every section is staffed with two officers on day shift, as they are no longer deployed for other duties. The staff situation in the women's section has thus improved considerably.

The visits to Innsbruck correctional institution in March 2018 and Wiener Neustadt correctional institution in May 2017 showed that the living conditions of female detainees are compromised by the lack of personnel. The cell opening times in the women's section of Innsbruck correctional

institution did not comply with the minimum standards for the detention of women (see 2.5.4.1). In Wiener Neustadt correctional institution it was evident that hardly any sports groups or other activities can take place during leisure time when there is a lack of personnel. The NPM emphasised that the “Minimum standards for women in Austrian correctional institutions” stipulate that in every correctional institution a supervised leisure programme including both indoor and outdoor activities has to be offered at least once a week. The personnel situation in the correctional institution must therefore be optimised.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that the measures for acquiring personnel for the prison service have been intensified even more in recent months. In the view of the NPM, however, it should also be considered whether pressure can be taken off the prison service by deploying non-law-enforcement personnel in the different areas. External skilled workers from craft trades, social workers or social pedagogues could cushion the negative effects in some areas that arise from the lack of law enforcement personnel.

- ▶ *The women’s sections require additional personnel resources in order to be able to comply with the minimum standards for women in detention.*

### 2.5.4.3. Training and continuing education for employees

The “Minimum standards for women in Austrian correctional institutions” provide for mandatory yearly training and continuing education for prison guards working in women’s sections. The Correctional Services Academy (*Strafvollzugsakademie*) has not offered any continuing training or qualification measures for the detention of women worth mentioning to date. For the purpose of closing this gap and complying with the minimum standards, the prison warden of the women’s section of Vienna-Josefstadt correctional institution was commissioned to draft a curriculum for a nationwide continuing education programme for the detention of women. In terms of content, the participants should be prepared, in particular, for the specific requirements inherent in the detention of women. The applicable legal norms and special needs of women in a detention situation are taught. The first part of the two-part course took place in October 2018, the second part is planned for April 2019. In future, the training courses must be completed in order for employees to be allowed to work in women’s prisons.

Female adolescents are often detained in the women’s section of court prisons due to the lack of an adolescent section. It was therefore recommended that consideration be given to the special needs of female adolescents as part of the training course for working in women’s prisons. It is encouraging that the recommendation was fulfilled and the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice will revise the content design to include this point. Furthermore, the female detention training course was made compulsory for prison officers who take care of adolescent girls.

- ▶ *In compliance with the minimum standards for women’s prisons in Austria, continuing education programmes must be offered for employees in women’s correctional institutions.*
- ▶ *The curriculum of the training course for women’s correctional institutions must also cover the peculiarities in connection with taking care of female adolescents.*

#### 2.5.4.4. Occupational opportunities

The “Minimum standards for women in Austrian correctional institutions” stipulate that every female inmate should work full time provided the orders in the individual companies providing occupational opportunities permit this. The skills and experience of the woman must be screened before allocating her a job. The result has to be taken into consideration when allocating the job. Female and male detainees must be deployed respectively in as far as possible in the companies. Job rotation is designed to enable the detainees to familiarise themselves with operations of companies which provide occupational opportunities in the prison and the different occupational opportunities.

At the beginning of April 2018, 42 out of a total of 77 female detainees in Vienna-Josefstadt correctional institution had a regular job. This is equivalent to an employment rate of around 55%. According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, the working hours are usually from 7.30 a.m. to 12.30 p.m. Apart from the low employment rate, the NPM again observed that women can only work as seamstresses, in the launderette, as cleaners or domestic helps.

The NPM also criticised the inadequate range of jobs for women during the visit to Wiener Neustadt correctional institution in May 2017. More than half of the women do cleaning work in the prison. The other jobs are simple unskilled labour.

Jobs in which men and women detainees work together are generally rejected by Leoben correctional institution. There are no separate sanitary facilities in the operations of companies that provide occupational opportunities; in addition, on average 190 men and a mere 10 women are being detained in the court prison. Sharing the jobs – which are already scarce – would result in worsening the men’s position. The NPM is familiar with positive field reports from other correctional institutions and recommended Leoben to look at these reports. It is not always necessary to regularly staff a complete operation with women. However, there are always female inmates who are candidates for a job in a mixed operation.

It is encouraging that a visit to Innsbruck correctional institution focusing on the detention of women in March 2018 indicated that the majority of the women has the opportunity to work. Only two women had no job at the time of the visit. According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, male detainees are also deployed in the companies of the correctional institution. For example, two men also work currently in the launderette and there would be a gender mix in the “Youth Operation” if there were any female detainees.

- ▶ *The range of occupational opportunities for female detainees must be expanded.*
- ▶ *Female detainees should have the possibility to acquaint themselves with different types of work in different companies providing occupational opportunities.*
- ▶ *Endeavours should be made to deploy female and male inmates in every company.*

#### 2.5.4.5. Supervision and housing of adolescent girls

Six adolescent girls were detained in correctional institutions in Austria in December 2018. In Linz court prison, a total of six adolescent girls were detained in 2018 and two in 2017. Because of the infrequency and usually short duration of the detention of adolescent girls in Linz correctional

institution, there is no dedicated section for female adolescents. In order to comply with the principle of separation, girls are (as in almost all court prisons) detained in a separate cell in the women's section.

There has been no guideline to date on how to supervise adolescent girls. Linz correctional institution assures that endeavours were always made to offer supervision that is as centred on the inmates to the extent possible. Furthermore, social pedagogues have always attempted to provide individual supervision during leisure time and to integrate adolescent girls in the supervision of adolescent boys (board games afternoon, cooking, etc.). Although these measures are to be welcomed, an individual concept is required for the supervision of the adolescent girls in Linz correctional institution in order to prevent discrimination vis-à-vis the male adolescents.

The NPM was assured that the recommendation will be fulfilled and the special needs of adolescent girls given more consideration within the framework of the yearly revision of the women's concept. In addition, a process for the integration of adolescent girls will be defined as part of the socio-pedagogical supervision of adolescents.

The NPM demanded that every correctional institution in which adolescent girls could be detained must develop a concept for this. This demand was regrettably rejected by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice.

The youth concept of Vienna-Josefstadt correctional institution made no provision for the detention of adolescent girls in shared accommodation. This observation motivated the NPM to recommend that all of the concepts nationwide for youth detention be examined. If necessary, the concepts should be adapted such that, in compliance with the minimum standards for women in prison, detention in shared accommodation for adolescent girls is provided for as a matter of principle.

It is encouraging that the Vienna-Josefstadt correctional institution youth detention concept was revised accordingly. According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, all adolescent girls and young adults have been detained in shared accommodation with daily cell opening times from 7.00 a.m. to 10.00 p.m. since the beginning of July 2018.

- ▶ *Detention in shared accommodation must be provided for adolescent girls as a matter of principle.*
- ▶ *(Socio-pedagogical) supervision concepts must be defined for adolescent girls.*

## **2.5.5. Right to privacy**

### **Strip search during restraint**

Before being placed in a specially secured cell, a female inmate of Innsbruck correctional institution was forcibly undressed in order to ensure that she was not carrying any dangerous objects. The strip search had to be carried out under restraint for safety reasons due to the aggressive conduct of the inmate. The search took place in such a way that the inmate was secured with her hands through the food hatch by the taskforce which was located in front of the cell. According to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice,

this securing of the inmate through the food hatch constitutes the mildest means or least intervention. The use of additional restraint is thus avoided.

The detainee was searched by two lady prison guards in the cell. The inmate was fully undressed before the search. While the inmate was secured through the food hatch, three members of the task force were standing directly in front of the cell. One of the members performed the securing through the food hatch opening, the other two waited preparing for another operation.

Which officer secured the detainee was not documented. As there were no female members in the task force of Innsbruck correctional institution at the time of the body search, it was definitely a male prison officer.

The NPM was concerned that perhaps the male members of the task force had seen the disrobed woman. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice stated in this matter that the intervening officers of the task force were aware of the addressed problem from the very beginning, which is why they adapted their behaviour to the given situation. All of the male officers involved had looked away from the food hatch in order not to cause any feelings of degradation or indignity on the part of the inmate. In addition, the restraint through the food hatch served to prevent visual contact. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that only the two lady officers who searched the inmate in the cell saw her.

The NPM emphasised that a strip search must only be carried out in the presence of two guards of the same gender as the prisoner and without other prisoners and persons of another gender. It must not be possible to see into the room (also according to the manual "Searching persons" – *"Durchsuchung von Personerl"* – for law enforcement officers in Austrian prisons) so that the dignity of the person to be searched is not violated. It must be ensured that male persons cannot see female detainees when these are undergoing a strip search.

The management of Innsbruck correctional institution thus had a privacy screen made for the women's section in order to comply with these standards.

The deployment of female prison guards for the task force was promised as a further measure. In addition, the task force and employees of the women's prison should be trained in how to carry out strip searches and how the dignity and modesty of the persons being searched can be protected. The issue should also be covered in the basic training of the task force of Innsbruck correctional institution.

The NPM endorses the measures taken and recommends introducing these preventive measures in all other correctional institutions in which female detainees can be housed.

The NPM observed in this connection that strip searches are currently only documented and reported to the respective prison warden if an offence is suspected. These cases are not documented beyond this. There are no nationwide uniform standards for the documentation of strip searches.

This is difficult to understand, as it must be ensured that with a strip search, in particular, an approach that is as considerate as possible is used and there is no inappropriate infringement of the privacy and modesty of the detainee. Whether or not a body search was carried out correctly can only be checked if specific surrounding circumstances are recorded (e.g. the purpose, the

concrete surrounding circumstances, the scope of nakedness, the persons present, the name of the room etc.).

It can also be taken from the "Searching persons" manual for law enforcement officers in Austrian prisons that the purpose and circumstances of the strip search must be documented in writing due to the intensity of the infringement in order to ensure their verifiability. The NPM views this as particularly important. It was also reiterated once again that these body searches should be carried out in two steps so that the person to be searched does not have to fully undress.

- ▶ *Other persons should not be able to see into the room in which a strip search is carried out.*
- ▶ *Strip searches must be carried out without other prisoners and persons of another gender being present.*
- ▶ *The surrounding circumstances of a strip search must be documented in writing.*

### 2.5.6. Contact to the outside world

On the visit to Innsbruck correctional institution in December 2017, it was recorded that three telephones are available for some 90 detainees, which according to unanimous responses from all of the detainees interviewed may be used by them for one hour on Saturday and/or Sunday respectively. The employees, for their part, claimed in contrast that the telephones can be used at all times.

The NPM emphasises that telephone calls are now one of the most commonly used communication channels with the consequence that a system was also created in correctional institutions that enables detainees to maintain regular telephone contact to the outside world at their own expense. This is pursuant to the Penitentiary System Act, according to which the prisoners must be encouraged to maintain relationships to their relatives insofar as this does not impair the proper running of the institution and it is to be expected that this positively influences the prisoners, fosters their progress or is otherwise to their benefit.

Salzburg/Puch correctional institution must be mentioned as a good practice example in this respect. Every cell is fitted with a telephone there. The NPM advocates establishing this practice nationwide.

In contrast, Section 96a of the Penitentiary System Act sets forth that it must only be possible for prisoners to make telephone calls in extenuating circumstances. This legal provision appears to be no longer contemporary. The NPM recommended revising the legal provision.

- ▶ *The legal restriction of telephone calls needs to be amended.*

### 2.5.7. Access to information

Detainees often cannot understand the contents of house rules. Functional illiteracy is very frequent among detainees; it is then not possible for them to comprehend what they are reading. The NPM therefore demanded the use of simple language in the house rules.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice recognised in 2015 that these comprehension problems can cause conflict with the detainees. The house rules

were thus provided in the form of pictograms. The design of the Korneuburg and Salzburg/Puch correctional institutions house rules using pictograms must be praised as an example of good practice.

- ▶ *Detainees must have access to the house rules, which must be formulated in a language that they can understand.*
- ▶ *House rules should also be available in pictogram form in all correctional institutions.*

## 2.5.8. Positive observations

### Asten Centre for Forensic-Therapeutic Science

The NPM gained a positive impression on the visit to the Asten Centre for Forensic-Therapeutic Science in May 2018. In addition to a varied range of therapies, the numerous opportunities for exercise in particular made a positive mark. The detainees reported very positively about the staff. They were informed about the medication that was administered to them. Therapy plans hung in every room. There was no indication of violence and aggression.

There was a therapeutic atmosphere in the building on the day of the visit. It was observed that the detainees were treated with respect (as for example, knocking on the door before entering a room). The fact that some 40 conditional releases are ordered per year is a tribute to functioning release management.

The recommendation of the NPM that prison guards in the Centre should receive basic training in the types of illnesses treated in the building was also adopted. At the time of writing this report, training modules on "Basic knowledge of illnesses and treatment in the detention of mentally ill offenders" for prison guards were being prepared.

The NPM also recommended that the reason for and duration of the use of handcuffs and foot shackles must be verifiably documented. This recommendation was also adopted and electronic documentation including the following information introduced: the name of the specially secured detainee as well as that of the commanding law enforcement officer, the reasons for using handcuffs and/or foot shackles, the duration of the securing, the notification of the management of the facility and a medical assessment, where applicable.

- ▶ *All law enforcement officers working in the detention of mentally ill offenders should receive basic training in illnesses and treatment.*
- ▶ *Reason for and duration of the use of handcuffs and foot shackles must be verifiably documented.*

### Follow-up care facilities in Graz

The NPM had a consistently positive impression on the visit to the two temporary residential facilities in Graz in December 2017. Accommodation is provided pursuant to Section 21 (1) and Section 21 (2) of the Austrian Criminal Code (*Strafgesetzbuch*). The stay in these two houses is part of the social rehabilitation process; residency is pursuant to judicial instruction. All residents have a defined daily structure, and almost all of them work in an internal operation.

The spacious structural situation deserves praise. Each house has four kitchens whereby each kitchen can only be used by four persons. The residents can also decorate their rooms individually and thus give themselves more privacy. The specific support and documentation were also seen positively. The agreements made with the residents were thus found in all of the files viewed.

The two houses are joined by a lockable door. However, only one of the houses is equipped with a unit that is adapted to the needs of persons with disabilities. There are few areas to meet in both houses. A recreation room that is also sometimes used as a kitchen is used for this purpose in house 1. House 2 has a social room on the ground floor.

The building has an outdoor security system which the residents open by means of a chip. A siren is triggered in the building if the door is opened without electronic clearance. The entrance area, the hallways and common areas are under video surveillance. The footage is saved. As there was no relevant authorisation from the data protection authority at the time of the visit, this had to be obtained subsequently by the facility. Upon recommendation by the NPM, signs were affixed informing visitors about the video surveillance and recording.

The NPM also observed that visits by persons under 14 years of age are strictly forbidden. It was thus recommended to remove this clause from the visiting rules and to decide on a case-by-case basis whether it is possible for minors under the age of 14 accompanied by an adult to visit the building. The recommendation was adopted.

It was also observed that neither a de-escalation concept nor measures for avoiding conflict had been defined. However, a compulsory further education event on the topic of de-escalation was planned for all employees in the forensic department. After the first part, a de-escalation concept should be jointly developed by the teams. In addition, forensic further education seminars are offered twice a year.

- ▶ ***Written de-escalation concepts must be available in follow-up care facilities***

## **2.6. Police detention centres**

### **2.6.1. Introduction**

The commissions visited 15 police detention centres and Vordernberg detention centre in the year under view.

As in the previous year, the Federal Ministry of the Interior implemented several of the recommendations of the NPM including the replacement of missing and defective fixtures in detention rooms in a timely manner. In several cases, however, conditions persisted after the end of the year under review, the rectification of which the NPM had recommended years ago. This affected above all the new construction or refurbishment of police detention centres announced by the Federal Ministry of the Interior.

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

In 2014 and 2015, the working group defined standards for open detention pending forced return, for detention in single cells including specially secured cells as well as for the improvement of visiting times and visiting modalities (see NPM Report 2016, p. 133).

In May 2016, the NPM recommended the Federal Ministry of the Interior to implement these standards as soon as possible. By the end of 2017, the Federal Ministry had only implemented the agreed standards for detention pending forced return in the form of open detention per decree of May 2015 (see NPM Report 2016, p. 134).

As depicted in the NPM Report 2017 (pp. 143 et seq.), the working group adopted standards in 2017 for occupational and leisure activities in police detention centres, for granting inmates access to information from the outside world and on hygiene. The NPM recommended the Federal Ministry of the Interior in December 2017 to also implement these standards as quickly as possible.

In the NPM Report 2017 (p. 144) the NPM informed about the conclusion of the working group on the standards concerning telephonic contact to the outside world and barrier-free access for inmates to a telephone (see NPM Report 2016, p. 136 et seq.).

Standards for specific security measures were also defined (see NPM Report 2017, pp. 144 et seq.). These standards specify action and documentation guidelines that must be considered for the placement of persons in a security cell or a padded cell. The working group agreed in January 2018 that it will have the Federal Ministry of the Interior check whether the new documentation obligation regarding the confiscation of detainees' clothing and offering alternative clothing can be implemented through changing the measures form.

In the initial reaction to the recommendation of the NPM of December 2017, the Federal Ministry of the Interior endorsed the additional standards for occupational opportunities in the police detention centre, for inmates' access to information from the outside world and for hygiene. The Federal Ministry of the Interior informed that these standards had been implemented in a new decree on detention in police detention centres of January 2018.

A notable positive aspect is that this decree contains not only all of the standards adopted by the working group until the end of 2017 but also those for telephonic contact to the outside world.

However, some of the formulations in the decree deviated from the standards; several detailed regulations were also missing. The NPM considered clarification necessary.

The barrier-free use of a telephone in police detention was accidentally not included. The decree also did not contain the information that the right to use a telephone may only be restricted under the legal conditions (in particular the Austrian Code of Criminal Procedure, *Strafprozessordnung*) and that this should be documented. The Federal Ministry of the Interior promised to amend the decree as part of the next revision.

The working group also agreed that all examinations following the initial official medical examination at the beginning of the measure should take place at the latest within twelve hours. The Federal Ministry of the Interior announced that it intended to amend the decree with this regulation.

A standard that was already adopted in the working group in 2014 stipulated that persons placed in tiled security cells have to be observed every 15 minutes and those in padded cells placed under continuous observation.

The Federal Ministry of the Interior did not consider this necessary (anymore), as the working group had agreed the installation of low light video surveillance (infrared camera) in all cells used for securing measures in 2017. Continuous observation is thus ensured in both types of cell. The Federal Ministry of the Interior promised, however, to amend the decree with the surveillance intervals in order to be able to guarantee the observation of the detainees in the event of a breakdown of the video system.

The decree defined the tiled cell as a security cell without furnishings. In contrast, the standards for detention in single cells stipulated permanently installed furniture (bed, table, seating). The working group erroneously assumed in 2014 that a tiled cell has furnishings. The Federal Ministry of the Interior also pointed out that furnishings in these cells are contrary to the security purpose.

The NPM shared the view of the Federal Ministry of the Interior that angular or sharp-edged objects in these cells pose a safety threat for detainees and law enforcement personnel. The NPM pointed out, however, that addressing this view at an early stage could have simplified the discussion.

The decree also failed to include the guideline that in padded cells handcuffs and/or foot shackles should be placed on inmates and locked moderately (see NPM Report 2017, p. 145). In the opinion of the NPM, the term "moderately" is not suitable for providing the law enforcement officers a precise instruction. The Federal Ministry of the Interior considered the provisions for the exercise of direct administrative power and coercive measures and the use of resources covered by the Use of Weapons and Firearms Act (*Waffengebrauchsgesetz*) and the Austrian Security Police Act (*Sicherheitspolizeigesetz*) to be sufficiently precise. The NPM acknowledged this but the discussion would not have been necessary if the Federal Ministry had already expressed its reservations in the working group.

In February 2018, the Federal Ministry of the Interior communicated that the valid hygiene standards for police detention centres of November 2009 contained some of the standards for hygiene. The remaining topics would be considered during the course of a planned revision of the hygiene guideline which will be completed by the end of June 2018. There was no conclusive result at the time of the editing deadline for this report.

The Federal Ministry of the Interior promised in February 2018 to integrate the regulation for structural hygiene standards into the Directive on Workplaces (*Richtlinie für Arbeitsstätten*) within a few weeks. These include fitting privacy screens between showers and the physical separation of toilets in cells for multiple persons.

As depicted in the NPM Report 2016 (p. 134), the update of the Directive on Workplaces began already in March 2016. The Federal Ministry of the Interior gave notice in 2017 of a decree for the first quarter of 2018 that should contain all of the structural standards which were the subject matter of the recommendation of the NPM of May 2016 (see NPM Report 2017, p. 142). After being requested, the Federal Ministry of the Interior announced in December 2018 that the draft of the Directive on Workplaces is complete and is being reviewed by the specialist departments. The Federal Ministry of the Interior was unable to provide the date for the finalisation of the Directive.

The NPM will continue to monitor the implementation of those standards that it recommended to the Federal Ministry of the Interior in May 2016 and December 2017 and which can only be realised through structural measures. Only when the standards, which have since been anchored in a decree by the Federal Ministry of the Interior, are actually fulfilled, has the Federal Ministry implemented the recommendations of the NPM. The NPM will therefore monitor progress on its visits and, if necessary, continue to demand implementation in all facilities from the Federal Ministry of the Interior.

The working group addressed the overcoming of language barriers in 2018. Emphasis was on the use of the video interpreting system in other areas than police detention centres. However, as video interpreting failed to prove its worth in the various tested areas according to the Federal Ministry for the Interior, the working group refrained from expanding the same.

The NPM noted positively that the Federal Ministry of the Interior ordered the future use of the video interpreting system in the normal operation of police detention centres per decree of January 2018. The personal deployment of interpreters in medical examinations (also by the public medical officer) and medical consultations should only be possible in justified exceptions (in the event that the system is down) in the future.

The Federal Ministry of the Interior adapted the measures form according to the standards for special security measures adopted in the working group. In the future, the time and location when the detainee's clothing is removed, the name of the officer giving the order and a possible refusal to wear the alternative clothing must be documented.

The working group addressed the protection of non-smokers again in 2018. It concluded the results depicted in the NPM Report 2017 (see NPM Report 2017, p. 147) and decided on harmonised standards on the basis thereof.

The working group also addressed the regulation in Section 15 (3) of the Detention Regulation (*Anhalteordnung*), according to which the cells must have lighting when it is dark outside of night sleeping times so that detainees can read without damaging their eyesight. The working group adopted the following standard because the Detention Regulation does not include a regulation for lighting detention rooms during the night sleeping time:

"Detainees must be allowed to use their own brought in lamps etc., provided that these do not bother other persons. The detainees should have the opportunity to purchase (mobile) LED lamps in the police detention centre or the detention centre."

The NPM will discuss the implementation of the standards adopted in the working group in 2018 with the Federal Ministry of the Interior. The NPM will continue to monitor some of the topics that were already discussed in the working group but could not be finalised yet.

The Federal Ministry of the Interior communicated that, in the long term, it intends to ensure the electronic documentation of medical examinations in all police detention centres. There is no decision to date on the part of the Federal Ministry of the Interior on the concrete use of the data. There is also still no result from the test operation of the video telephony in the Hernalser Gürtel police detention centre, as there were problems with the required licences for use. The Federal Ministry of the Interior announced that it would report any further progress to the NPM.

The working group also discussed several times the issue of how detainees can be given the opportunity to keep their personal belongings in the cells in lockable boxes or containers. There was agreement that, in addition to a box or locker, a transparent box or compartment would be possible. Every detained person should be able to lock up their belongings in order to protect their privacy. If desired, the containers should be lockable with a combination lock paid for by the detainees themselves.

The working group agreed test operation in the Klagenfurt, Graz and St. Pölten police detention centres. In November 2018, the NPM found out that the Federal Ministry of the Interior had only commissioned the test operations in St. Pölten police detention centre, as the refurbishment of the other police detention centres had allegedly not taken place yet. The existing wall shelves in the cells were to be fitted with doors and padlocks. An initial progress report is to be expected after three months.

- ▶ *Barrier-free opportunities to make telephone calls must be provided. If required, barrier-free use must be facilitated. Restriction of this right is only permissible under the legal conditions and must be documented.*
- ▶ *The first medical examination by the public medical officer of detainees in specially secured cells should take place immediately or as quickly as possible, and every other examination within twelve hours in any case.*
- ▶ *Padded or rubberised inmate cells must be subject to constant personal surveillance, tiled security cells must be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance.*
- ▶ *The technical surveillance of all cells used for securing purposes should be carried out using low light video surveillance and observing the personal space of the detainees.*
- ▶ *Detainees must be allowed to use their own brought in lamps etc., provided that these do not bother other persons.*
- ▶ *Detainees should have the opportunity to purchase (mobile) LED lamps in the police detention centre or the detention centre.*
- ▶ *There must be a sufficient number of cells available in all police detention centres which are suitable for solitary confinement pursuant to Section 5 and/or Section 5b (2) (4) of the Detention Regulation.*
- ▶ *Specially secured cells should have natural daylight, and there must be natural or mechanical ventilation in all single cells.*

- ▶ *All single cells must have an alarm button, the activation of which has to be acknowledged at the cell.*
- ▶ *Pursuant to the Detention Regulation, single cells must be fitted with a sink, supply of cold and hot water, a sit-down toilet, a bed and a table with seating.*
- ▶ *Tiled security cells must have a (squat) toilet.*
- ▶ *The reason, commencement, course and end of solitary confinement as well as the consultation of a doctor when placing a person in a specially secured cell must be documented.*
- ▶ *Detainees in pending return procedures must be transferred to the open section of the police detention centre within 48 hours of admission. Exceptions to the open detention should only be possible in the cases agreed with the NPM.*
- ▶ *Section 5a of the Detention Regulation should be amended for the textualisation and clarification of the principles of detention pending forced return in open stations.*
- ▶ *Visits to the detainees should take place at a table unless there are specific, safety-relevant criteria as well as in the event of prisoners in court custody. The undisturbed course of table visits must be guaranteed – if necessary, through structural measures.*
- ▶ *A dedicated room with a table must be provided for visits from minor relatives.*
- ▶ *Detainees' access to hygienic sanitary facilities as well as the protection of their personal space must be guaranteed through structural and/or organisational measures.*
- ▶ *Toilets in cells for multiple inmates must be located separately from the rest of the cell. The mattresses and textiles handed out to detainees must be clean.*
- ▶ *Detainees should be informed about the possibility to take showers and they should be able to shower at least twice a week; in certain conditions daily.*
- ▶ *All detainees must be given access to toiletries. Women must be provided with the necessary toiletries during menstruation.*
- ▶ *Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees.*

### 2.6.3. Working group on suicide prevention

The working group revised passages of the "Detention log III" (*Anhalteprotokoll III*) and respective versions thereof IIIa, IIIb ("Police doctor's assessment of the detainee's soundness of mind" – "*Zurechnungsfähigkeit Polizeiamtsärztliches Gutachten*") and IIIc. They formulated precise questions while managing to keep the form simple. The forms now contain a section for remarks, whether the examination was carried out involving law enforcement officers.

After intense discussion of the new definition of the term "fitness to undergo detention" and the possibilities for medical evaluation or decisions, there was agreement that no further action is needed. This also applied to the topics of dealing with substance impaired persons and the flow of information from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice to the Federal Ministry of the Interior.

After the completion of the activity of the working group in March 2018, the Federal Ministry of the Interior made some clarifying changes to “Detention log III”, which the NPM acknowledged after discussion.

The NPM recommended the Federal Ministry of the Interior in June 2018 to quickly implement the standards for suicide prevention developed by the working group. In an initial reaction, the Federal Ministry of the Interior welcomed this recommendation by the NPM in August 2018. The Federal Ministry considered many parts of the standards already fulfilled due to various training measures, organisational targets and existing decrees.

The NPM, however, saw the need for clarification on the standard that other detainees affected by an (attempted) suicide must be immediately treated in line with crisis intervention. The Federal Ministry of the Interior emphasised in this matter that it is only responsible for psycho-hygienic measures for the benefit of the Ministry personnel. The NPM pointed out that proactive conversations on the part of the public medical officer with witnesses could be conducive to recognising the risk of suicide at an early stage. The Federal Ministry of the Interior has not made a regulation for the topic of “case-oriented analysis for the optimisation of prevention work” to date.

The NPM requested a statement of opinion on the e-learning module “Suicide prevention in the area of detention” that the Federal Ministry established in 2018. A commission had tested the module on the visits to Vordernberg detention centre and Villach police detention centre and expressed several concerns. In January 2019, the Ministry presented the e-learning module to the employees of the NPM in detail whereby the conclusion was positive. It was particularly helpful that employees of the psychological service of the Federal Ministry of the Interior who had developed the module explained the objectives in more detail. New officers in police detention centres are obliged to complete the module within a short period of time and repeat it every two years. The possibility to complete the module on a voluntary basis is open to all other law enforcement officers at all times. The successful completion of this e-learning module is entered in the training certificate. The psychological service is available to assist with any questions from the law enforcement officers.

- ▶ *Training should help to enable all law enforcement officers to recognise signs of suicidal behaviour on the part of the detainees as well as risk factors at an early stage, and to take suicide prevention measures.*
- ▶ *Organisational regulations must ensure that after every suicide or attempted suicide a case-oriented, standardised analysis is conducted for the optimisation of prevention work.*

#### **2.6.4. Fire prevention in police detention**

As stated in the NPM Report 2017 (pp. 151 et seq.), the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) of the Federal Ministry of the Interior recommended the Federal Ministry of the Interior to implement a large number of measures for improving fire safety in the area of police detention.

The core of the recommendations involves expanding the scope of the Technical Guidelines for Fire Prevention N 160/11 on “Structural and technical fire protection in correctional institutions”. The Federal Ministry of the Interior informed the NPM that it has applied for the inclusion of police

detention centres as well as district and city police lock-ups in the said Technical Guidelines at the Austrian Federal Fire Brigade Association.

To the best of the knowledge of the NPM, the definition of terms and content details were still being worked on at the time of the editing deadline for this report. The Federal Ministry of the Interior communicated that it still ordered the inclusion of the Technical Guidelines for Fire Prevention in the planning of the refurbishment of Linz police detention centre in 2019. The NPM welcomed this approach, as it promises the rapid creation of the highest possible standard of fire safety in this facility.

With regard to theoretical fire prevention training, the Federal Ministry of the Interior informed that it has created a new concept for suicide prevention, de-escalation and basic fire prevention training on the basis of teaching aids from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. E-learning is to be used to impart the learning content due to the tense personnel situation in the detention area.

At the time of the editing deadline for this report, the NPM did not have a status update from the Federal Ministry of the Interior on the implementation of the practical training components (extinguishing and evacuation drill, body searches and cooperation with fire brigades). The Ministry assured, however, that it would adopt all recommendations on the training measures and define a competence profile for the officers working in police detention per decree.

The Federal Ministry of the Interior was able to locate three usable types of fire alarm in cells or sanitary rooms. These are a multi-sensor device that can detect heat, smoke and carbon monoxide, a vandal-proof fire alarm type and a smoke alarm that can be installed in ventilation systems. All of these types of device can distinguish fire smoke from cigarette smoke. The Federal Ministry of the Interior promised to have these types of fire alarm installed in future conversions and new constructions.

The Federal Ministry of the Interior also reported about successful tests with highly flame-resistant mattresses and pillows that only develop few fumes in the event of fire. Once a type of mattress and pillow has been determined, they will be used in Linz police detention centre.

Due to unclarified technical questions, the Federal Ministry of the Interior was unable to say at the time of the editing deadline for this report whether sprinkler systems will be installed at least in cells in new buildings. The decision on the possible purchase of new breathing apparatuses for all police detention centres should, according to the Federal Ministry of the Interior, be taken only after product testing at the beginning of 2019.

It must be noted that on a visit to Bludenz police detention centre in May 2017 the NPM observed that there were no fire alarms in the cells. At that time, detainees who smoke were predominantly housed in the police detention centre. The Federal Ministry of the Interior refused to fit the cells with fire alarms subsequently and pointed out the risk of constant false alarms with the use of smoke alarms and the lack of technical alternatives.

On the occasion of a follow-up visit in February 2018, the NPM addressed the topic once again and expressed concern, as it had on the previous visit, due to the outdated condition of the building. The Federal Ministry of the Interior indicated that the fire safety regulations valid at the time when the building was constructed still apply. However, it agreed to examine fitting cells with fire alarms as part of the planned new construction of a police detention centre in Feldkirch-Gisingen.

In the middle of September 2018, the NPM learned from the media about a fire caused by six detainees awaiting forced return in a communal cell of Hernalser Gürtel police detention centre and initiated *ex-officio* investigative proceedings. The Federal Ministry of the Interior reported about an examination of all of the fire prevention measures in the Vienna police detention centre and promised to undertake necessary structural and technical improvement measures within the given budget framework without delay.

From the NPM's point of view, measures for optimising fire prevention are not only limited to system-related or structural aspects. Objects such as the plastic rubbish bins used in the cells and recreation rooms of Salzburg police detention centre can be problematic too. On a visit to the open station, a commission noticed cigarette butts in the bins. The NPM recommended replacing the rubbish bins with fireproof ones in order to reduce the risk of a fire developing.

The Federal Ministry of the Interior first rejected the purchase of fireproof rubbish bins and pointed out the risk of detainees harming themselves or others. However, the Federal Ministry agreed to include the recommendation of the NPM when considering the improvement of fire prevention in police detention centres.

With regard to the visit of Salzburg police detention centre, it must be added that the Federal Ministry of the Interior adopted two other points of criticism by the NPM: it promised to examine whether the recommended complete physical separation of a toilet in a cell for multiple inmates can be implemented. The Federal Ministry also communicated that it has arranged the acquisition of television sets for two common rooms.

- ▶ *The fire prevention level in police detention must be adapted at least to the standard that applies for correctional institutions.*
- ▶ *The Federal Ministry of the Interior should develop an overall strategy for the nationwide harmonised organisation of fire safety, and issue corresponding specifications.*
- ▶ *All of the cells used for long-term police detention should have suitable, automatic fire alarm systems.*
- ▶ *All furniture and fixtures used to dispose of the detainees' cigarette butts, ash and matches should be fireproof.*

## 2.6.5. Improvement of facilities in police detention centres

The commissions also examined in 2018 whether the rectification and/or improvement of structural or technical deficits in individual police detention centres, some of which were promised by the Federal Ministry of the Interior years ago, had taken place. This affected the announced refurbishment and new construction of police detention centre buildings in particular.

Already on the occasion of a visit to Klagenfurt police detection centre in February 2016, the NPM recommended improving the dilapidated condition of the facility. The cells were not fitted with a sufficient number of sockets, and the inadequate ventilation and lighting in the cells provided grounds for criticism. In 2017, the Federal Ministry of the Interior promised to remove the deficits – after finalisation of the guidelines for workplaces.

As there was no recognisable improvement in the situation on a follow-up visit in July 2018, the NPM repeated the recommendation made in 2016. Most recently, the Federal Ministry of the

Interior announced that, in addition to the complete refurbishment of the police detention centre, it would now also consider the reconstruction of the facility.

On a visit to Linz police detention centre in August 2017, the commission observed the poor condition of the communal shower room on the third floor. The Federal Ministry of the Interior promised to replace the defective fittings and the unopenable windows as well as the complete refurbishment of the police detention centre in the first six months of 2018.

On a follow-up visit in May 2018, the commission observed that none of these measures had been implemented. The commission also noticed an infrastructural deficit in the emergency call system: it was evident from the documentation of several emergency situations involving detainees that the guards had intervened immediately in the respective cell. However, in at least two cases the law enforcement officers left the cell in order to organise medical help, as direct contact to the admissions office was not possible from there.

The Federal Ministry of the Interior pointed out that the law enforcement officers could have used their handheld radios. Furthermore, the officers at Linz police detention centre were supposed to receive a smartphone as part of the nationwide modernisation of communications. The Federal Ministry explained the delay in the overall refurbishment with ongoing structural, safety-relevant and fire safety evaluations. Detainees in custody are currently only held for a maximum of 48 hours in the police detention centre due to the inadequate fire safety.

The NPM has also addressed the condition and facilities of Innsbruck police detention centre several times since 2016. This included amongst others the lack of sufficiently large sinks in the cells and the structural layout of a padded cell in the basement of the police detention centre. Most recently, the commission observed on a visit to the police detention centre in March 2018 that water damage made it impossible for the detainees to use the recreation room and they were thus not able to watch television. For want of structural measures, there were neither privacy screens in the men's shower room nor was it possible to hold table visits in the police detention centre.

The NPM requested a statement of opinion on these observations from the Federal Ministry of the Interior, which was not available at the time of the editing deadline for this report. It must be mentioned, however, that the Federal Ministry had already announced in March 2018 that it would cease operations in the police detention centre at the existing location as per 1 June 2019 and continue in temporary quarters on the grounds of Innsbruck police detention centre until the completion of the new security centre. The NPM assumes that all of the standards for the design and facilities of police detention centres agreed with the NPM will be included in the planning of the new security centre.

- ▶ *The condition and fittings of cells pursuant to Detention Regulation must always allow the humane detention of persons.*
- ▶ *Standards for the detention of persons that are agreed with the NPM and which can only be realised through structural measures should be implemented without delay.*

### 2.6.6. Vordernberg detention centre

As mentioned in the NPM Report 2017 (pp. 154 et seq.), the NPM observed deficits in Vordernberg detention centre on visits in September and November 2017. The Federal Ministry of the Interior commented on these visits in 2018 and reported about arrangements to rectify several deficits.

Directives for closed detention should be issued directly by the management of the detention centre in the future in order to avoid the disproportional restriction of freedom. The Federal Ministry of the Interior also announced that the management of the detention centre stopped the general transfer of detainees on hunger strike to closed detention in November 2017. Furthermore, the Federal Ministry reported about the increase in food portions and the amendment of the anamnesis forms with photos of the detainees.

The Federal Ministry of the Interior announced that it would examine issuing white coats or a suitable medical uniform to law enforcement officers working as paramedics in the out-patient area. Furthermore, the Federal Ministry promised measures for the improvement of several deficits, some of which had been objected to years ago. The Federal Ministry pledged – subject to the solution of technical problems – to set up electronic patient documentation including ICD 10 compatible diagnostics. The Federal Ministry also intended to implement a new detainee support concept by June 2018 and to improve the limited occupational opportunities.

However, the Federal Ministry of the Interior was unable to refute all of the points of criticism. These included amongst others the medical care of a detainee who was admitted to the detention centre shortly before the commission's visit in November 2017. Although the affected person displayed clear signs of an acute psychotic condition, he was only initially assessed by the psychiatrist three days after admission. As it transpired, the affected person was declared unfit to undergo detention after a further three days and transferred to a psychiatric clinic. The NPM assumed that this was attributable to a deficit in medical care, as his health deteriorated during his detention.

The commission carried out a follow-up visit to the detention centre in April 2018. It was observed on the visit that medication was no longer dispensed in the hallway of the out-patient clinic but in the residential areas. The commission observed, however, that there was no improvement in the occupational opportunities or the daily structure.

Once again, the commission observed that there was no electronic patient documentation in the out-patient clinic. The handwritten patient document again contained erroneous information, unclear diagnoses and had gaps. The commission also found out-of-date medication and spotted deficits in the management of addictive drugs and the documentation thereof. Furthermore, the commission considered the education level of the nursing staff in the areas of de-escalation and suicide prevention worthy of improvement.

As on the two previous visits, the quality of medical care of the detainees proved to be problematic. This included the lack of adequate treatment of detainees with a substance use disorder or opioid addiction, on the one hand. There were qualitative deficits in the care of detainees with psychiatric illnesses, on the other. It was observed, in particular, that the psychiatrist either did not examine two detainees at all or as soon as possible despite their acute psychiatric symptoms. The commission attributed this to the fact that the psychiatrist who lives in Bavaria only visited the detention centre once a week (usually on Sundays).

In addition to the high temperature in the rooms of the detention centre and the insufficient shade on the sports ground, the commission again criticised the quality and quantity of the food. The NPM had no statement of opinion regarding this follow-up visit from the Federal Ministry of the Interior at the time of the editing deadline for this report.

- ▶ *The occupational opportunities of the detainees in the detention centre must be designed to provide more diversity.*
- ▶ *The Federal Ministry of the Interior must ensure that every detainee in the detention centre receives timely adequate curative-medical care in accordance with modern science.*
- ▶ *The medical and nursing staff of the detention centre must be able to rely on psychiatric expertise at all times.*
- ▶ *The nursing staff in the detention centre should be trained in the areas of de-escalation and suicide prevention.*
- ▶ *The patient documentation in the out-patient clinic of the detention centre should be in electronic form.*
- ▶ *The Federal Ministry of the Interior should organise measures to guarantee shade in the outdoor areas of the detention centre and cooling of the rooms as required.*
- ▶ *The food given to the detainees in the detention centre must be based on a balanced diet and quantitatively sufficient in accordance with nutritional science.*

### **2.6.7. Problems in detention pending forced return in Hernalser Gürtel police detention centre**

Pursuant to the decree of the Federal Ministry of the Interior of January 2018, detention pending forced return must be executed in open stations. Detainees awaiting forced return may thus only be detained in closed cells under certain conditions (see NPM Report 2016, volume "Protection & Promotion of Human Rights", p. 141 et seq.). These criteria apply exclusively to individual reasons that are associated with the person or the behaviour of the detainee.

In February 2018, the NPM observed on a visit to Hernalser Gürtel police detention centre that conversion work was being carried out on the ground floor that is used for open detention. As this section of the facility was not available for detention, detainees awaiting forced return were housed in locked cells in a section of the second floor as an alternative.

The Federal Ministry of the Interior justified this measure with the necessity of the conversion work, the short 24-day duration of the same and the lack of alternatives for open detention. The Federal Ministry justified locking up the detainees awaiting forced return in cells on the second floor with the argument that there are no video surveillance and no bars in the hallway to separate the area from the rest of the floor.

These arguments failed to convince the NPM. It should have been clear at the beginning of the conversion work at the latest that fewer open detention places would be available during the building phase. The Vienna Police Department or the Federal Ministry of the Interior should thus have looked for alternative space before the renovation work began in order to avoid the closed detention.

At a meeting in July 2018, officers of the Federal Ministry of the Interior and the Vienna Police Department reported about increasing conflict between the detainees awaiting forced return as well as assaults on the guards during the first two to seven days of detention. This was justified with the argument that the detainees had difficulty in becoming accustomed to everyday life in detention and their duties. Furthermore, it was claimed that the increase in the number of forced returns and the high personnel requirements needed to guarantee safety in open detention were unforeseeable.

The police detention centre staff criticised, in particular, that detainees awaiting forced return have to be housed in open detention within 48 hours of admission. It must be mentioned that the detainee awaiting forced return may be detained in closed detention during this observation period. Before the deadline expires, it must be ascertained whether one of the grounds for ruling out open detention mentioned in the decree exists. These include harm to the detainee themselves or to others that requires special security measures, or the inability to be housed in a group due to rough, disruptive behaviour.

The NPM considered the suggestion of the Federal Ministry of the Interior to extend this observation time frame to fourteen days to be inappropriate, as this period of time would have covered two thirds of the average duration of detention pending forced return. The NPM also pointed out that organisational measures could take some pressure off the guards. As detainees do not have to be informed about the routine in police detention centres by law enforcement officers, the NPM recommended deploying psychologists for this. The detainees should be informed during admission or shortly thereafter.

The NPM agreed to a trial limited extension of the observation period to seven days in order to alleviate the situation in the police detention centre. As agreed, the Federal Ministry of the Interior presented a concept for the future organisation of detention pending forced return before the trial test operation had expired. However, the concept did not include a statement about whether the test operation helped relieve the guards or resulted in a change in the behaviour of the detainees.

The NPM discussed the problem again with representatives of the Federal Ministry of the Interior in September 2018. The representatives of the Federal Ministry ruled out the recommended increase in the number of guards referring to the nationwide lack of personnel. They expressed the need, however, for the trial operation of a five-day observation period. In the middle of December 2018, the Federal Ministry of the Interior informed that it would postpone a repeated trial operation of the observation period and maintain the 48-hour observation period until further notice. The NPM initially registered this decision as a positive development.

However, a visit carried out at the end of September 2018 raised further issues. The commission observed that the seven-day observation period that had been limited until 12 September 2018 had been continued up to the day of the visit. The management of the police detention centre announced that it wanted to adhere to the longer observation period until the end of 2018, as the Federal Ministry of the Interior had not revoked the order for the trial operation. The NPM requested a statement of opinion from the Federal Ministry of the Interior on this visit, which was not yet available at the time of the editing deadline for this report.

- ***Detainees awaiting forced return must be housed in open detention at the latest within 48 hours of admission to the police detention centre or detention centre.***

- ▶ *Detainees awaiting forced return may be excluded from open detention only for the reasons agreed with the NPM.*

### 2.6.8. Confiscation of articles of clothing from detained persons

In the NPM Report 2017 (p. 146 et seq.), the NPM gave an account of a visit to Innsbruck police detention centre in August 2017. It was observed on the visit that several persons in a padded cell were completely naked or were only in their underwear. Furthermore, two naked persons were placed in a cell together for over six hours.

The Federal Ministry of the Interior explained the circumstances leading to the confiscation of articles of clothing. The affected persons were therefore (partly) undressed in order to stop them from hiding objects in the clothing with which they could harm themselves. Several of the affected persons were placed in the padded cell because they had previously injured themselves with such objects. In one case, the detainee's clothing was removed because his aggressive behaviour prevented a thorough search.

The Federal Ministry of the Interior stated that in all of the cases articles of clothing were confiscated because of the risk of improper use and only to the extent necessary. The affected persons were also offered blankets, which not all of the detainees accepted. These included the two undressed persons who were placed together in a security cell. The Federal Ministry of the Interior justified this measure, which was taken as an exception, with the acute self-harm of the persons and the lack of suitable alternative space for their safe detention.

Apart from the circumstances surrounding these individual cases which the NPM cannot investigate adequately, the following is important to the NPM: measures such as these in which detainees are partly or fully undressed should be completely stopped with a view to human dignity and the known cases to date should remain the absolute exception. The NPM thus recommended abandoning this type of procedure in any case in the future.

The Federal Ministry of the Interior assured in its statement of opinion of March 2018 that all detention locations with security cells and padded cells now have non-tear-resistant alternative clothing in accordance with the decree. The commission carried out a follow-up visit two days after receiving this statement of opinion.

The commission examined amongst others the documentation of the placement of a detainee in the padded cell five days previously. The commission observed that the affected person was not offered alternative clothing at the beginning of the placement and was dressed in only a T-shirt for two days. It was also evident from the documents that the lower body of the detainee remained uncovered when being taken from the cell to and back from a patrol car in the yard of the police detention centre.

The NPM pointed out to the Federal Ministry of the Interior that the new decree on detention had come into effect more than a month before these incidents. The detainee should thus have been issued alternative clothing directly after being undressed and his lower body covered when outside the cell. The NPM requested a statement of opinion from the Federal Ministry of the Interior on this visit. It was not yet available at the time of the editing deadline for this report.

- ▶ *If confiscation of clothing is required, the affected persons must be offered non-tear-resistant alternative clothing immediately.*

- ▶ *There must always be sufficient non-tear-resistant alternative clothing to meet demand at all detention locations with security cells or padded cells.*
- ▶ *It must be ensured that detainees' private parts are covered when they are outside the cell.*

### **2.6.9. Positive observations**

The NPM observed that detainees were treated by staff in a professional, correct and respectful way on all visits to police detention centres in 2018.

Worthy of special attention is the support of several inmates at Roßauer Lände police detention centre in connection with the passing of a prisoner serving an administrative penalty shortly after he voluntarily started detention: the detainee suffered from a sleep apnoea which he, however, did not mention during the admission examination on the evening before the incident. The detainee passed during the night without his fellow detainees and the guards noticing. The psychosocial service of the Federal Ministry of the Interior, which is actually only responsible for the support of employees of the Federal Ministry, also offered its support services to the shocked fellow detainees of the deceased. This measure deserves praise, as an uncounselled, mental trauma could have a negative impact on the already stressed, mental condition of a detainee caused by being in detention.

## 2.7. Police stations

### 2.7.1. Introduction

The commissions visited 49 police stations in the year under review. As in previous years, the focus of the visiting delegations was on the proper documentation of measures that restrict freedom as well as on the structure and furnishings of the stations and departments.

The closure of those basement detention rooms at police stations which do not meet all human rights criteria remains a major issue for the NPM (see chapter 2.7.2).

The NPM also paid great attention to the staffing levels at police stations in 2018. The points of criticism were the understaffing of police stations and the low proportion of women law enforcement officers. The *ex-officio* investigative proceedings initiated on this issue were not completed at the time of the editing deadline for this report (see chapter 2.7.4).

In 2018, the NPM addressed the issue of whether police stations have to set up barrier-free sanitary facilities for visitors and came – also after deliberation by the Human Rights Advisory Council – to the conclusion that this is not the case. If, however, visitors' toilets are available in police stations, they must be barrier-free (see chapter 2.7.6).

The assumed lack of public medical officers in 2017 in the area of Vienna Police Department did not prove to be true in 2018 (see NPM Report 2017, p. 159). However, the general lack of doctors in rural areas continues to be an issue, in which case Burgenland, Lower Austria and Vorarlberg can be mentioned in a positive light. On the request of the NPM, the Federal Ministry of the Interior endeavoured to improve the situation in the other *Laender*. It cannot, however, ultimately intervene itself for competence reasons but is dependent on measures taken by the respective regional governments (VA-BD-I/2358-C/1/2017, BMI-LR1600/0012-III/10/2018).

### 2.7.2. Basement detention rooms at police stations

In the NPM Report 2017 (p. 162 et seq.), the NPM reported about the provisional result of the comprehensive examination of all basement detention rooms in Austria.

The Federal Ministry of the Interior communicated in March 2018 that it had already closed a total of three impermissible basement detention rooms in police stations and it would discontinue an additional 16 in the near future. The Federal Ministry conceded that there was room for improvement in ten police stations, but pointed out that these detention rooms could not be closed due to a lack of alternatives. The Federal Ministry also claimed to fulfil all of the applicable fire safety regulations.

Due to the closures, the NPM considered the deficits of three of the basement detention rooms that failed to meet human rights criteria removed. In 14 police stations, the NPM deemed the deficits as being in the process of rectification, as the Federal Ministry of the Interior promised to close these basement detention rooms soon. In the case of the cells at Köflach police station and Kirchberg police station, which have not been in use for years, the NPM refrained from making an objection due to the promised closure. The NPM objected to the basement detention rooms that did not comply with human rights standards in ten police stations (Zirl, Kötschach-Mauthen, Krumpendorf, Greifenburg, Pöggstall, Zwettl, Eisenerz, Bad Aussee, Nauders, Neustift), as the Federal Ministry of the Interior was not able to present any concrete measures for their closure.

On the visit to Ried im Innkreis motorway police station in April 2017, the commission observed amongst others two insufficiently lit basement detention rooms as well as an unpleasant smell from the heating oil tank room close by.

The Federal Ministry of the Interior had the heating oil tank room sealed immediately and confirmed the poor lighting in the cells. It promised to abandon the cells after the construction of a new detention room on the ground floor of the station in 2018. The NPM objected to the poorly lit basement detention rooms that will continue to exist until the station has been converted.

Since a commission expressed doubt in October 2018 regarding the completeness of the list of all impermissible basement detention rooms presented by the Federal Ministry of the Interior, the NPM initiated *ex-officio* investigative proceedings. There was still no conclusive result at the time of the editing deadline for this report. In its statement of opinion, the Federal Ministry of the Interior conceded that Ried im Innkreis motorway police station was mistakenly not included in the list of those police stations with impermissible basement detention rooms. The Federal Ministry further explained that the planned conversion measures had been unexpectedly delayed, which is why this detention room had been used for longer than assumed.

- ▶ *Basement detention rooms in police stations must have sufficient lighting and ventilation, comply with the fire safety regulations as well as guarantee establishing direct contact and a quick response in the event of an incident.*
- ▶ *Basement detention rooms in police stations must be connected with the station itself.*
- ▶ *Cells should no longer be built in the basement of new or converted police stations.*

### 2.7.3. 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 NPM emphatically points out again in 2018 that detained persons have certain information and notification rights (see most recently NPM Report 2017, p. 164 et seq.). If these rights are not protected, the 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 verifiable manner and substantiated, if the detainee is handcuffed for a lengthy period of time, for example.

As in 2017, the commissions found deficiencies in the documentation of detentions and informed the heads of police stations in concluding meetings. The NPM criticised the inadequate documentation of the use and removing of handcuffs as well as handing out information sheets. In one case, the remark on the notification of the public prosecutors' office was missing. The circumstances surrounding the notification of a trusted person were not adequately recorded as was the refusal by a detainee of a medical examination. Furthermore, the NPM criticised the inadequate documentation of the application of coercive means (see chapter 2.7.8).

As per July 2017, a decree by the Federal Ministry of the Interior was enacted stipulating that all police stations with usable cells must keep a compulsory detention book. This decree also made clear which entries have to be made (see NPM Report 2017, p. 165). On its visit to Leopoldsgasse police station at the end of August 2017, the commission observed that there was no detention book. The deficit was rectified by the Federal Ministry of the Interior during the ongoing investigative proceedings. The commissions also observed unverifiable and incomplete documentation in the available detention books in 2018, which the NPM found unacceptable.

The Federal Ministry of the Interior immediately arranged training and awareness measures in the criticised cases. A follow-up visit to Mittersill police station at the end of September 2018 gave a commission reason to question the efficiency of the measures taken by Salzburg Police Department to date. The result of these investigate proceedings was not available at the time of the editing deadline for this report.

Pursuant to Section 5 (5) of the Detention Regulation (*Anhalteordnung*), the placement of a detainee in a specially secured cell is only permissible if the threat to themselves, other persons or property precludes placement in another cell. If the reasons that led to the ordering of such a measure no longer apply, it must be lifted without delay. On a visit to Hohenbergstraße police station, the commission generally praised that sleeping detainees in specially secured cells are not woken even if the detention in the specially secured cell might no longer be necessary. However, the commission was critical of the fact that the sleep phases of the detainees were not documented to date.

In a statement of opinion, the Federal Ministry of the Interior pointed out that it is only possible to assess whether the reasons for ordering the security measure actually no longer apply if the person is awake. Waking the person immediately to quickly find out whether they are still behaving dangerously is, in the view of the Federal Ministry of the Interior, not compatible with Sections 3 and 4 of the Detention Regulation, according to which the detained person is to be approached with “the greatest possible care”. The NPM shared the view of the Federal Ministry of the Interior. Fortunately, the Federal Ministry adopted the recommendation to document any sleep phases occurring during security detention and sensitised the officers. The NPM thus considered the inadequate documentation rectified.

On a visit to Lehen police station, the commission found that the law enforcement officers apparently misinterpreted the decree on the documentation in the detention book and detention log of the Federal Ministry of the Interior of June 2017 and therefore did not document certain deprivations of freedom. The Federal Ministry of the Interior took the criticism as an opportunity to stress the requirement of complete and verifiable documentation to the officers at this police station.

► *Detentions in police stations must be documented fully and verifiably.*

#### **2.7.4. Inadequate personnel levels at police stations**

In the previous reporting periods (see NPM Report 2017, p. 165 et seq.), 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.

The NPM criticised that at the beginning of February 2018 a quarter of the permanent positions in Voitsberg district police department were not filled. The Federal Ministry of the Interior gradually filled the positions by August 2018. All 36 permanent positions at Hötting police station were filled. Effectively, six officers were initially missing due to reallocation to other police stations; five were still missing before the completion of the visit. At Leoben-Josef-Heißl-Straße police station, the actual personnel level was well below the target number despite the high workload. The Federal Ministry of the Interior promised at least the cessation of on-call deployment to other police stations by the end of 2018. In the Laßnitzhöhe police station and Au police station, the NPM objected to understaffing over a period of four or five months. The Federal Ministry of the Interior followed the recommendation of the NPM and increased the personnel at both police stations.

It is understandable to the NPM that sick days, assignments and training can lead to a level of personnel that is temporarily below that required for the individual police station. However, excessive overtime figures should at least be avoided through organisational measures, as stress and heavy workloads can have a negative impact on detained persons.

The structural examination of the personnel shortage in the police force in all of the *Laender* that started at the end of 2017 (see NPM Report 2017, p.166) was not completed at the time of the editing deadline for this report. The NPM can, however, observe as an interim result that – as could be taken from media reports – the Federal Ministry of the Interior is endeavouring to hire 4,000 law enforcement officers in addition to the required filling of vacancies due to retirement in the coming years. The greatest challenges will be not only finding enough qualified applicants but also equipping the Security Academies for the two-year police training of all these trainees.

The commissions also recorded the number of women law enforcement officers in the police stations visited in 2018. In so doing, they observed that, for example, no policewomen were employed at Lans police station. At other police stations, in particular in rural areas, the number of women police officers was low. The Federal Ministry of the Interior assured that, if required, policewomen from the nearest police stations will be called in and requests to transfer female employees to police stations with few policewomen will be fulfilled.

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 from another police station because a woman is being detained, this extends the detention time. A gender balance in the police force is also desirable with a view to protecting the victims in cases of domestic violence.

The Federal Ministry of the Interior stated that the proportion of women law enforcement officers in Austria is around 14%. Work is, however, being done to increase the proportion of women, as this is also in the interest of the Federal Ministry. Advertising measures are being used to target women for work in law enforcement, for example, on the homepage of the Federal Ministry of the Interior. Due to its lecturing activities, the NPM can confirm that the proportion of women attendees in police school classes is between 30% and 50%.

- ▶ ***The actual number of persons working at the police stations should be equal to the planned number. Understaffing results in stress and overload, both of which 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.***

### 2.7.5. Inadequate furnishings and equipment at police stations

Inadequate furnishings and equipment observed by the commissions during their visits are usually discussed with the head of the station during a concluding meeting. Improvements are thus 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.

The commissions criticised in 2018 that there were no light switches in the detention rooms of four police stations, meaning that the detainees had no control over the lighting in the cell. Persons who are merely suspected of having committed a punishable deed are thus subjected to greater restriction in detention than convicted inmates who are entitled to reading lamps that they can switch on and off themselves. The NPM reiterated its recommendation of 2017 that detention rooms at police stations must be fitted with light switches as a standard, and objected to the deficit (see NPM Report 2017, volume "Protection & Promotion of Human Rights", pp. 166 et seq.). The Federal Ministry of the Interior upheld its rejection of the implementation of this recommendation, in particular for reasons of suicide prevention.

The Directive on Workplaces regulates amongst others that walls, fittings and furniture in detention rooms must be made of robust and vandal-proof materials. Fittings that cause injury or that can be used as a fixing point for strangulation aids are thus not allowed. The NPM objected to the beds that constitute a safety risk used in the detention rooms at Neusiedl am See police station in 2018. The NPM also took the view that the dilapidated masonry in cells constitute not only a risk of injury but can motivate agitated detainees to cause further damage. The NPM therefore criticised the damage to the masonry it observed in the detention room at Bahnhof Salzburg police station.

In addition, the NPM objected to the hygienic conditions in detention areas of the police station and the inadequate cleaning of the rooms, the disconnected water supply to the toilet in one cell, not properly marked alarm buttons in specially secured cells, the acoustic transmission of a conversation due to an activated intercom as well as an inadequately equipped cell. In addition to missing or too small sinks, the NPM also criticised observed objects and cracks in the masonry in detention rooms. Encouragingly, the Federal Ministry of the Interior removed many of these deficits quickly.

One point of criticism that cannot usually be rectified quickly is the lack of barrier-free accessibility. 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 or alternative organisational solutions found by the end of 2019. The NPM insisted once again that police stations must be equipped and furnished to barrier-free standards as quickly as possible.

Hermann-Bahr-Straße police station has an automatic door in order to guarantee barrier-free access to the station. However, on a visit to the station in February 2018, this door was not working due to a technical defect. As the door was repaired immediately, the NPM considered the lack of barrier-free accessibility rectified.

- ▶ *Detention rooms in police stations must be fitted with light switches that can be activated from inside the cells but also be deactivated from the outside for safety reasons. The Directive on Workplaces must be adapted accordingly.*
- ▶ *Detention rooms in police stations must be equipped and furnished in a way that they cannot be vandalised. Fittings and furniture that cause injury or can be used as fixing points for strangulation must be avoided.*
- ▶ *Police stations must be hygienic and have personal safety systems. Cells 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.*

### 2.7.6. Barrier-free sanitary facilities for visitors in police stations

The NPM contacted 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 (see NPM Report 2017, p. 163 et seq.).

In a statement of opinion, the Human Rights Advisory Council stated that it is not the responsibility of the security authorities to provide toilet facilities for the general public. For the Human Rights Advisory Council it was important to distinguish between whether a private person contacted the police on their own initiative or were required by the police to do so. When pressing charges or obtaining information, the private person can usually determine the time and circumstances surrounding the visit and decide when they leave the police station themselves. The Human Rights Advisory Council did not consider it necessary to provide special toilets in such cases. The Human Rights Advisory Council emphasised, however, that sanitary facilities for visitors are part and parcel of good standard administration.

If a private person is legally required to spend a longer period at a police station, the time and duration of which they cannot determine themselves, for example after being subpoenaed for questioning or temporary detention outside of cells, the Human Rights Advisory Council assumes that a suitable toilet must be provided. This can, in the view of the Human Rights Advisory Council, also be staff sanitary facilities provided that the structural conditions are given and the increased use is not at the expense of hygiene standards.

However, the Human Rights Advisory Council suggested considering partnerships with municipalities, for example, for the operation of barrier-free toilets in order to be able to quickly guarantee the provision of non-discriminatory sanitary facilities.

The Federal Ministry of the Interior stated that the use of existing staff toilets by third parties is already common practice. It is of no relevance whether the person visited the police station of their own accord or due to a subpoena. The anticipated third party use is also included in the planning calculations of new police stations or those awaiting refurbishment. The Federal Ministry rejected the suggestion of cooperation with municipalities due to the associated high amount of personnel effort – for example, the obligation to accompany persons to and from the toilet facilities outside of regular opening hours.

The NPM welcomes the fact that staff toilets are available to third parties. If, however, there are sanitary facilities for visitors in a police station, the NPM insists that these – in accordance with the Directive on Workplaces – must be adapted to the needs of persons with disabilities (see NPM Report 2017, p. 163 et seq.).

As a result, the NPM objected to a toilet that was designated as suitable for persons with disabilities or visitors but in fact was not a barrier-free sanitary facility in the St. Georgen/Gusen police station and the Zirl police station. The Federal Ministry of the Interior did not make any adjustments, but simply changed it into a staff toilet. The NPM regrets that there are now no toilets for visitors at these police stations. At Hermann-Bahr-Straße police station, the NPM criticised that there was no second grip in the toilet for persons with disabilities. The Federal Ministry of the Interior conceded that the poor building material had delayed the suggested installation of the second grip to date, but promised remedial action.

- ▶ *Sanitary facilities for visitors in police stations must be barrier-free.*
- ▶ *The Federal Ministry of the Interior should ensure that non-discriminatory toilet facilities for third parties are installed in police stations.*

### **2.7.7. No medical examinations during longer periods of detention**

On the visit to Leibnitz police station in February 2018, the commission observed that two arrested persons had not been examined by a public medical officer despite being held for almost 48 hours. On a visit to Liezen police station in February 2018, the commission found that an inmate had not been examined although he had been detained for 31 hours.

Section 7 (3) of the Detention Regulation stipulates that all detainees must be medically examined for their fitness to undergo detention without unnecessary delay, at the latest within 24 hours upon admission.

The NPM emphasises that the CPT also considers three rights for persons in police custody particularly important: in addition to the right to access to legal representation and the right to notify a person about the detention, these include the right to access to a doctor (cf. CPT/Inf/E [2002] 1 – Rev. 2010, German, p. 12, (40)).

Usually, detainees held in police stations are not examined by a public medical officer if they are released after a few hours or admitted to a correctional institution.

If a detained person remains in police custody for a longer period of time, however, consultation with a doctor must, in the opinion of the NPM, be ordered in time in any case regardless of whether the person is injured or unwell. If the examination is refused, the consulted doctor must document this.

The Federal Ministry of the Interior argued in all three cases that the affected persons displayed no injuries and the duration of the detention was initially unforeseeable. As it became apparent that the deadline for the examination would be exceeded, there was no doctor available. The Federal Ministry of the Interior communicated that Styria Police Department was tasked with urgently and sustainably increasing the awareness of all senior staff for this issue. In addition, the Federal Ministry stated that the justified criticism is being taken as an opportunity to also address this topic on training days and at coordination meetings.

The NPM welcomes the measures and hopes to be ensured that in the future detainees are examined on time and endeavours to reach medical staff are fully documented.

The NPM is aware of the problem of accessibility of doctors in rural areas (see NPM Report 2016, pp. 149 et seq.). However, a lack of doctors was not the reason for not performing the examinations in the concrete cases. Rather, due to an incorrect estimation of the duration of the detention, the attempt to reach a doctor was too late.

- ▶ *If persons are detained in police stations for longer periods, they must be examined by a doctor for their fitness to undergo detention without unnecessary delay, at the latest within 24 hours upon admission.*
- ▶ *The involvement of a doctor to perform the examination for fitness to undergo detention must be ordered in time at police stations. The order must be verifiably documented.*
- ▶ *A refusal of the examination must be documented by the consulted doctor.*

### 2.7.8. Official acts in accordance with the Hospitalisation of Mentally Ill Persons Act and supervision

In July 2017, a commission visited the Attnang-Puchheim police station and Vöcklabruck district police department. In so doing, it observed that officers at Attnang-Puchheim police station who were working under the framework of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) had injured a person and had neither documented nor reported the same. The commission criticised that the assessment of the attending medical staff was not considered when executing the challenging official act, and recommended a follow-up care concept for stressful events.

The Federal Ministry of the Interior regretted the incident and informed that due to the report made by an involved person investigations were conducted and disciplinary proceedings initiated. In view of the principle of voluntarism, the Federal Ministry communicated that the head of the police station did not encourage the use of supervision.

The NPM shared the view of the Human Rights Advisory Council and the Federal Ministry of the Interior that supervision cannot be forced. As depicted in the NPM Report 2015 (see NPM Report 2015, p. 137 et seq.), the NPM insists that supervision, as an occupational mechanism, can contribute to helping law enforcement officers act in a human-rights-oriented way. The NPM therefore recommended amongst others the promotion of supervision through police station senior staff with the required level of awareness.

Thanks to the measures taken by the Federal Ministry of the Interior, the NPM considered the determined cases of maladministration (inadequate documentation, non-consideration of the assessment of medical staff attending an official act covered by the Hospitalisation Act) as rectified. Due to the peculiarity of the incriminating incident for the entire police station, the NPM criticised, however, that the senior staff at the station had not encouraged officers to accept the offer of supervision.

- ▶ *The use of supervision in the law enforcement service should be promoted. Senior staff, in particular, should encourage the personnel in their stations to avail of supervision.*

### 2.7.9. Providing specially secured cells with disposable clothing

On the visit to Wattgasse police station in December 2017, the commission criticised that there was no disposable clothing for detainees held in specially secured cells. When asked, the officers replied that, if required, paper clothing has to be requested from Hernalser Gürtel police station. The NPM recommended providing paper clothing to all police stations with specially secured cells in the detention area.

Encouragingly, the Federal Ministry of the Interior followed the recommendation already in January 2018. The Vienna Police Department regulated the provision of disposable clothing to all detention areas in police inspectorates per decree, so that the clothing should be available if required.

- ▶ *Disposable clothing should be available in police stations with specially secured cells, if required.*

### 2.7.10. Positive observations

The commissions document their observations after every visit in a visit report. They regularly praise improvements and positive aspects and communicate these to the senior staff of the police station at the concluding meeting. It was important to the NPM in some cases to inform the Federal Ministry of the Interior as the supreme body about positive impressions in writing. The Federal Ministry of the Interior and the affected police stations appreciated this kind of construction cooperation.

The commissions regularly praised the exemplary willingness to cooperate, the harmonious working atmosphere, the promotion of women law enforcement officers, the high level of knowledge of the law enforcement service on the work of the NPM, the complete documentation of detentions, clean and well equipped cells as well as barrier-free and modern police stations.

Juchgasse police station made a marked positive impression on a commission in February 2018: in cooperation with the psychiatric ward at Rudolfstiftung Hospital, the officers are trained in dealing with mentally ill persons and those suffering from dementia. The commission praised the positive acceptance of extra-occupational further education (e.g. de-escalation training) and supervision, the reduced waiting time for examinations by the public medical officer and provision of new fingerprint scanners. Lehmannngasse police station was awarded the "Dementia-friendly Police Station" quality seal; it cooperates with the local nursing homes and senior citizens' facilities in the 23rd district.

At Hohenbergstraße police station, the NPM assessed extremely positively that in the area of Vienna Police Department – if available – a doctor is regularly consulted for detentions in specially secured cells.

On the visits to Kandlgasse police station and Hohenbergstraße police station in July 2018, the commission appreciated that all of the cells were fitted with dimmable lights.

The continuous surveillance of the detention room when occupied appeared optimal to the commission on the visit to Hof/Salzburg police station in May 2018.

The commission saw the executed training programmes for officers (dealing with persons suffering from dementia, use of provided defibrillators), the designated body-worn cameras, the decrease in the use of foot shackles and the physical extension of the police station positively on its visit to Laurenzerberg police station in April 2018.

On the visit to Laßnitzhöhe police station, the commission was impressed by compassionate attitude of the law enforcement officers towards the conditions of the residents at the *Lebenswelten* facility in Kainbach.

The commission observed committed personnel management on the visit to Attnang-Puchheim police station: the new head of this police station regularly discusses topics relevant for police work with all of the staff.

On the visit to Viktor-Christ-Gasse police station, the commission positively stressed that cases of alleged abuse against law enforcement officers are addressed directly in the police station by the head officer and reflected together with affected law enforcement officers.

The commission also assessed the e-learning programme on suicide prevention in detention conditions ("*Suizidprävention unter Haftbedingungen*") at Pappenheimgasse police station positively.

In addition to availing of group supervision, the commission praised the provided service mobile telephones on the visit to Ausstellungsstraße police station.

## 2.8. Coercive acts

### 2.8.1. Introduction

In the year under review 2018, the commissions observed a total of 44 acts of direct administrative power and coercive measures. These included six (forced) returns and 38 demonstrations, football matches, raids, events, inspections regarding basic reception conditions and other major police operations.

As in previous years, there was scarcely any criticism. This development has been continuing for years and is seen positively by the NPM.

Demonstrations, football matches and targeted campaigns gave even fewer grounds for criticism in 2018 than in previous years. The demonstrations against the government passed without major problems as did those against the Vienna Academics Ball.

At targeted campaigns aimed at combatting human trafficking, the NPM criticised that neither women law enforcement officers nor interpreters were involved.

Contact meetings prior to (forced) returns were positive in most cases. However, forced returns of children gave grounds for criticism.

Notification about the participation of members of commissions in (forced) returns was modified. There should therefore no longer be difficulties in their taking part in the future.

### 2.8.2. Arrests in connection with (forced) returns

A commission observed the arrest of a family by the police in Carinthia in connection with their forced return. Detention pending forced return was subsequently imposed on the family including the underage children.

The NPM criticised that the law enforcement officers wore civilian clothes but that their firearms were visible inside their jackets. With forced returns where children are involved, in particular, the NPM is of the opinion that care should always be taken that firearms are not visible.

Furthermore, the NPM found it unacceptable that the father was interrogated by the law enforcement officers in relation to the detention pending forced return order within earshot of his children. As the Federal Ministry of the Interior communicated, the children were within earshot but not near enough for what was said to be comprehensible. Nevertheless, the Federal Ministry intended to organise awareness training for the staff at the Federal Office for Immigration and Asylum.

The NPM welcomed the promised training measures and stated that, in the interest of their protection, interrogations within earshot of children should be avoided, even in cases where what was said cannot be understood.

- ▶ *During forced returns, law enforcement officers should conceal their firearms. This applies if children are involved, in particular.*
- ▶ *In the interest of protecting children, the police should not interrogate a person awaiting forced return within earshot of them.*

### 2.8.3. (Forced) returns by air and bus

The members of the commissions observed (forced) returns again in 2018 and accompanied a flight as well as a bus drive.

On 15 January 2018, the NPM was informed of a Frontex forced return that was to take place on 23 January 2018. It was not possible to participate in the forced return because the notification was sent too late. The Federal Ministry of the Interior regretted the notification at too short notice. The forced returns management section of the Federal Ministry took this opportunity to remind those responsible of the rule on the necessity to notify the NPM.

The members of the commission participated in a forced return to Moscow on 24 May 2018. The commission reported that it had difficulty in obtaining visas from the Russian consulate beforehand. The reason for this was that the Federal Office for Immigration and Asylum submitted a list of those persons who would be accompanying the forced return flight to Moscow to the Russian consulate. The members of the commission who were to accompany the flight were not included in this list. The officials at the consulate were surprised that the members of the commission did not plan to leave the airport in Moscow but to return immediately to Vienna. This created problems in issuing the visas.

The members of the commission only received the visas after intervention by the Federal Office for Immigration and Asylum. The Federal Ministry of the Interior agreed that in future the Federal Office for Immigration and Asylum will again acquire the visas for the members of the commission as was previously the case. However, the members of the commission would have to provide the Federal Office for Immigration and Asylum the necessary data for issuing the visas one and a half months before the planned forced return. This requires timely information about the dates of (forced) returns.

The Federal Ministry of the Interior will therefore no longer perform the advance planning with Frontex on a monthly but on a quarterly basis. The NPM will be involved in this quarterly planning as the advance planning will be communicated.

On 7 May 2018, members of the commission accompanied a return by bus to Budapest (from there, a flight organised by Hungary flew to Afghanistan). There was no criticism.

### 2.8.4. Observation of demonstrations

At the demonstration against the "Defenders of Europe" event on 3 March 2018 in Aistersheim, the commission observed that three participants of the event were inside the exclusion zone. They gesticulated in the direction of the demonstrators and photographed them with their mobile phones, which caused a volatile atmosphere among the demonstrators.

The NPM criticised the inconsistent enforcement of the exclusion zone as observed by the commission, and recommended consistently banning all persons who are not expressly exempted.

There was no criticism of the police action during observation of the demonstration against the Fraternity Ball (*Burschenbundball*) in February 2017. Nevertheless, the NPM recommended marking individual openings in cordoned off areas that are not part of the exclusion zone for residents so that they can recognise and use the same.

- ▶ *Persons who are not expressly exempted should be consistently banned from exclusion zones.*

### 2.8.5. Targeted campaigns

On a targeted campaign under immigration law carried out by the Innsbruck city police squad, the commission observed that the police did not call upon interpreters even though this operation was primarily directed at “North Africans” according to the authorities. An Arabic interpreter would thus have been necessary.

The Federal Ministry of the Interior explained that it is not possible to commission an Arabic interpreter “just in case”, as this would be too expensive. Furthermore, no interpreter was available at short notice on the day of the operation. An interpreter had to be ordered to Innsbruck police detention centre the following day, as one person was arrested during the operation.

The person was detained overnight because the law enforcement officers had not planned interpreting for the targeted campaign. The principle, according to which the deprivation of freedom should be for the shortest possible period of time, requires the involvement of an interpreter so that the facts can be clarified quickly. This is all the more the case when the language for which interpreting is necessary was known in advance. The NPM thus recommended that interpreters are involved when the need for them is foreseeable.

On 24 August 2017, a targeted campaign was carried out on freight trains in Matrei on the Brenner border, and at the Brenner Bahnhof border in the Brennersee/Seehof border region on 30 November 2017. The NPM observed in both cases that the police had made no medical staff available. Furthermore, there were not enough mattresses and blankets to care of all of the detained persons.

The Federal Ministry of the Interior explained that forces of the Austrian Federal Army with fully trained paramedics always assist on operations such as these. All law enforcement officers are also trained in first aid. Regarding the criticism of the missing mattresses and blankets, the Federal Ministry explained that the affected persons would have been transferred to Innsbruck police detention centre if the detention period would have been longer. The NPM refrained from submitting an objection after receiving these explanations.

In another case, the NPM observed targeted campaigns aimed at combatting human trafficking for the purpose of sexual exploitation in Möllersdorf, Sollenau, Theresienfeld, Wiener Neustadt and Neunkirchen.

The NPM criticised that no interpreters were called upon during the execution of the official act. The checks were also made by male officers only, and the officers consistently addressed the female sex workers using the informal “*du*” form.

Regarding the criticism of the lack of interpreters, the Federal Ministry of the Interior stated that experience has shown that potential victims of human trafficking do not confide directly in the officers during checks. They have considerable inhibitions in this respect.

The NPM insisted that it must still be possible for potential victims to communicate in their native tongue. It therefore recommended the deployment of interpreters or video interpreting. In this

way, the opportunity to communicate is created and can reduce any inhibitions on the part of the victims to confide in officers. As far as video interpreting is concerned, the Federal Ministry of the Interior explained that it is still too early for regular operation, but that there is ongoing test operation at different police stations.

On the involvement of policewomen, the Federal Ministry of the Interior informed that endeavours were made in the planning phase to deploy female law enforcement officers. There were at that time, however, no relevant personnel resources. The non-involvement of female officers due to lack of availability should, in the opinion of the NPM, remain an exception.

As in previous years, the NPM thus reiterates its recommendation (see NPM Report 2017, p. 175, and NPM Report 2015, p. 150): policewomen should also always take part in checks in the area of sex work and prostitution. It is easier for the women to trust policewomen during such official acts, and these can better counter insecurity.

The Federal Ministry of the Interior explained the informal use of the “*du*” form with the argument that most of the officers and sex workers have known each other for a long time. The use of the informal form of address is therefore normal. The NPM is of the opinion that the “normal practice” argument may not be generalised and not viewed as standard for all comparable official acts.

On 14 February 2018, Vienna Police Department carried out a nocturnal targeted campaign aimed at combatting human trafficking in a house in Vienna. During the check, additional law enforcement officers were called upon to assist in the official act for the purpose of speeding up the operation.

The NPM objected to the inadequate coordination of the additional personnel, which resulted in a significant disturbance of the peace. In the interest of professionally run targeted campaigns, the NPM thus recommended avoiding disturbances of the peace insofar as possible, particularly at night. Besides, the police performed the ID checks by radio as opposed to electronically, which caused time delays.

According to the information from the Federal Ministry of the Interior, technical failure of the “Mobile Police Communication” app made it necessary to query data by radio. The NPM emphasised that regardless of this isolated incident care must be taken that the technical equipment functions smoothly.

- ▶ *If possible, interpreters should be called upon during targeted campaigns if the foreign language that is needed is known in advance.*
- ▶ *Female law enforcement officers should also always be involved in official acts carried out by the police in the area of sex work and prostitution.*
- ▶ *Interpreters should be called upon or provision made for video interpreting during police operations to combat human trafficking. Potential inhibitions on the part of victims to confide in law enforcement officers can thus be reduced.*

## 2.8.6. Positive observations

As in previous years, many police operations were positive in 2018.

The NPM assessed the work of the police as positive at almost all observed police operations connected with football matches. The commissions observed league matches and international games at which the police acted moderately and was well organised. An assessment of the police operation in connection with the Austria versus Rapid Vienna football derby of 16 December 2018, during which over 1,000 Rapid fans were encircled according to media reports, was not possible at the time of the editing deadline for this report. Here, the commission expressed criticism to which the Federal Ministry of the Interior was requested to provide a statement of opinion.

For the NPM, all of the measures taken in particular to ensure a coordinated fan march before the game, during admission as well as when the fans were leaving the stadium after the match were relevant. The NPM also paid attention to the de-escalation strategy of the police. If possible, the fans should be accompanied by a small number of law enforcement officers in normal uniform, not in riot gear.

In one case, the NPM recommended that the police surveillance at international matches should be announced in a language that the away fans can understand. The Federal Ministry of the Interior welcomed the recommendation and implemented it at the next game.

In another case, barriers that had not been removed caused a fan to be injured. The Federal Ministry of the Interior recognised this deficit as a mistake and promised to stow the barriers safely in the future.

The NPM also provided considerable positive feedback after observing demonstrations. There was no criticism of the police action while observing the demonstration against the Academics Ball and the Opera Ball in Vienna, the Fraternity Ball in Linz, as well as observing the demonstration and counterdemonstration on the occasion of the commemoration of the battle at Kahlenberg. The operations were well prepared and the police stayed in the background insofar as the situation permitted. The cooperation between the police and the members of the commission was good.

The demonstrations against the government were also quiet and passed without incident. The police operations were very well prepared and the police acted in a de-escalating way.

The NPM also assessed the police measures at the "March of Responsibility" demonstration on 19 September 2018 on the occasion of the EU Council Presidency meeting in Salzburg as moderate and consistently well organised. At the time of the editing deadline for this report, the full assessment of the police operation at the "A better future for all" demonstration on the following day in Salzburg was, however, not yet complete.

The observation of the police operation during the Croatian commemorative ceremony in Loibach and the counterdemonstration in Bleiberg on 12 May 2018 was positive throughout. The deployment of the police was both professionally planned and executed. The arrests were firm but respectful.

In several cases, the NPM assessed contact meetings that it observed in connection with forced returns as correct. Affected persons were given the opportunity to regulate personal matters and the meetings were calm.

The NPM assessed the police operation while checking an accommodation which provides reception conditions under the Basic Provision Agreement as well prepared and experienced. In particular, the commission praised the police treatment of families with children.

### **3. Recommendations of the Austrian National Preventive Mechanism (NPM)**

#### **3.1. Retirement and nursing homes**

##### **Living conditions**

From the NPM's point of view, uniform nationwide standards for the access and quality requirements of care in long-term care facilities must be defined within the framework of the Federal Government's "Care Master Plan" ("Masterplan Pflege") (2018)

A database should be set up in which evidence-based projects from the Laender can be invoked in order to increase efficiency and improve the quality of life of the residents. (2018)

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, 2018)

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)

Institutions have to take measures to implement the intended objective of the Second Adult Protection Law (*Erwachsenenschutzgesetz*) to enable persons with psychosocial or intellectual impairments to generally make independent decisions through appropriate forms. (2018)

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)

##### **Right to family and privacy**

The private and intimate sphere must be maintained when providing care-related services as well as during the planning phase of multi-bed rooms (setting up of screens etc.). (2013)

As relatives can be a great support for residents and positively affect their quality of life, all facilities should seek cooperation with them in structured processes. (2018)

### **Access to information within institutions**

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)

### **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)

### **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)

Measures that restrict freedom often become unnecessary after psychosocial interventions, personal attention and consideration of individual needs. (2014)

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)

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)

Measures that restrict freedom must be avoided as far as possible in order to prevent negative health consequences. (2018)

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)

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)

It is recommended that restraints only be used along with the medicinal products authorised for that purpose. (2015)

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)

## Health care

The (specialist) medical, nursing and therapeutic care in nursing homes must cover the entire range of preventive interventions, health improvement and preservation to palliative care due to the complexity of multi-morbidities. (2018)

Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids and grab bars in hallways contribute to the prevention of falls. (2014)

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)

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)

Efficient treatment with powerful analgesics must always be possible in a reasonable amount of time for care facilities, hospices and mobile palliative care services. (2018)

Before medications are prescribed, the type, extent, implementation, expected 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)

In order to strengthen mental health, biography work, validation and supportive care planning are helpful in reinforcing the identity of residents with dementia and activating their resources. (2018)

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)

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) Caregivers must be permitted to apply their competence with full legal backing in the way they have learned by means of improved working and framework conditions. (2018)

High staff turnover should be perceived by home operators and supervisory authorities as an alarming indication of inadequate nursing. (2016) Health-promoting measures should be established for staff in all homes in order to make work for trained caregivers and the profession for interested parties more attractive. (2018)

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 in part-inpatient as well as outpatient day-care. (2016, 2017, 2018)

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, 2018)

### **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) A separation rule also serves to avoid sexual abuse of minors. (2018)

Special departments must be set up to provide adequate treatment in the field of child and adolescent psychiatry. Psychosomatic wards in paediatrics and adolescent medicine departments cannot replace these. (2018)

Adolescents need development-specific programmes in therapy and in the psychosocial setting. These care models must cater to the peculiarities in the transition from childhood to adulthood. (2018)

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)

Wearing private clothes is a personal right of each patient. Continuously wearing institutional clothing is only permissible in duly substantiated exceptional cases (2018); the patients' representatives therefore must be informed immediately. (2016)

Psychiatric hospitals and departments are obliged to provide the opportunity for patients who are even involuntarily restrained to go outdoors for at least one hour every day, which serves to promote their health. (2018)

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)

Video surveillance with a digital recording of picture data must be reported to the data protection authority. (2018)

If there is video surveillance in a ward, there must be visible information indicating the same. Where permanently installed video cameras are used, it must be clearly visible whether these are in operation or not. (2018)

The permanent video surveillance of patients is – even if only real-time monitoring – amongst others only permissible if it is of vital interest to the affected person and no other milder measures are possible. (2018)

The consent of the affected patients to permanent video surveillance as well as of employees of the health care facility must be obtained and documented. (2018)

Information about granting consent to permanent video surveillance must be understandable to patients even when they are in an acute situation. It must contain the information that granted consent can be revoked. (2018)

Places that are classified as highly personal living areas may not be permanently video monitored. The same applies to places of work if the surveillance can be used for the purpose of monitoring employees. (2018)

Relatives and past caregivers should be involved in the therapy concept of risk patients, if possible. (2018)

## **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)

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)

Whenever measures that restrict freedom are applied, they must be applied as gently as possible. This also includes holding follow-up meetings with the patients after the end of the measure. (2017)

In hospitals measures that restrict freedom must also be reported to the representatives of the residents if they affect persons who, during their stay in hospital, progress to a final condition of permanent mental illness or mental disability with the probable need of permanent nursing and care. (2018)

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)

The application of measures that restrict freedom due to doctors' prescriptions that have been made in advance or in reserve must stop because this results in the illegal delegation of the relevant mandatory authority to write prescriptions to the nursing staff. (2017)

The application of measures that restrict freedom must be fully documented in a comprehensible way. (2017)

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)

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)

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)

After they have been restrained, patients must be supervised 1:1 "constantly, directly and personally" as the CPT has been demanding for years. (2014)

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)

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)

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)

Potentially overwhelming situations that can result from joint care of adolescents, some of whom are being compulsorily treated and some of whom are being treated voluntarily, must be minimised. (2015)

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 implemented nationwide and as soon as possible. (2018)

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 (*Unterbringungsgesetz*). (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)

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)

The number of specialised after-care facilities for persons with chronic mental illnesses must be urgently increased in order to avoid frequent and longer stays in acute psychiatric wards. (2018)

A defined, close, interdisciplinary and inter-professional cooperation is necessary for the prevention, diagnostics and therapy of delirium in medical facilities. (2018)

The prescription of PRN medication must be precise and in accordance with the legal requirements. (2017)

### **Personell**

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)

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)

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)

The preservation of evidence by doctors in hospital must be carried out comprehensively and sensitively vis-à-vis the victim. (2015)

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)

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)

More training possibilities for specialists in the child and adolescent psychiatry speciality field are urgently needed. (2014)

Austria-wide guidelines must be developed in accordance with the recommendations of the CPT by the Societies for Psychiatry and Psychotherapy. (2015)

The NPM is convinced that implementation of the Istanbul Protocol in hospitals must be supported by way of education and training. (2015)

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)

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)

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)

The lack of staff required to accompany patients cannot be used to justify not allowing them to go outdoors. (2018)

#### **Returns and management of release**

The authority of persons having powers of representation must be carefully examined as part of discharge management. (2017)

### **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**

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)

The NPM recommends all private and state competent authorities for child and youth welfare and protection to consult the "Quality development in in-patient child and youth welfare manual when implementing internal quality management systems. (2018)

The technical supervision of the *Laender* is recommended to pay special attention to the quality areas described in the manual on inspections. (2018)

The effectiveness of technical supervision in "problematic facilities" must be increased. Visits there should also be unannounced. (2018)

Minors must be prepared for moving when facilities have to be closed. As far as possible, it must be ensured that supportive relationships to schools, training centres and the circle of friends are not lost. (2018)

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)

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). The daily allowances agreed with the institutions and facilities must be increased on a needs-related basis. (2018)

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-pedagogical facilities. (2017)

Mass accommodation is unsuitable for unaccompanied minor refugees and asylum seekers. (2015)

Unaccompanied minor refugees should be accommodated exclusively in residential groups. Special care places for multiply and severely traumatised minor refugees must be created. (2016)

Daily allowances for accommodation for unaccompanied minor refugees must be adapted to the level of child and youth welfare facilities, in order to be able to guarantee sufficient and adequately qualified staff required for needs-based support. (2018)

Unaccompanied minor refugees need practical support in mastering everyday tasks and must be involved in decisions that affect their lives in as much as possible. (2018)

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)

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 preventive measures such as outpatient, family-supporting assistance to avoid and reduce the out-of-home care of minors (2017, 2018)

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)

Sexual violence may not be trivialised by using the wrong terms. (2018)

Minors for whom a socio-pedagogical care setting does not (no longer) suffice must be transferred to more suitable, multi-disciplinary oriented socio-therapeutic or socio-psychiatric facilities without delay. (2017, 2018)

Crisis de-escalation places must be expanded. (2018) Crisis centres must be created for children and adolescents suffering from psychiatric or post-traumatic stress disorders. (2017)

Children may not be sent back to the family home where their welfare is at risk, to wait there for a vacant place in shared accommodation because there is a lack of suitable follow-up care facilities. (2018)

Models with time-out shared accommodation must be developed. (2016)

#### **Access to information within the facility**

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)

Unaccompanied minor refugees must also be offered integrative care that is oriented to professional requirements and needs instead of reacting to problems with impermissible measures that deprive or restrict freedom. (2018)

#### **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)

All *Laender* should follow the example of Upper Austria and Burgenland and introduce a quota system for admitting minors from other *Laender*. (2018)

Children should be looked after in their *Land* insofar as another solution is more advisable in the interest of the child's welfare. (2018)

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)

Care of refugees of legal age in training must be intensified. (2016)

Support for young adults must be provided for the entire duration of their education. (2016)

A legal entitlement to support by the child and youth welfare must be provided for, to ensure a positive educational development even after reaching the legal age. (2017, 2018) Socio-pedagogical support should be possible for the duration of education (maximum up to the age of 26). (2016, 2018)

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 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)

Imposing group punishments 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. (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 personnel in the institutions and facilities must be informed about the legally compliant implementation of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*). (2018)

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 15a 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)

Scientific-based plans by the *Laender* to assist children and adolescents must include care deficits and measures to remedy them (2014)

Prevention of violence, sex education and prevention of 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 NPM calls on federal and regional legislators to completely re-structure the current support system for persons with disabilities. (2018)

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. (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 applied. (2014)

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. (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)

Residential facilities for persons with psychiatric diagnoses and addictions, rehabilitation must be provided for by sufficient resources (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)

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)

Increased efforts must be made to promote the equal participation of persons with serious illnesses or mental impairments nationwide. (2016) Adequate psychiatric care and specific support must be ensured. (2018)

Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner. (2015)

Recognising possible triggers of aggression (pain, lack of opportunity to withdraw into one’s own space, no sexual self-determination, insufficient medication etc.) is a requirement for effective violence prevention. (2018)

Hypotheses regarding aggressive behaviour should be developed and individually adapted de-escalation measures described in personalised development plans. (2018)

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)

The *Laender* should create standards and guidelines on the framework conditions of sexual self-determination in institutions and facilities. (2018)

Participatively developed sex education concepts should be the basis for the approval and operation of institutions and facilities for persons with disabilities and for children and adolescents. (2018)

### **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)

Persons with learning difficulties must have the possibility to receive sex education and information in institutions and facilities. The staff must be motivated and trained for this important task. (2018)

### **Complaints management**

Persons with disabilities must be provided with the adequate means to be able to file a complaint. (2013)

Care home agreements in written form for persons with disabilities are obligatory by the law in force. These agreements must be worded in a simple and comprehensive way. The persons involved must be able to understand and follow the content and to understand the rights and obligations relating to it. (2014)

### **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)

Caregivers must be familiar with the formal and material regulations of the Nursing and Residential Homes Residence Act in order to avoid impermissible measures that restrict freedom. At the least, training in the support of basic medical care should be a basic requirement for care work with persons with disabilities. (2018)

Crisis intervention plans and increasing of awareness with a view to milder measures must be implemented. (2018)

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)

Effective violence prevention is only possible if staff is trained accordingly. This should be mandatory in institutions for persons with disabilities. (2017)

The public sector must provide sufficient personnel with the required competence as well as suitable framework conditions to the owners and/or operators of facilities so that these can also care for persons with multiple disabilities and an increased potential for aggression in accordance with the principles of the UN CRPD. (2018)

Sufficient and extensively trained staff for persons with disabilities must be available in all institutions and facilities. (2018)

Safety in institutions and facilities must be guaranteed during the night by suitable staff. (2018)

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. (2017) A maximum of four persons should be accommodated in cells for multiple inmates. (2018)

To prevent crowded conditions, the max. capacity of inmate cells and of a correctional institution must be reviewed from time to time and reduced, if necessary. (2017) It must be possible to query the occupancy in correctional institutions by gender, age, detention status and/or detention type. (2018)

Detainees awaiting trial should be held separately from convicted prisoners (separation rule). (2017, 2018) 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)

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) All

women's sections must be operated as shared accommodation. (2018) Only in justified exceptions should female detainees be in regular detention. (2018)

The cells in women's sections must be kept open on weekdays, weekends and public holidays. (2018)

Detention in shared accommodation must be provided for adolescent girls as a matter of principle. (2018)

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) (Socio-pedagogical) supervision concepts must be defined for adolescent girls.(2018)

As a rule, all persons with a substance use disorder must be housed in shared accommodation. (2018)

Persons with mental impairments and detainees in need of care should receive professional support in cleaning their dining and living areas. (2016)

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, 2018) The price and product lists of the prison kiosk must be accessible for all detainees. (2018)

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)

### **Right to family and privacy**

Body searches involving disrobement must not be carried out in the presence of fellow inmates or persons of the opposite sex. (2015, 2017) They should be carried out in two stages so that the person being searched need not be fully disrobed. (2015, 2017).

Other persons should not be able to see into the room in which a strip search is carried out. (2018)

The surrounding circumstances and the cause and nature of a body search involving disrobement must be documented in writing (2015, 2017, 2018)

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 world**

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) Work opportunities should also be expanded for detainees awaiting trial. (2017)

Workshops must be expanded as soon as possible. (2015) Companies providing occupational opportunities at correctional institutions should be continuously open. (2017, 2018) The employment of external skilled workers must be expanded in the companies. (2018)

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, 2018) Female detainees should have the possibility to acquaint themselves with different types of work in different companies providing occupational opportunities. (2018)

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)

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)

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 the 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, 2018) House rules should also be available in pictogram form in all correctional institutions.(2018)

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**

All persons who are restrained or isolated against their will in a public medical facility should have the opportunity to be represented. (2017)

Reason for and duration of the use of handcuffs and foot shackles must be verifiably documented. (2018)

Strapping a patient to a hospital bed in a forensic ward/psychiatric institutions is only permissible 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)

If a person is placed in a specially secured cell in the event of acute danger to themselves or to others, the dangerous situation must be described exactly and the time of the first medical check noted. (2018)

Written de-escalation concepts must be available in follow-up care facilities. (2018)

Task force trainings may not cause longer lock-up times. (2014)

### **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**

Persons in detention have the right to the same medical care as persons in freedom (equivalence principle). (2018) They 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 assessed and adjusted on a regular basis. (2017)

The key figures in the medical area, which have been lacking for years, must be determined as soon as possible. (2017)

Infirmatory staff should wear a clearly visible tag stating their name or function. (2017)

In case of communication problems in the medical area, trained interpreters should be utilised. The video interpreting systems, which are available nationwide in all infirmaries, should be used without exception. (2014, 2015, 2016, 2017) A video interpreting system should also be established in forensic wards/psychiatric institutions and in public hospitals (2017)

Preventive examinations are part of standard medical care. (2014)

A visit must be carried out by a medical officer to the sections and inmate cells of the respective correctional institution once a month and documented in the Integrated Prison Administration. (2014, 2015, 2018) These regular visits 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) The workplace of the prison officers must be physically separated from the treatment room.(2018)

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)

The request for a specific therapy, the approval of the same and/or care as well as the course of the treatment must be documented in the Electronic Patient Record Module and in the patient file. (2018)

Diagnoses must be entered in the emergency sheet. (2018)

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)

Nationwide uniform rules for the initial interview with the psychological service and the initial psychiatric examination are required. (2018)

The examination to determine whether a substance use disorder exists must be performed by the medical staff during admission, at the latest, however, within 24 hours; this also applies on weekends and public holidays. If there is no medical staff available, the on-call (emergency) doctor must be consulted or the detainee transferred to a hospital if there is a suspected substance use disorder. The relevant decision may only be taken by law enforcement officers if they have appropriate additional qualifications. (2018)

A nationwide department for admission diagnostics for detainees with substance use disorders who are in need of treatment must be staffed with a sufficient number of medical specialists. (2018)

Detainees with substance use disorders are entitled to receive the appropriate means to cover their specific needs for care and support. (2017)

Every correctional institution must establish a multi-professional treatment team for treating substance use disorders. (2018)

In addition to the addiction-based medical programme, the detainees with a substance use disorder should also be offered group therapies or clinical-psychological treatments. (2018)

With the relevant indication, an opioid substitution therapy must be carried out. Patients who discontinue an opioid substitution therapy must be verifiably informed that the risk of mortality increases considerably as a consequence. (2018)

The administering of "one-size-fits-all medication" for withdrawal conditions always requires a doctor's prescription. (2018)

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)

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)

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)

Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from the other prison inmates and are to receive adequate special treatment and therapy. Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification (2017)

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**

Additional personnel is required to comply with the legal requirements and those set forth in the minimum standards. (2018)

In compliance with the minimum standards for women's prisons in Austria, continuing education programmes must be offered for employees in women's correctional institutions. (2018) The curriculum of the training course for women's correctional institutions must also cover the peculiarities in connection with taking care of female adolescents. (2018)

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)

All law enforcement officers working in the detention of mentally ill offenders should receive basic training in illnesses and treatment. (2018)

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. 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)

## 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)

## 3.7. Police stations

### Infrastructural fixtures and fittings

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)

Police stations must be hygienic, well-kept and equipped with functioning heating systems. (2014, 2015, 2016)

Police stations must have their own staff safety systems. (2016)

Police stations must be hygienic and have staff safety systems. Detention rooms must be sufficiently lit. (2017, 2018)

Police stations and police detention centres must have toilet facilities for female personnel. (2015)

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)

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)

Alarm buttons in detention rooms in police stations must be adequately labelled, so that detained persons can contact the guards. (2015, 2017)

When police stations are being built or converted, examination rooms with an emergency call system should be set up. (2017)

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, 2018)

Sanitary facilities for visitors in police stations must be barrier-free. (2018)

The Federal Ministry of the Interior should ensure that non-discriminatory toilet facilities for third parties are installed in police stations. (2018)

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, 2018)

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, 2018)

When police stations are being built or converted, detention rooms should not be located in the basement of new and converted detention rooms. (2017, 2018)

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, 2018)

The condition and fittings of cells pursuant to Detention Regulation must always allow the humane detention of persons. (2018)

Standards for the detention of persons that are agreed with the NPM and which can only be realised through structural measures should be implemented without delay. (2018)

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, 2018)

All single cells must have an alarm button, which can be activated in the inmate cell. (2017, 2018)

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)

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, 2018)

Tiled security cells must have a (squat) toilet with flushing function (2017,2018), a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating). (2017)

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, 2018)

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, 2018)

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, 2018)

Specially secured cells should have natural daylight, and there must be natural or mechanical ventilation in all single cells. (2018)

The Federal Ministry of the Interior should organise measures to guarantee shade in the outdoor areas of the detention centre and cooling of the rooms as required. (2018)

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, 2018)

All of the cells used for long-term police detention should have suitable, automatic fire alarm systems. (2018)

All furniture and fixtures used to dispose of the detainees' cigarette butts, ash and matches should be fireproof. (2018)

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)

Disposable clothing should be available in police stations with specially secured cells, if required. (2018)

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. (2018) 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)

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)

The food given to the detainees in the detention centre must be based on a balanced diet and quantitatively sufficient in accordance with nutritional science. (2018)

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, 2018)

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)

Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees. (2018)

The detainees at the (police) detention centres should have more varied employment opportunities. (2017, 2018)

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, 2018)

Detained asylum seekers must be actively offered showers upon admission to the police detention centre. (2017)

Detainees must be allowed to use their own brought in lamps etc., provided that these do not bother other persons. (2018)

Detainees should have the opportunity to purchase (mobile) LED lamps in the police detention centre or the detention centre. (2018)

### **Contact with the outside world**

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, 2018)

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, 2018)

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)

Barrier-free opportunities to make telephone calls must be provided. If required, barrier-free use must be facilitated. Restriction of this right is only permissible under the legal conditions and must be documented. (2018)

### **Right to family and privacy**

If confiscation of clothing is required, the affected persons must be offered non-tear-resistant alternative clothing immediately. (2018)

There must always be sufficient non-tear-resistant alternative clothing to meet demand at all detention locations with security cells or padded cells. (2018)

It must be ensured that detainees' private parts are covered when they are outside the cell. (2018)

### **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, 2018)

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, 2018)

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, 2018)

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**

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)

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)

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)

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)

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)

Non-smoker protection must be complied with in all police stations. Detention rooms may not be used as smoking rooms for staff. (2017)

A clear definition of the term "fitness to undergo detention" should be provided in the Detention Regulation. (2015)

If persons are detained in police stations for longer periods, they must be examined by a doctor for their fitness to undergo detention without unnecessary delay, at the latest within 24 hours upon admission. (2018)

The involvement of a doctor to perform the examination for fitness to undergo detention must be ordered in time at police stations. The order must be verifiably documented. (2018)

A refusal of the examination must be documented by the consulted doctor. (2018)

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)

The initial medical examination of prisoners held in specially secured cells in police detention centres must be conducted as soon as possible and every further examination in any event within twelve hours. (2017, 2018)

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)

If a detained person is suspected of being suicide-prone, this should be documented. Information should be provided to decision-makers. An assessment should be quickly made by a (specialised) doctor. (2017)

If a danger of suicide is identified, organisational measures should be taken to prevent access by the detained person to dangerous objects. (2017)

After a suicide (attempt), life-saving emergency measures be initiated and the rest of the rescue chain activated. Crisis intervention measures should be carried out quickly with fellow prisoners. (2017)

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, 2018)

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, 2018)

The medical and nursing staff of the detention centre must be able to access psychiatric expertise at any time. (2017, 2018)

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, 2018)

### **Personnel**

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. (2016, 2017, 2018)

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, 2018)

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, 2018)

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, 2018)

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 nursing staff in the detention centre should be trained in the areas of de-escalation and suicide prevention. (2018)

### **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)

During forced returns, law enforcement officers should conceal their firearms. This applies if children are involved, in particular. (2018)

In the interest of protecting children, the police should not interrogate a person awaiting forced return within earshot of them. (2018)

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)

## **Demonstrations**

When the police encircle a crowd, the persons in the crowd must be given clearly audible information. (2014)

Encirclement should be for as short a time as possible. (2014)

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)

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)

Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this. (2014)

The successful “3-D strategy” (Dialogue – De-escalation – Drastic Measures) should be retained and further developed. (2014, 2015)

Persons who are not expressly exempted should be consistently banned from exclusion zones. (2018)

If possible, interpreters should be called upon during targeted campaigns if the foreign language that is needed is known in advance. (2018)

Interpreters should be called upon or provision made for video interpreting during police operations to combat human trafficking. Potential inhibitions on the part of victims to confide in law enforcement officers can thus be reduced. (2018)

## **Compensatory measures in border areas**

Interpreters must always be available. (2014)

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)

Quick clarification regarding the reason for and the sequence of the official act is absolutely necessary to avoid uncertainty. (2014)

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)

Heated rooms at major train stations should be set up for compensatory monitoring and control activities. (2015)

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)

## **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, 2018)

The persons in charge of the operations and the employees must be sensitised regarding the identification of victims of human trafficking. (2015)

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)

The Federal Ministry of the Interior should ensure that those responsible in the *Laender* police departments are aware that the obligation to notify the NPM about police operations is complied with. Only this way, the NPM can fulfil its legal mandate. (2017)

## Annex

Austrian Ombudsman Board	
<p>retirement and nursing homes, facilities for persons with disabilities, child and youth welfare facilities, hospitals and psychiatric wards in medical facilities Ombudsman Günther KRÄUTER</p>	<p>Adelheid PACHER Kerstin BUCHINGER Johannes CARNIEL Patricia HEINDL-KOVAC Alexandra HOFBAUER Markus HUBER Donja NOORMOFIDI Alfred REIF Elke SARTO</p>
<p>correctional institutions psychiatric wards in medical facilities Ombudswoman Gertrude BRINEK</p>	<p>Michael MAUERER Manuela ALBL Peter KASTNER Edeltraud LANGFELDER Nadine RICCABONA</p>
<p>forced returns demonstrations and police operations family accommodation barracks, police detention centres and police stations Ombudsman Peter FICHTENBAUER</p>	<p>Martina CERNY Teresa EXENBERGER Dominik HOFMANN Dorothea HÜTTNER Stephan KULHANEK Thomas PISKERNIGG</p>

## Commissions of the Austrian NPM

<p><b>Commission 1</b> Tyrol / Vorarlberg</p> <p><b>Head of Commission</b> Verena MURSCHETZ</p> <p><b>Coordinator</b> Manuela SEIDNER</p>	<p><b>Members</b></p> <p>David ALTACHER Michaela BREJLA Erwin EGGER Wolfgang FROMHERZ Elif GÜNDÜZ Dominik KRAIGHER Martha TASCHLER Thomas THÖNY <i>(since 1.7.2018)</i> <i>(Sepp BRUGGER – until 30.6.2018)</i></p>
<p><b>Commission 2</b> Salzburg / Upper Austria</p> <p><b>Head of Commission</b> Reinhard KLAUSHOFER</p> <p><b>Coordinator</b> Alfred MITTERAUER</p>	<p><b>Members</b></p> <p>Doris BRANDMAIR Martin KARBIENER Esther KIRCHBERGER Robert KRAMMER Margit POLLHEIMER-PÜHRINGER Monika SCHMEROLD Florian STEGER <i>(since 1.7.2018)</i> <i>(Manfred MANDL – until 30.6.2018)</i> Renate STELZIG-SCHÖLER Ulrike WEISS <i>(since 1.7.2018)</i></p>
<p><b>Commission 3</b> Styria / Carinthia</p> <p><b>Head of Commission</b> Gabriele FISCHER</p> <p><b>Coordinator</b> Marianne Nora AUER</p>	<p><b>Members</b></p> <p>Heide GLASER Arkadiusz KOMOROWSKI Martin ORTNER <i>(since 1.7.2018)</i> <i>(Odo FEENSTRA – until 30.6.2018)</i> Claudia SCHOSSLEITNER Petra TRANACHER-RAINER <i>(since 1.7.2018)</i> <i>(Erwin SCHWENTNER – until 30.6.2018)</i> Heidelinde WÖRÖSCH <i>(Alexandra MILLENDER-WAGNER, 1.7.2018 – 30.9.2018)</i></p>
<p><b>Commission 4</b> Vienna (districts 3-19, 23)</p> <p><b>Head of Commission</b> Andrea BERZLANOVICH <i>(since 1.7.2018)</i> <i>(Ernst BERGER – until 30.6.2018)</i></p> <p><b>Coordinator</b> Caroline PAAR</p>	<p><b>Members</b></p> <p>Bettina CAPAR-BURES <i>(since 1.7.2018)</i> <i>(Helfried HAAS – until 30.6.2018)</i> Karin FISCHER Thomas FRÜHWALD Hannes LUTZ Matthias PETRITSCH <i>(leave of absence)</i></p>

	<p>Christine PRAMER  Nora RAMIREZ-CASTILLO  Petra TAFERNER-KRAIGHER  Barbara WEIBOLD</p>
<p><b>Commission 5</b>  Vienna (districts 1, 2, 20-22) /  Lower Austria (political districts of  Gänserndorf, Gmünd, Hollabrunn, Horn,  Korneuburg, Krems, Mistelbach, Tulln,  Waidhofen a.d. Thaya, Zwettl)</p> <p><b>Head of Commission</b>  Heinz MAYER</p> <p><b>Coordinator</b>  Evelyn MAYER</p>	<p><b>Members</b></p> <p>Atena ADAMBEGAN  Marlene FETZ  Claudia GRASL (<i>since 1.7.2018</i>)  (Lisa ALLURI – <i>until 30.6.2018</i>)  Franz LIMA (<i>since 1.7.2018</i>)  Katharina MARES-SCHRANK  Getrude MATTES (<i>since 1.7.2018</i>)  Eveline PAULUS  Sabine RUPPERT  Hans Jörg SCHLECHTER</p>
<p><b>Commission 6</b>  Burgenland / Lower Austria  (political districts of Amstetten, Baden,  Bruck a.d.Leitha, Lilienfeld, Melk, Mödling,  Neunkirchen, Scheibbs, St. Pölten,  Waidhofen a.d.Ybbs, Wiener Neustadt)</p> <p><b>Head of Commission</b>  Gabriele AICHER (<i>since 1.7.2018</i>)  (Franjo SCHRUIFF – <i>until 30.6.2018</i>)</p> <p><b>Coordinator</b>  Angelina REIF</p>	<p><b>Members</b></p> <p>Süleyman CEVIZ  Margot GLATZ  Corina HEINREICHBERGER (<i>leave of absence</i>)  Petra HÖNIG (<i>since 1.7.2018</i>)  (Siroos MIRZAI – <i>until 30.6.2018</i>)  Cornelia NEUHAUSER  Karin ROWHANI-WIMMER  Volkert SACKMANN (<i>since 1.7.2018</i>)  Regina SITNIK  Petra WELZ  Gregor WOLLENEK</p>

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Deputy Chair Andreas HAUER		
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