1. Welcome

Ombudsman Mr. Günther KRÄUTER welcomed all participants and especially thanked Prof. Klaushofer and the Austrian NPM Commissions for supporting the AOB in preparing this event. Mr. KRÄUTER gave also special thanks to the representatives of the international organizations, Ms. Eva Csergő (APT), Ms. Stephanie Selg (ODIHR) and Ms. Margret Osterfeld (SPT).

Ombudsman KRÄUTER emphasized that the first session should be seen as a preparation for the visits in the afternoon and gave the floor to Mr. Michael MAUERER.

2. Methodology of the visit

Chair: Michael MAUERER

After a short introduction to the topic, Mr. MAUERER encouraged the participants to discuss the standards and visiting methodology after the presentations of Mr. Reinhard KLAUSHOFER and Mr. Siroos MIRZAEI, representatives of the Austrian NPM Commissions.

KLAUSHOFER started his presentation stressing that there are several representatives of the Austrian Commissions from Vienna present and that this gives the participants the opportunity to participate in NPM visits of various homes for the elderly in the afternoon. During these monitoring visits Mr. KLAUSHOFER underlined that the Commissions will especially concentrate on people with dementia and the deprivation of liberty in its medical, physical and psychological form. In contrast to the last SEE NPM Network meeting, where there was a lot of talk about the legal standards, the focus at this meeting should be a more practical perspective.

He added that the visits with the participants of the SEE NPM Network are announced due to the large number of people, but that usually the AOB is doing its visits unannounced. Mr. KLAUSHOFER also explained the usual procedure of a visit of the Austrian NPM Commission. In general it
starts with a short introduction talk with the legal manager or anybody in charge for managing the institution at this point of time.

After that the Commission is separating in sub-delegations with a minimum of two people to be able to have talks with the staff and the people living in those institutions. Mr. KLAUSHOFER underlined that it is especially important for the Commissions to consist of experts, who are experienced in doing interviews, especially in difficult situations like with people with dementia.

Although the sub-delegations are separated and start in different stations they change the stations after some time and try to pass the whole institution and get a broad picture. And similarly to what was explained in the presentation in the last meeting in Salzburg, KLAUSHOFER mentioned that the Commission tries to get information from the people by asking very open questions.

After talking to the residents talks with the staff are important too, so the Commission can cross check the information, which was provided by the manager of the institution in the first place. Finishing that Mr. KLAUSHOFER explained that the whole group of experts comes back together to another meeting and tries to put together all information provided. This is followed by another talk with the legal manager of the institution, where the Commission presents its first impressions of the institution.

After the first presentation on the visiting methodology Mr. Ivan ŠELIH from the Slovenian NPM asked if the Commissions visited these institutions already before. He also added that in Slovenia the NPM staff prepares already facts about an institution before going there.

Mr. MAUERER answered that it is not the first time and that this raises another interesting question. On the one hand it can be useful to have information on the institution itself but at the same time the visits should be unannounced. In Austria general information on all welfare institutions of this kind are provided. Another interesting question added by Mr. MAUERER was how to react in unexpected situations.

Ms. Margret OSTERFELD from the SPT mentioned that in the German NPM the staff in the office prepares some details on the institutions, like for example on the size, which the owner is and also the legal background in which situation people can be detained.

Ms. Jasminka DŽUMHUR expressed her gratitude to have been invited to the SEE NPM Network Meeting. She explained that Bosnia has still a lot of problems with the adoption of laws and that the new law on the NPM was dismissed because of political reasons. However, as a human rights institution Bosnia is already working on a smaller scale on the monitoring of public institutions. She stressed that it is very important to create a national database which collects the most important information on welfare institutions, because this can save a lot of time.

Regarding the announcing of the visits Ms. DŽUMHUR mentioned that it depends from case to case, because of course many heads of institutions are not happy to let NPMs in, so visits have to be unannounced, on the other side there are also institutions that use the Ombudsman’s reports to get a better image and for their demands to the ministries and announced visits can be a sort of working together.
Mr. Günther KRÄUTER thanked Ms. DŽUMHUR for the comment and asked if in Bosnia the Ombudsman has the explicit right to monitor institutions also without an NPM mandate. Ms. DŽUMHUR answered that the Bosnian Ombudsman has a broader mandate in this case and is able to monitor public institutions as well as has access to documents.

The discussion was followed by another comment of Mr. Ivan ŠELIH mentioning that in Slovenia the practice is quiet similar to the one presented by Mr. KLAUSHOFER, but that visits to social care homes are all unannounced. In terms of unexpected situation he mentioned that these are very difficult but the NPM is trying to solve it by repeating the visit later on if it does not work out the same day. He also mentioned that in Slovenia the NPM just recently started to make visits during the night time and on weekends.

Mr. Miloš JANKOVIĆ continued the discussion by mentioning that the Serbian Ombudsman has also its own written methodology, which is improved through practice. The general intention of the Serbian NPM is also to get as much information on an institution as it can, before visiting it. This information is usually based on international organizations, own previous reports, but also before going into the institution the whole team meets and information on the institutions are exchanged. In general all visits are unannounced but sometimes there are also announcements to facilitate the working together with the institutions. Mr. JANKOVIĆ mentioned that sometimes it would be good to start a new work approach in some areas and try to announce it. Regarding the unaccepted situations he added that this can demolish the idea and the plan of the visit, but it would be important to still have a preventive approach in reacting on unexpected situations.

Mr. MAUERER used this opportunity to raise another question on how other NPMs handle the visits. He asked if they always concentrate on the same topic when visiting various homes for the elderly or do they change the topic from institution to institution.

Mr. KLAUSHOFER asked what to do when visiting an institution on the weekend and therefore not being able to get any documentation. He also underlined that within the Austrian NPM Commission are very highly experienced persons, who can react on unexpected situation and the experience to do the right thing.

Regarding the NPM visits during the night or the weekends Ms Anica TOMŠIĆ STOJKOVSKA from Croatia said that when they decide to go there during the night or weekend, they usually have a reason why. She also added that in any case it would be no problem to visit again and check it a few days later if something did not work out. Another problem mentioned by TOMŠIĆ STOJKOVSKA was the fact that many staff members within the institution talk about their individual problems and as representatives of the Ombudsman the complaints should be taken in consideration, but on the other hand the NPM needs to focus on his duties and not take individual complaints into consideration.

Ms. OSTERFELD countered that one needs to be aware of the fact that sometimes and especially in elderly homes it is the question of who decides and what is the legal background.
Mr. Gergely FLIEGAUF from Hungary additionally explained that his NPM has not so much experience with homes for the elderly but that the general methodology is similar and is also recommended like this by the CPT.

In general the Hungarian NPM has to plan his visits on an annual basis and this has to be approved by the Ombudsman. In general there is tried to put seven types of places of detention within the list. Prior to each visit the Hungarian NPM tries to prepare documentations on the institution.

The comment was followed by Mr. KRÄUTER, who mentioned once again the individual complaints during visits. The SPT states that it would not be appropriate to take complaints during an NPM visit, but the Austrian Ombudsman Board has a different opinion. Ombudsman experts have to take complaints and take the problems of everybody serious.

Ms DŽUMHUR added that international bodies and national institutions have to find the best way of how to approach in such situations and that it is not by accident that NPMs are in most of the time Ombudsman institutions. If there is a complaint for one institution a proactive approach has to be found. And this is for Ms. DŽUMHUR also true when speaking about monitoring, because as NPMs you get a lot of information and as Ombudsman you are obliged to transfer this information.

JANKOVIĆ was seeing this similar to Ms. DŽUMHUR, mentioning that as the Ombudsman is the NPM it is his duty to if someone gives him a complaint to transfer this information to another unit. He concluded that as an preventive mechanism you cannot just ignore a complaint.

The first part of the session was concluded with a remark by Ms. Zdenka PEROVIĆ from Montenegro, who said that Montenegro is in a similar situation and she thinks that you cannot ignore a complaint. Ms. PEROVIĆ also mentioned the fact that Montenegro is in an accession process to the EU and that they have to listen to the advices of the EU, who recommend them to make unannounced visits.

3. Recommendations and Standards

The discussion on the first topic was followed by another presentation by Mr. Siroos MIRZAEI from the Austrian NPM Commission, who also worked on the “work in progress” documents for the recommendations and standards on visits in homes for the elderly.

Mr. Siroos MIRZAEI started his presentation by explaining that the standards are a mixture of different recommendations, including recommendations from the city of Vienna, but also from other European countries and from Californian guidelines.

The reason for starting this paper was however the fact that until now no international recommendations were made on the visits of homes for the elderly and through the feedback provided and own experienced the Austrian NPM Commission was able to create a combined document. The main questions for Mr. MIRZAEI are here how to have access to the needs of patients with dementia, depressions and medication of these persons.
Another point which should be looked at is the validation of the staff and researching if all staff members have a certificate to take care of the patients. Finally in his third point MIRZAEI mentioned the duty to concentrate on the documentation. The standards state that the documentation has to be kept for ten years.

In general the recommendations are independent of financial resources, because recommendations cannot be the same for every country, because everybody has different recourses. But he added that besides some aspects, where the standards talk about the number of staff and the size of rooms, which are of course financially depended points, there are many recommendation which are not dependent on financial resources.

Finally MIRZAEI explained that this would be a dynamic paper and that the Austrian NPM Commission would be happy if they would receive some feedback in the coming years to continue this process and maybe have in a few years a proper paper and international standards.

The presentation was followed by additional questions by Mr. MAUERER, who came back on the topic of degrading treatment and the question on how to distinguish bad and degrading treatment.

Mr. Ivan DECHEV from Bulgaria thanked the Austrian Ombudsman Board for the invitation and explained that the Bulgarian NPM is doing inspections in several institutions and that for his team the most interesting thing is the will of the patient. Persons who suffer from dementia have to have the right to agree to the proposed therapy and all treatments when it is prescribed by the doctor.

Ms. OSTERFELD agreed with Mr. DECHEV that this would be a very important question; because especially in elderly care homes there is the tendency to keep the people quiet and there is always a tendency to rather give them too much than not enough sedation. There are many kinds of deprivation of liberty, but this can be called a chemical deprivation.

Mr. ŠELIH mentioned that the recommendations of the Slovenian NPM are more general and broader, because in general it has to be kept in mind that all of these situations can lead to inhuman treatment and that should be in the focus.

Another example was given by Mr. JANKOVIĆ, who explained that the Serbian NPM recently visited an institutions being in shock about the practice there and actually got to the conclusion that this institution should be closed. In general, he underlined, there are some substantial problems in Serbia with welfare homes. Coming back to the document of standards in nursing homes JANKOVIĆ mentioned that the document starts with the need of a written contract with the residence. But there are people in such institutions that are put involuntary there. In Serbia for example there are people in social welfare institutions because they do not have any legal capacity anymore, for example because of psychiatric problems etc. Therefore, he concluded, the law should express if somebody should be placed in an institutions and not a contract.

The next comment was given by Ms. TOMŠIĆ STOJKOVSKA who asked how to distinguish degrading and bad treatment. There are always different possibilities how to fulfill the job of an NPM, but in general the Croatian NPM tries to follow CPT reports. A practical example for this is to ask yourself if the human dignity is secured if a patient is all day in a pyjama.
Mr. MIRZAEI explained that therefore the standards were created, so following them it would be easier to recognize a mistreatment. If consent for taking psychotropic drugs for example is not given and the patient is getting the medication by force, this is a degrading treatment. Another example is when the private space of a person is not respected. He summarized that degrading treatments can be classified through these recommendations.

Ms. Ksenija BAUER from Croatia commented that in her daily work she tries to talk with the patients too to get the impression if a treatment is degrading or not, because sometimes some residence like to be in pyjamas all day and it is sometimes more helpful to check up with the residences.

Mr. MAUERER underlined once again that the paper on standards in homes for the elderly should be seen as a paper in progress and it has to be agreed that there are different standards in some countries. However, although the recommendations may be different it would be necessary to also find common and general standards. Reasons for these are the fact that for care institutions are no international standards until now and the question of the free will of a patient is a very difficult one.

Ms. DŽUMHUR added that all of the NPM teams allocate same standards, although they all might be in different situations, and a part of that should be the methodology. She also mentioned cases from the European Court of Justices, which could get standard cases, where it was seen that some social institutions in Bosnia and Herzegovina were placing patients there without their free will and without having periodical assessments, although a court decision was made. She also found the term “chemical fixation” especially interesting and innovative and that it would be very important to ask yourself how you can take the resident’s opinion in consideration when this person is under a medical deprivation of liberty.

Regarding the topic of the contract with a residence Ms. DŽUMHUR added that if it is the case that one can see the entry point to an institution in a contract and this is described in the law – it is therefore correct.

Then Ms. BAUER once again explained that listening to a patient is in particular helpful, but that do not mean that it is the only way to see if deprivation of liberty is happening. However, it would be very important for the patient to have the opportunity to express one’s wish.

Finally, Ms. CERNAVODEANU explained that in Romania they have common problems and that in general doctors decide on the medication of the patient.

Mr. KLAUSHOFER closed the session by thanking all participants for the comments and explaining that there are always different aspects in a situation during a visit. Important is here the planning and to then try to find what kind of treatment is given to the patient. He added also a second point by explaining that there is a rather new way in Austria how the free will of the patient is handled. There are new legal standards in the law, which try to assess people on their legal capacity and with that their free will. By getting the best overview on the free will of the patient the best option on that can be decided.
12 October 2016, 9.30 am – 12.30 pm

Austrian Ombudsman Board, Vienna

1. Welcome
Mr. KRÄUTER welcomed all participants to the second day of the SEE NPM Network Meeting in Vienna and congratulated the Greece and Romanian NPM that they became a full member of the Network.

2. Debriefing of the visits
Chair: Michael MAUERER

a. Feedback from the 3 NPM visits
Ms. Nora Ramirez Castillo gave a short presentation about the NPM visit to the medical nursing home in Simmering. The nursing home opened in 2011 with 328 beds and two living areas for people with dementia as well as two living areas with people with psychiatric diseases and one of each of this areas was visited by the NPM Commission. The Commission was also complemented by an expert in a wheelchair, who could advise them on the topic of the accessibility for wheelchairs.

In general most of the people living there were satisfied. However, looking at the activities it was discovered that there is a huge program offered for the residence in the central area, but not everybody from the other parts of the building is able to come down to this areas. Another problem seemed to be the fact that the nursing home is understaffed, as many people are on long term sick leaves and mostly the activities suffer from this problem.

So, the general recommendation was that more nursing – especially psychiatric - stuff is needed, as well as more staff for activities.

Due to the fact that there is also a lot of violence against the staff, more supervision was recommended.

Ms. OSTERFELD started the discussion by underlining that it would be very important to include the problem of being understaffed into the recommendations, because if you are very understaffed it reaches a point where human treatment cannot be provided anymore.

Mr. ŠELIH agreed with this comment and mentioned that in Slovenia there are very strict rules on the number of staff and this is heavily needed.

Mr. JANKOVIĆ used the opportunity to raise another general question. He asked who made the decision to detain the people in this nursing home. Mr. JANKOVIĆ mentioned that in his country this topic would be tricky, because Article 4 of the OPCAT says that the NPM should visit institutions where people are or may be detained, so it is an essential question how the people got there. It is not the NPM’s mandate if nobody gets detained.

Like in Slovenia Mr. JANKOVIĆ mentioned that in Serbia too there are rules on how many staff members should be present. However, in the institutions visited by the Serbian NPM some very bad conditions were found. Sometimes there were institutions where one nurse had to look after...
65 patients. In this case they then write a report and send it to the Ministry and then they have then to discuss and debate on this topic.

Ms. RAMIREZ CASTILLO explained that these people are not detained, but that they have bracelets, which send a signal to the nurse if the patient goes too far from his room.

Ms. OSTERFELD added that the idea of having chips, which are controlling people, would be a very new idea and suggested to discuss it in future meetings. Although it is a technical step forward and patients can then walk around in a bigger scale, there is also the possibility for abuses and this should be kept in mind.

The discussion was continued by Mr. MAUERER who summarised Mr. JANKOVIĆ’s comment by saying that in this case then institutions where there is nobody detained do not fall under the NPM mandate. He raised the question how to deal with medical detentions then?

Mr. JANKOVIĆ explained that the Serbian NPM comes to some institutions where somebody might be detained and explores then the situation. If there are people who are detained, the NPM makes a distinction between deprivation of liberty and medical deprivation. At the end the role of an NPM is not to work with people who are not detained. Therefore it is important to know who made this decision of deprivation of liberty. Serbia is also fighting for laws like in Austria where the situation is better regulated for people with dementia. At the end however the decision on what to do with people like this has to be made by the court.

Ms. DŽUMHUR continued the discussion by underlining that the court decision would be the key issue. If you have to put somebody in a nursing home without his own will, the state needs to justify it through the responsible organs. If this is a guardian who makes this decision, the court has to proof if this person is acting in the best interest of the person. She mentioned that this would also be stated in Article 5 of the EU Convention. However, they do not insist on the court decision, but it can also be an independent body who has the allowance of the court. However, she underlined that there must be an ex-officio revision.

Mr. KLAUSHOFER mentioned that there has to be a difference between the international legal basis of the OPCAT and the constitutional legal basis of different states. Austria has a law that says that medical and other forms of deprivation of liberty are included in the NPM mandate. So the NPM has the obligation to protect and promote human rights also in these institutions, no matter if there is an actual deprivation or not. This was also underlined by a comment from Mr. MAUERER who said that this is a special situation in Austria and here the CRPD would be important too.

Mr. JANKOVIĆ countered that this would mean that the NPM is a mandate is not one described in OPCAT but one described in the constitution. He agreed that something described in the OPCAT is a minimum, but he underlined that in his perspective the mandate cannot be shorter or wider. For example it would totally be against the mandate of the NPM to personally deal with individual complains about the administration and can just be transferred to another unit of the Ombudsman.
He concluded that the NPM mandate is a very interesting discussion and would be a good topic in the next meetings.

Mr. KLAUSHOFER did not agree entirely with the comment of Mr. JANKOVIĆ and mentioned that in his opinion this would be a problem if the national mandate is smaller than the OPCAT but if its broader this would be even an advantage.

The representative of Greece Ms. Fotini PANTELIDOU entered the discussion by saying that this would be a fairly big conversation for talking about it during this meeting and it should be continued another time. In the case of Greece, every institution, which is controlled directly or indirectly from the state, is considered to be part of OPCAT; however the Greek NPM is not able to monitor private places.
This was also discussed already with the SPT, as the tendency in general is to broaden the mandate and include not just de jure deprivation but also de facto deprivation of liberty, Ms. PANTELIDOU added.

Ms. OSTERFELD expressed as a member of the SPT the opinion that she would be personally shocked if someone really would believe that in privately run places no torture is possible.

Mr. JANKOVIĆ added that Article 4, Paragraph 2 of OPCAT is very clear on this question, but it should be discussed if in geriatric institutions one should not go to private and public institutions.

Mr. KLAUSHOFER once again explained that Article 4 of the OPCAT says that private institutions should only be visited if the state is involved. This was followed by a comment of Ms. Adelheid PACHER, who explained that in Austria it is considered that in elderly homes the risk of deprivation of liberty exists as well so the NPM needs to visit them.

Ms. Eva CSERGÖ, representative from the APT added to the discussion that it is the institution’s duty to priorities the work as an NPM, because different mandates can be handled in different parts of the institutions. Furthermore, she added that there would be also NPMs, who are not with an Ombudsman institution and that it would be important to have a good plan how to incorporate the extended duties in the national context.

Summing up the discussion, Mr. MAUERER mentioned that it would be good to hear more from the SPT about their approach to the mandate.

Coming back to the questions if private institutions fall under the mandate, Ms. PEROVIĆ underlined that of course torture can happen everywhere, but when signing OPCAT, the state agreed to prevent it and is therefore it’s the responsibility to do so in state institutions.

Ms. PACHER once again underlined that indeed there are some institutions where deprivation of liberty cannot happen, like for example shelters for asylum seekers. At least in Austria they are free to go everywhere and do not have to stay in the shelters. However, this cannot be true for social institutions.
Finally, Ms. OSTERFELD recommended for further information on this topic a paper on treatment without informed consent on the webpage of the SPT.

The report about the second NPM visit in Donaustadt was given by Ms. Sabine RUPPERT, who is also from the Austrian NPM commission. The positive observations were that the documentation was sufficient. Furthermore, positive was also that a lot of focus has been put on work of biography, where it is tried to fulfil the needs of a patient based on his previous life.

Negative observations where the fact that the rooms and halls still look like a hospital and that sometimes personal things are missing. The Commission observed that people who need personal assistance are sitting for an hour with their coffee and cake in front of them without being able to eat on their own. Another negative observation was the fact that activities were often connected to therapies and missing otherwise. There is apparently a garden for dementia patients, but it was closed during all three times the Commission visited the nursing home.

Based on the presentation Mr. MAUERER raised the question how to encourage the institution to improve?

Mr. ŠELIH explained that the Slovenian NPM always tries to include good practice examples in reports and also name it during visits when seeing something which could be improved.

The last NPM report on the nursing home in Mödling was delivered by Mr. Robert KRAMMER, who explained that in general there was a positive feedback. The Commission observed a well-run documentation system and a very good non-verbal pain assessment. A big focus within the nursing home was on doing interviews and including the family and relatives in the care of the patient. It is tried to fulfil the needs of the patient by asking detailed information on the biography, but also eating habits etc.

However, again the main negative observations were that nurses do not have enough time to do activities with the patients or activate them.

Mr. MAUERER opened the discussion by raising the question if it leads to progress, when special needs of patients are assessed and how the monitoring of the assessment functions. He also added the question about supervisions for members of the NPM team.

Mr. FLIEGAUF underlined that supervision would be extremely important and that during the visits some of the cases can be very problematic. Therefore, the Hungarian NPM tries to do a debriefing, where also the personal feedback of the team members is relevant and should help them. Although this is a good practice, he added that it would be important to have also supervision with someone from outside and who has a psychological background.

a. Feedback from the informative excursion

Finally, Mr. Johannes CARNIEL gave a report on the visit to the good practice institution Senecura Grafenwörth. He started with very interesting details of the nursing home, by mentioning that there was also a kindergarten within the premises of the nursing home. With this the kids can
play in the units of dementia residence and have a cross generational exchange. The institution also offers the possibility to host family event, which also shows that they try to involve families as much as possible. There is also a gym, which can be used by all residence for free, but also by outside persons with a certain fee. This also helps the patients to still have contact to people from outside, which shows the open house policy.

Mr. CARNIEL also mentioned that there are a lot of activities with the residence, like for example making their own vine, which also then reduce the need of staff during the nights, because most residences sleep very well after doing so many activities during the day. Of course the biggest problem is the high costs of the institutions.

Ms. OSTERFELD added to the topic of the costs that in general Austria substitutes a lot, because when entering a care home 80 % of your pension is taken for the payment of the home and 20% stay pocket money.

Another comment was given by Mr. ŠELIH who said that in Slovenia when somebody is placed in a social care home by a court decision, the relatives have to pay for it. On the other hand, when somebody is placed to a psychiatric hospital or into prison there is no obligation for payment.

Mr. CARNIEL underlined that if you have enough income or assets you have to contribute to the payment of the nursing home, but that for people who do not have enough financial security the state steps in to cover the costs. He also added that many people within this nursing home came there with their free will.

Mr. KRÄUTER closed this session and thanked all participants for their contributions.
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<td>Mr Ivan Dechev</td>
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<td>Ms Margret Osterfeld</td>
<td>Medical Professional</td>
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<tr>
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<td>Mr Günther Kräuter</td>
<td>Ombudsman</td>
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<td>Ms Adelheid Pacher</td>
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<td>Mr Michael Mauerer</td>
<td>Chief of Cabinet, Ombudswoman Brinek</td>
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<td>Austria</td>
<td>Mr Reinhard Klaushofer</td>
<td>Director of the Austrian Institute of Human Rights and Head of NPM Commission 2</td>
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<td>Austria</td>
<td>Mr Robert Krammer</td>
<td>Austrian Institute of Human Rights</td>
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<td>Austria</td>
<td>Mr Siroos Mirzaei</td>
<td>Head of the Medical Working Group, NPM Commission 6, Doctor of Medicine</td>
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<td>Austria</td>
<td>Ms Nora Ramirez-Castillo</td>
<td>NPM Commission 4, Psychologist</td>
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<td>Austria</td>
<td>Mr Ajdin Lubenović</td>
<td>Legal Expert, AOB</td>
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<td>Ms Teresa Exenberger</td>
<td>Legal Trainee, AOB</td>
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<td>Ms Carina Zehetmaier</td>
<td>Trainee, International Department, AOB</td>
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<tr>
<td>Austria</td>
<td>Ms Tanja Mišić</td>
<td>Trainee, International Department, AOB</td>
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