AUSTRIAN
OMBUDSMAN BOARD

Annual Report

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

2023

Monitoring Public Administration

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Preface

The Austrian Ombudsman Board is an important point of contact for the population in the event of problems with the authorities. Since 1977, it has been helping anyone who feels that they have been treated unfairly by an Austrian administrative authority. Over the decades, the number of people seeking help has risen continuously, reaching new records in the last few years of crisis in particular.

The number of complaints remained at this high level in 2023: 23,124 people contacted the Austrian Ombudsman Board with a concern and asked for support. 11,380 investigative proceedings were initiated during the reporting year. This shows, on the one hand, that people are increasingly seeking help in challenging times, but also that their trust in the Austrian Ombudsman Board and its ability to help is high.

The Trust Index, compiled by the polling institute OGM and the Austrian Press Agency and published in September 2023 also showed that the Austrian Ombudsman Board enjoys a high reputation among the population. The Austrian Ombudsman Board was part of the survey for the first time and came in first place with around 58 per cent. We would like to express our gratitude for the trust placed in us. It is an additional incentive to stand up for people's concerns. We will continue to work hard to live up to this trust.

The Austrian Ombudsman Board provides an overview of its current activities in its annual report to the National Council and the Federal Council. This volume covers the ex-post monitoring of Austrian public administration, i.e. the review of the administration in the case of complaints. At the same time, however, the Austrian Ombudsman Board is also a national human rights institution. As part of its mandate to protect and promote human rights in Austria, the Ombudsman Board carries out preventive checks to ensure that human rights are being complied with in institutions and facilities. Another volume, entitled "Protection and Promotion of Human Rights", is dedicated to this preventive activity in detail. A complete picture of the year 2023 can therefore only be obtained by reading both volumes.

These are challenging times. Without the dedicated commitment of our employees, we would not have been able to cope with the many tasks and respond to the numerous enquiries. We would like to express our gratitude for this. We would also like to thank the Federal Ministries and the other federal, state and municipal bodies for their dialogue and excellent cooperation over the past year.

Gaby Schwarz

Bernhard Achitz

Walter Rosenkranz

Vienna, April 2024

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Introduction

For many people, the Austrian Ombudsman Board (AOB) is the last resort when they are stuck with a problem regarding a public authority. They refer to the AOB when they cannot understand the decision of an authority, when they do not receive a satisfactory solution to their concern, or when they have to wait an unreasonably long time for an authority to deal with their matter. The AOB can review the proceedings; it can determine whether laws have been complied with, whether decisions have been made correctly, or whether citizens have been treated in a citizen-friendly manner. It can also assess whether laws are accurate or need amendment.

23,124 Complaints

The approximately 23,100 complaints in 2023 show that the need for such an institution is great and continues to grow. The crises of recent years have continuously increased people's need for information and support. Staffing and financial bottlenecks in the health and care sector, in the justice system and in the police force have also steadily gotten worse and are affecting the quality of the services provided. All complaints must therefore be seen against this backdrop.

Problem-solving and role as intermediary

The AOB's task is to help those affected to assert their rights. In many cases, the complainant’s assessment is correct if they feel that the authorities have not treated them correctly: In around a fifth of all complaints, the AOB's investigative proceedings revealed maladministration. In many cases, the AOB was able to correct an unlawful action by the authorities or find an acceptable solution for those affected.

The AOB regularly reports on complaints to the supervisory authorities and legislative bodies. The description of these cases of maladministration aims to help sensitise the authorities to apply laws correctly and in a citizen-oriented manner. This is the only way to promote transparent and efficient courses of action and comprehensible decision-making processes. At the same time, it enables people to better understand the law and administrative actions. Thus, the AOB also fulfils a mediating role between the population and the administration.

Objective: improve public administration

Investigating thousands of individual cases provides a general picture of how the administration functions. Through its investigative proceedings the AOB is able to continuously identify weaknesses and point out undesirable developments. An individual case can therefore serve as an example of the need for general recommendations or legislative changes and thus contribute to the improvement of administrative behaviour in general. The AOB therefore expects that its work will provide both administrative authorities and legislative bodies with an impetus for necessary changes.

The present report provides an overview of the AOB's *ex-post* control activities. The performance record in chapter 1 summarises the various areas of competence and provides the most important key figures for 2023. It also presents the AOB's financial and personnel resources, public relations work and international activities.

Chapter 2 covers the activities of the independent Pension Commission, which has been established at the AOB since July 2017 and acts as an umbrella organisation under the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). The AOB therefore deals with issues relating to the compensation of care home victims and supports those affected in enforcing their claims. This chapter provides information on the responsibilities of the Pension Commission, the course of the proceedings and the main results and findings of its activities. Since the Pension Commission was established, around 3,500 requests were brought forward from people who have not yet received remuneration. Over 660 requests were submitted in 2023 alone.

Legislative recommendations

Chapter 3 presents in detail the results and priorities of the investigative activities as part of monitoring the public administration. As in previous reports, the subject matter is organised by area of departmental responsibility. The report covers investigative proceedings initiated by individual complaints and outcomes of *ex-officio* investigative proceedings. In view of the large number of investigative proceedings, it is not possible to provide a detailed account of all the identified cases of maladministration. The focus lies on those issues that were frequently the subject of complaints or affect a larger group of people. However, the AOB does not only want to point out cases of maladministration, but also make concrete suggestions as to how to achieve improvements. The tabular overview, provided on the following pages, summarises the legislative recommendations.

1 Performance record

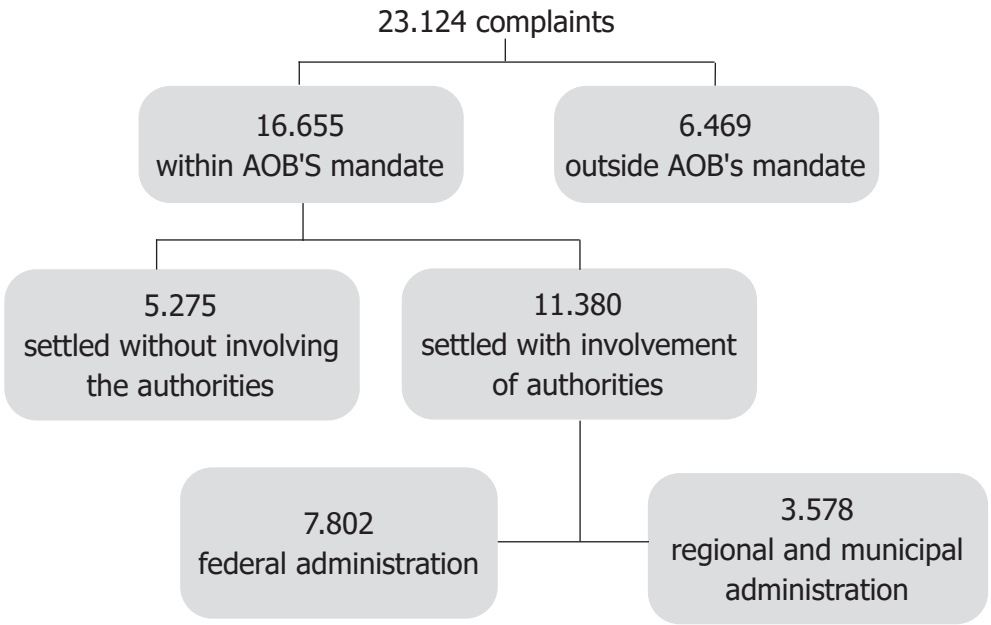
1.1 Monitoring public administration

The AOB was founded to support citizens in the exercise of their rights vis-à-vis the Austrian authorities. It is one of the supreme bodies of the Republic of Austria. Since 1977, it has been monitoring the public administration based on the Austrian Federal Constitution. It offers everyone in Austria the opportunity to resolve problems with the authorities in a non-bureaucratic way and free of charge. Pursuant to Article 148a Austrian Federal Constitutional Law (*Bundes-Verfassungsgesetz*), anyone can turn to the AOB in case of alleged maladministration, if all legal remedies have been exhausted. The AOB investigates every admissible complaint and examines whether decisions by authorities comply with the law and the principles of good administrative behaviour. This may involve inactivity, a legal opinion that does not comply with the law, or rude behaviour. The AOB informs the person concerned of the outcome.

If the AOB suspects maladministration, it can also take action on its own initiative and open *ex-officio* investigative proceedings. In addition, the AOB is authorised to request the Constitutional Court to verify regulations issued by a federal authority.

Monitoring public administration 2023

23,124 Complaints



In the year under review, 23,124 people contacted the AOB with a complaint. This represents an average of around 94 complaints per working day. Of these, 16,655 complaints related to the Austrian administration. In 5,275 of these cases, it was not necessary to refer the matter to the authorities. The AOB could either deal with these complaints immediately or they were related to pending proceedings. 6,469 requests related to issues outside of the AOB's investigative mandate and fell within the competence of the independent jurisdiction. In these cases, the AOB informed the persons concerned about the legal situation and further counselling services.

90 *ex-officio* proceedings

The Federal Constitution also allows the AOB to conduct *ex-officio* investigative proceedings if it has a concrete suspicion of maladministration. In the reporting year, the members of the AOB invoked this right and initiated 90 *ex-officio* investigative proceedings.

2,437 identified cases of mal-administration

In 2023, the AOB concluded 12,752 investigative proceedings. In just under one fifth, 2,437 cases exactly, the AOB identified maladministration.

Investigative proceedings in the federal administration

Federal administration: 7,802 proceedings

The AOB's investigative proceedings cover the entire public federal administration. It therefore controls all authorities and departments that enforce federal laws. In addition to the direct and indirect federal administration, the AOB also covers administration acting as private entity. In the area of federal administration, the AOB initiated 7,802 investigative proceedings in 2023.

26.5 % of all investigations in the area of internal security

There was a year-on-year increase in investigative proceedings in the area of internal security (up 14%). With 2,064 files (2022: 1,811), these equals the most proceedings (26.5 %). The majority of complaints concerned issues relating to asylum, settlement and aliens police law, followed by complaints about the police.

Increase of 42 % in relation to climate protection and energy

Complaints in relation to climate protection, environment, energy, mobility, innovation and technology saw a particularly high increase of over 42% compared to the previous year. 1,480 investigative proceedings were initiated (2022: 1,038), which accounted for 19% of all proceedings in 2023. The complaints related in particular to the so-called Climate Bonus (including inflation compensation) for 2022.

The social and health sector accounted for 1,416 (18.2%) of the investigative proceedings; 1,190 proceedings related to the area of justice and the Data Protection Authority (15.3 %).

Federal Ministry investigated	number	in %
Federal Ministry of the Interior	2.064	26,5
Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology	1.480	19,0
Federal Ministry of Social Affairs, Health, Care and Consumer Protection	1.416	18,2
Federal Ministry of Justice and Austrian Data Protection Authority	1.190	15,3
Federal Ministry of Finance and Federal Fiscal Court	650	8,3
Federal Ministry of Labour and Economy	353	4,5
Federal Chancellery	270	3,5
Federal Ministry of Education, Science and Research	142	1,8
Federal Ministry of Agriculture, Forestry, Regions and Water Management	96	1,2
Federal Ministry for European and International Affairs	88	1,1
Federal Ministry of Defence	28	0,4
Federal Ministry of Arts, Culture, the Civil Service and Sport	17	0,2
TOTAL	**7.794**	**100**

Investigative proceedings in regional and municipal public administration in 2023

Regional and municipal administration: 3,578 investigations

In addition to the federal administration, the AOB controls the regional and municipal administration in seven *Laender*. Only the *Laender* Tyrol and Vorarlberg have established their own regional Ombudsman offices. 3,578 investigative proceedings concerned regional and municipal administration in 2023. The number of complaints increased by 17% compared to the previous year (2022: 3,058). The most investigative proceedings were carried out in Vienna, the most populous *Land* (43.6%), followed by Lower Austria with a share of 17% and Upper Austria with 12.4%.

Key areas in the *Laender*

There were slight shifts with regard to key focus areas: in 2023, almost a quarter of all complaints related to problems under the needs-based minimum benefit system, youth welfare, issues concerning persons with disabilities, and basic services (23.4%). Citizenship, voter registers, and traffic police accounted for 20.6%, or over a fifth, of all investigative proceedings. 16.1% of all complaints related to spatial planning and building law, followed by community affairs (11.5%).

Land	2023	in %
Vienna	1.560	43,6
Lower Austria	610	17,0
Upper Austria	444	12,4
Styria	373	10,4
Burgenland	206	5,8
Carinthia	205	5,7
Salzburg	180	5,0
TOTAL	**3.578**	**100**

Areas of investigation at the regional and municipal level

Subject area	number	in %
Needs-based minimum benefit system, child and youth welfare, persons with disabilities, basic level of social services	838	23,4
Citizenship, voter register, traffic police	736	20,6
Regional planning and housing, building law	577	16,1
Community affairs	413	11,5
Health care system and veterinary sector	211	5,9
Education system, sports and cultural matters	198	5,5
Finances of the *Laender*, regional and local taxes	175	4,9
Trade and industry, energy	152	4,2
Regional and municipal roads	104	2,9
Office of the *Laender* governments, public services and compensation law for regional and municipal employees	61	1,7
Agriculture and forestry, hunting and fishing laws	44	1,2
Nature conservation and environmental protection, waste management	43	1,2
Transport and traffic on regional and municipal roads (excl. traffic police)	25	0,7
Science, research and the arts	1	0,03
TOTAL	**3.578**	**100**

Citizen-friendly communication

Easy to contact

The AOB lays great importance into the fact that persons have access to its services as easily as possible. The high number of complaints is therefore not only due to the high level of awareness and acceptance of the AOB among the population. Good accessibility for citizens also plays an important role. As a citizen-friendly service and monitoring institution, the AOB guarantees simple and informal contact: Complaints can be submitted in person, by regular mail or electronically. Citizens have the opportunity to submit their documents in person at the AOB Information Centre. They can also call a free service number to obtain initial information. The public used this service 10,625 times in 2023. The AOB also provides an online complaints form on its website, which was completed by 2,622 people in 2023.

In addition, citizens have the opportunity to discuss their concerns with the Ombudspersons within the framework of the consultation days in the *Laender*. The population welcomes this offer and uses it intensively. In 2023, 145 consultation days with 1,084 consultations took place. In line with the demographic distribution, most consultation days took place in Vienna.

Consultation Days 2023	
Land	**number**
Vienna	46
Lower Austria	24
Upper Austria	14
Salzburg	14
Carinthia	13
Styria	12
Burgenland	11
Tyrol	7
Vorarlberg	4
TOTAL	**145**

1.2 Activities of the Pension Commission

In 2017, an independent Pension Commission was set up at the AOB. It handles applications for a pension for victims of homes in accordance with the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). Anyone who suffered violence in a children's home, foster family, hospital, psychiatric institution, or sanatorium between 1945 and 1999 can apply for a pension for victims of homes. They are entitled to a monthly pension beginning with the standard retirement age or the date of retirement, or

upon receipt of rehabilitation allowance. Recipients of benefits under the needs-based minimum benefit system are also entitled to the pension if incapacitated for work. The same applies to insured persons who are not entitled to benefits under the needs-based minimum benefit system due to their partner's income. Those affected receive the pension without further investigative proceeding if they have already been granted compensation by a victims support facility. If they have not had the opportunity to apply for such compensation, the Pension Commission will initiate a clearing proceeding.

The independent Pension Commission is chaired by Ombudsman Bernhard Achitz and consists of twelve experts from different disciplines. At regular meetings, the Pension Commission carefully examines and assesses whether the applicants' descriptions of events are credible and whether they are entitled to a pension for victims of homes.

Clearing proceedings

The Pension Commission bases its eligibility assessments on anonymised clearing reports. For this purpose, the Pension Commission carries out clearing interviews between the applicants and clearing experts. Verifying the stated placements requires extensive enquiries with care home providers and authorities. The Pension Commission makes a careful decision based on these anonymised documents and the descriptions presented in the clearing reports and submits proposals to the AOB. The panel discusses the proposals and issues founded recommendations to the relevant decision-maker as to whether or not the applicant should receive a pension for home victims.

Clearing proceedings with sign language interpreting

Victims of violence in so-called "deaf-mute institutions" can also apply for a pension for victims of homes. In order to guarantee a professionally qualified clearing proceeding for deaf applicants, a sign language interpreter is present at the clearing interviews. In 2023, clearing experts conducted over 250 interviews in this setting.

661 new applications

In 2023, 661 (2022: 512) applications for a pension for victims of homes were submitted to the Pension Commission. In addition, the AOB received and processed around 90 enquiries for further information. AOB received 110 applications directly and forwarded them to the decision-makers.

428 people were invited to a clearing interview. The Pension Commission received and examined 344 clearing reports and made 344 recommendations to the AOB. In 345 cases, the recommendation was in favour of granting a home victim's pension, in 22 cases against it. The cases were forwarded to the decision-makers. One case was solved by awarding a lump sum compensation in the meantime, which is why no further recommendation was made.

1.3 Preventive human rights monitoring

Preventing human rights violations

The AOB has been responsible for the protection and promotion of human rights in the Republic of Austria since 1 July 2012. The objective is to as far as possible prevent violations of human rights by conducting regular monitoring and control visits. This involves investigating public and private institutions and facilities where the freedom of persons may be deprived or restricted. In these facilities, people are particularly at risk of becoming victims of abuse or inhumane treatment. On behalf of the AOB, a federal commission and six regional commissions routinely visit prisons, police stations and police detention centres, retirement and nursing homes, psychiatric institutions and child and youth welfare services. The visits also extend to facilities for persons with disabilities in order to prevent exploitation, violence and abuse there as well. In addition, the AOB monitors the behaviour of the executive when carrying out direct administrative power and coercive measures, for example during forced returns, demonstrations and police operations. Essentially, the aim is to recognise and stop risk factors for human rights violations at an early stage.

UN human rights treaties

The AOB's legal constitutional mandate to protect human rights as a "National Preventive Mechanism" (NPM) is based on two United Nations legal instruments: the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

7 expert commissions

On 1 July 2021, in addition to the six existing regional commissions, the AOB established a separate federal commission for the enforcement of penalities and measures. Each commission is headed by a person recognised in the field of human rights and is made up of members appointed by the AOB in accordance with international guidelines, taking into account gender parity and persons with disabilities. They are multi-ethnic and multidisciplinary. The commissions have unrestricted access to all institutions and facilities and all information and documents required to fulfil their mandate. They report to the AOB on the results of their monitoring activities.

505 monitoring visits

In 2023, the commissions conducted 505 monitoring visits throughout Austria. 481 visits took place in institutions and facilities, 24 at police operations. In order to obtain as unbiased an impression as possible, the monitoring visits are generally unannounced. In 2023, only 4% were announced. Due to the high density of facilities in Lower Austria and Vienna, most of the checks took place in these two *Laender*.

Preventive monitoring 2023		
Land	**Monitoring visit to facility**	**Observation of police operations**
Lower Austria	118	1
Vienna	88	9
Upper Austria	54	0
Tyrol	45	6
Styria	46	1
Burgenland	44	1
Salzburg	34	5
Carinthia	32	1
Vorarlberg	20	0
TOTAL	**481**	**24**
of which unannounced	*477*	*8*

The commissions criticised the human rights situation in 64% of the monitoring visits (322 cases). Based on these observations, the AOB examined the cases and contacted the competent ministries and supervisory authorities in order to bring about improvements. As a result, the AOB prevented many cases of maladministration and endangerments. These investigations result in numerous recommendations by the AOB and aim to ensure human rights standards in the institutions.

Human Rights Advisory Council advises AOB

The Human Rights Advisory Council acts as an advisory body to the AOB. It consists of representatives of non-governmental organisations and federal ministries. The AOB regularly asks the Human Rights Advisory Council for its opinion on various topics relating to the prevention and protection of human rights and draft recommendations of the NPM. In the reporting year, the Human Rights Advisory Council discussed the results of its activities with the Ombudspersons in five ordinary plenary sessions.

The preventive activities of the AOB are described in detail in the volume "Protection and Promotion of Human Rights".

1.4 Budget and personnel

According to the cash flow statement, in 2023 the AOB had a budget of EUR 14,638,000. According to the operating statement, EUR 14,727,000 were available. This report only explains the cash flow statement, as it represents

the actual cash flow (see Austrian Federal Budget Statement 2023, section 05 AOB).

As presented in the cash flow statement, outgoing payments for personnel expenses accounted for EUR 9,279,000 and outgoing payments for general material expenses for EUR 4,338,000. General material expenses include, for example, payments for the commissions and the Human Rights Advisory Council, expenditures from statutory obligations regarding remuneration of the Ombudspersons, payments for the Pension Commission and its clearing activities, administrative internships, printed materials, supplies of energy and other expenses.

In addition, the AOB had expenses relating to transfers, primarily for pensions of former Ombudspersons and the widows of former Ombudspersons totalling EUR 938,000. Finally, payments from capital expenditures totalled EUR 53,000 and advances on salaries EUR 30,000.

Federal budget statement of the AOB in millions of Euros
Cash flow statement 2022 / 2023

Expenditures	**2022**	**2023**
personnel expenditure	7,845	9,279
operating expenditure	4,153	4,338
transfers	0,924	0,938
capital expenditures and advances on salaries	0,083	0,083
TOTAL	**13,005**	**14,638**

In order to fulfil the tasks incumbent on the AOB since 1 July 2012 pursuant to the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), in 2023 a budget of EUR 1,700,000 (2022: EUR 1,600,000) was earmarked for payments to the commissions and the Human Rights Advisory Council. Of this, around EUR 1,526,000 was budgeted for remuneration and travel expenses for the members of the commission and around EUR 97,000 for the Human Rights Advisory Council. Around EUR 77,000 was available for workshops attended by the commissions and the AOB employees engaged in OPCAT-related work, as well as for expert opinions.

In 2023, a budget of EUR 200,000 (2022: EUR 160,000) has been earmarked for payments for clearings commissioned by the Pension Commission (pursuant to Section 15 Pension for Victims of Children's Homes Act), which was established at the AOB on 1 July 2017.

93 permanent positions

According to the federal personnel plan, as of 31 December 2023, the AOB had 93 permanent positions (2022: 92 permanent positions). Including part-time staff and persons with reduced weekly working hours, administrative internships and staff seconded from other local or regional authorities, the AOB employed 107 people as at 31 December 2023. The headcount does not include the approximately 60 members of the seven commissions (since July 2021), the 34 members and substitute members of the Human Rights Advisory Commission and the 11 members of the Pension Commission pursuant to the Pension for Victims of Children's Homes Act.

1.5 Public relations

Information and support

The AOB attaches great importance to meeting the information needs of citizens and the media. Through active public relations work, the AOB constantly draws attention to its tasks and possibilities as well as its day-to-day activities. An important goal is to provide the population with the best possible support in the event of problems with Austrian authorities and to contribute to the observance of human rights. The most important instruments of the AOB's public relations work include, in particular, a comprehensive online presence with a regular newsletter and the weekly TV programme *Bürgeranwalt* ("Advocate for the People").

In 2023, the AOB continuously informed the public and the media about its current priorities in press releases, press documents and press conferences. In addition, the Ombudspersons were also available for numerous interviews, media appointments and background discussions.

AOB Website

Website with around 180,000 hits

All interested parties can find comprehensive information about the AOB and its activities on the website www.volksanwaltschaft.gv.at. There, users can find out everything about the institution and its mandates and, in addition to updated reports on investigative proceedings, they can also read all basic information, publications, activity reports and statements of opinion on draft legislation, as well as reports on events and international activities. Although the website may already be a little bit outdated, it is still actively used by the public. With over 183,000 visits, the number of hits in 2023 was just below that of the previous year (190,000).

As the website has grown enormously over the past ten years, its user-friendliness is now suffering. Since the end of 2023, the AOB has therefore been working on a concept to relaunch the site. This shall be implemented in the course of 2024 in order to bring the site up to date with the latest technology. The AOB places great emphasis on user-friendliness on the one

hand, and on accessibility for persons with disabilities and multilingualism on the other, in order to make the institution more accessible for everyone.

When it comes to submitting a complaint, the AOB is eager to provide a particularly low-threshold and easy access. One option is the online complaint form, which can be accessed via the website and was used 2,622 times in the year under review.

ORF programme *Bürgeranwalt*

The ORF programme *Bürgeranwalt* ("Advocate for the People") provides an important communication platform in the area of monitoring public administration. In this programme, the AOB has been informing the public about current investigative proceedings on a weekly basis since January 2002. At the beginning of the programme, the ORF presents the respective case in a short film, which describes the problem and introduces the persons concerned. The Ombudspersons (appearing on an alternating basis) come to the studio to discuss the case directly with the citizens involved and representatives of the respective authorities. In addition to one or two current cases per programme, older, unresolved cases are revisited in the "Follow-up" section. The vast majority of problems were successfully resolved thanks to this media coverage.

ORF 2 broadcasts *Bürgeranwalt* every Saturday from 6 pm. Deaf and hearing-impaired people can follow the programme in Austrian sign language or in ORF TELETEXT on page 777 with subtitles. Furthermore, every programme can be viewed for one week on ORF TVthek (via http://tvthek.orf.at/profile/Buergeranwalt/1339 or via the AOB website).

In 2024, ORF TVthek will be completely replaced by the new ORF On streaming platform. This is already available online at on.ORF.at. The switchover of programmes to the new platform will take place gradually at the beginning of the year. One major advantage is that the seven-day retrieval restriction will no longer apply due to a change in the law. As a result, from 2024, ORF content will be available on the new platform for up to six months.

TV show reaches 400,000 households

The studio discussions continue to be very popular with viewers. An average of 400,000 households watched the programme in the reporting year, which equals a market share of around 27%.

AOB Reports

As a support body of Parliament and the *Laender* Diets, the AOB regularly informs the legislative about the outcomes of its activities. In 2023, the AOB submitted its annual report to the National Council and the Federal Council,

as well as the annual report to the Diet of the *Land* Vienna. In addition, it submitted reports on the monitoring of public administration in Upper Austria, Burgenland and Salzburg. All *Laender* also received the Annual Report on the Protection and Prevention of Human Rights. In January 2023, the AOB published a special report on the terrorist attack of 2 November 2020. All reports are available on the AOB website.

New UPR monitoring tool on the human rights situation in Austria

As a national human rights institution, the AOB also fulfils its mandate of protecting and promoting human rights in institutions and facilities and is actively involved in the protection and promotion of human rights at the international level, e.g. within the framework of the UN. In doing so, the AOB works closely with civil society. As part of a scientific co-operation with the AOB, the Austrian League for Human Rights has developed an online monitoring tool that shows where Austria falls short in terms of human rights.

Sobering assessment of the human rights situation

The Austrian League for Human Rights coordinates the status report of the Austrian civil society as part of the Universal Periodic Review (UPR). The UPR process is an instrument of the United Nations Human Rights Council, which was created to investigate the human rights situation in member states. In November, the League submitted the Austrian civil society's status report on the UPR to the UN. The results were sobering.

Of the 45 thematic clusters, only 18 - i.e. 40% - showed progress at various stages of implementation, while 27 (60%) showed no effective implementation efforts. It was also criticised that there is currently insufficient government initiative for effective human rights monitoring. In order to improve this situation, the League launched an online monitoring tool on the website https://liga.or.at/upr/ with the help of a research cooperation with the AOB and partial funding from the Future Funds of the Republic of Austria, which will provide the current implementation status of human rights recommendations to Austria in the future.

The new UPR monitoring tool was presented at a joint press conference organised by the Austrian League for Human Rights, the NGO ZARA - Civil Courage and Work Against Racism - and the AOB at the beginning of November 2023. ZARA reiterated its call from 2002 for a National Action Plan against Racism, which is still lacking. Ombudsman Bernhard Achitz reported on the AOB's findings as part of this year's country review of Austria in the area of the UN CRPD.

NGO-Forum 2023: AOB brings together people affected by poverty and the authorities

In 2023, the AOB's annual NGO Forum focussed on the topic of combating poverty - and specifically on those authorities that contribute to this. The AOB's aim is not only to point out flaws in the system, but also to improve it together with the authorities. More than 80 people affected by poverty, representatives of NGOs, social welfare offices, the Public Employment Service Austria, social insurance providers and other authorities met in June for a day of dialogue and networking.

People affected by poverty as experts

Karin Heitzmann from Vienna University of Economics and Business contributed the academic perspective to the NGO forum and called for a reorientation of poverty policies. Poverty prevention must be placed more at the centre of attention. Where it is too late for this, policies must take a needs-orientated and multidimensional approach. People affected by poverty demanded to be involved and heard as experts on their situation.

Direct exchange with authorities

In working groups, participants discussed topics such as the public employment service, pension and health insurance, education, disability assistance, foreign and residence law, the needs-based minimum benefit system, and social welfare directly with representatives of the respective authorities. They discussed what works well, where there is room for improvement in the work of the respective authorities, but also where there is a need for more cooperation between the individual agencies.

From the AOB's point of view, providing help is particularly difficult when people are sent from one institution to another and it is not clear which authority is competent, criticised Ombudsman Achitz.

Reform at the legal level

Finally yet importantly, the working groups were meant to identify which problems cannot be solved within or between the authorities. These problems can only be solved by reforms at a legal level. One example often cited was the benefits under the needs-based minimum benefit system and social welfare, where standardised minimum rates should be introduced throughout Austria.

According to Ombudsman Achitz, the AOB will continue to highlight problems where there is a need for legal change and discuss them with politicians. The results and demands of the NGO Forum 2023 will be summarised in a written conference report and published on the AOB website.

Ongoing dialogue with civil society

One of the key demands of the 1993 Vienna World Conference on Human Rights was "Bringing Human Rights Home": International human rights standards and national fundamental rights must be implemented at all

levels of legislation and administration in order to arrive in the lives of all people. As a national human rights institution, the AOB has the mandate of promoting and protecting human rights. In doing so, it must contribute to effective parliamentary monitoring and to sensitising public and private decision-makers and raising public awareness of these rights.

Regular meetings with NGOs from the human rights sector

The latter takes place in cooperation with NGOs within an institutionalised framework. In addition to the thematic NGO forums, the AOB organises meetings several times a year with organisations that are active in the field of human rights. These meetings serve to exchange information, to coordinate actions within the framework of UN country reviews and to follow up on the implementation of recommendations made by the AOB and UN bodies appointed for this purpose.

Information film – „This is the Austrian Ombudsman Board“

AOB concisely summerized

Images and videos are playing an increasingly important role in communication. They make complex contexts easier to understand using images and enable information to be passed on more quickly and efficiently. In order to communicate better who the AOB is and what it does, the AOB produced and published a video lasting around seven minutes in 2023.

The video is available on the AOB website and YouTube and provides a compact guide to all of the AOB's key areas of expertise. It is made available to schools as part of civic education and is used in presentations, both online and at face-to-face events inside and outside the AOB.

Kick-off event on the topic of violence against women

Lecture series "One in Five"

In order to counteract actively the taboo and trivialisation of violence against women, the Center for Forensic Medicine at the Medical University of Vienna organises the annual interdisciplinary lecture series "One in Five" in collaboration with the Association of Autonomous Austrian Women's Shelters (*Verein Autonome Österreichische Frauenhäuser*) and the AOB. The lecture series aims to encourage students from various disciplines to take an in-depth look at the issue of violence and the resulting health problems for those affected, with a view to their future professional practice and in an academic context.

The AOB uses the lecture series to address the protection and prevention of violence as a political and social challenge, to point out deficiencies and to initiate training and further education programmes in the legal, health and social professions aimed at remedying them.

Focus: Institutional and domestic violence

In order to draw attention to the full range of challenges, the lecture series focuses on a different topic each year. In 2023, the focus was on "Institutional and domestic violence". Children and adults are increasingly experiencing violence not only within their homes, but also in institutions and organisations: at school, in hospitals and nursing homes, in prisons, in companies and in the arts and cultural sector. Furthermore, violent assaults such as sexual abuse, bullying, racism, hostility and sexting often occur during leisure activities in sports and music clubs.

Victims of violence often turn to physicians and outpatient clinics for help. As they do not always state the causes of their injuries, the staff at these facilities play an important role in recognising the plight of those affected and in initiating the measures necessary. They provide appropriate treatment and detailed documentation of the injuries and refer patients to appropriate victim protection and support centres. In this way, medical intervention helps to interrupt the spiral of violence in the long term. One of the aims of the lecture series was to impart the necessary knowledge for such needs-based care, counselling and qualified referral.

Lecturers from a wide range of institutions - from health professionals to employees of counselling centres against violence to the Austrian Ombudsman Board - presented various preventive and intervention measures over seven days of lectures and discussed them with the students. The individual speakers also made the lecture content available in written form. They are available on the website of the Centre for Forensic Medicine.

Kick-off event on intersectional discrimination

A kick-off event on 22 November 2023 at the AOB launched the lecture series. In order to allow as many people as possible to participate, this event was once again streamed live. The central topic of this year's kick-off event was intersectional discrimination, i.e. multiple discrimination. Experts from different groups such as migrants, Roma, transgender people, women with disabilities and those affected by poverty were heard. They discussed what forms of violence these women are affected by, what specific challenges they face and what support measures or framework conditions would be necessary to specifically address their needs.

The event was very well received. Over 140 people watched the livestream. The ABO then published the video on its website. By the end of the year, 350 people interested had watched the kick-off event of the 2023 lecture series.

1.6 International activities

1.6.1 International Ombudsman Institute (IOI)

The International Ombudsman Institute (IOI) is a network of independent institutions for the monitoring and control of public administration at the

national, regional and local level. The IOI has over 200 members from 100 countries worldwide. Since 2009, its headquarters have been at the AOB in Vienna; Ombudsperson Gaby Schwarz has the role of IOI Secretary General.

IOI Board meets in Vienna

In May 2023, the AOB organised the annual meeting of the IOI Board of Directors in Vienna. During the deliberations, the Board decided to continue the regular training sessions for members and discussed a funding programme for projects in the six IOI regions. The circle of members was expanded to include institutions from Africa, Latin America and North America. The focus was also on the preparations for the upcoming IOI World Conference 2024, organised by the Dutch National Ombudsman in The Hague.

During the Board meeting, Rafael Ribó, former Ombudsman of Catalonia, and Werner Amon, former Austrian Ombudsman and IOI Secretary General, were honoured for their special services to the IOI. At a reception hosted by the Executive Board in the Austrian Parliament, the President of the National Council, Wolfgang Sobotka, emphasised the importance of Ombudsman institutions for the protection and promotion of human rights in his words of welcome.

Focus on United Nations

In 2023, Secretary General Ombudsperson Schwarz focused her work on strengthening relations with UN organisations and intensifying the IOI's opportunities for cooperation. Discussions with the UN High Commissioner for Human Rights, Volker Türk, focussed on the common goal of "protecting and promoting human rights". The Ombudsperson also met high-ranking representatives of the United Nations, such as the 78th President of the UN General Assembly, the President of the UN Economic and Social Council (ECOSOC), and the Deputy Secretary-General of the UN Department of Economic and Social Affairs (UN DESA).

During these meetings, Ombudsperson Schwarz was able to show how Ombudsman institutions contribute to the UN's Sustainable Development Goals (SDGs), e.g. in matters of health, gender equality, education or environmental protection. She particularly emphasised SDG 16 on "Peace, justice and strong institutions", to which Ombudsman institutions make a special contribution by offering free and easily accessible services for investigating complaints, identifying systemic failures and making recommendations with the aim of increasing the effectiveness and performance of public administration.

Preparations for UNITAR training

The Ombudsperson was also able to discuss a more concrete project during her meeting with the Head of the New York office of the UN Institute for Training and Research (UNITAR). This is a workshop on the United Nations Sustainable Development Goals, which will be tailored to the work and needs of Ombudsman institutions.

Programmes for training and further education

NPM, media expertise and webinars

The IOI supports its members with regular training programmes. In the reporting year, this included a training course for National Preventive Mechanisms (NPMs) in Latin America, which focussed on the particular challenges of monitoring the detention conditions of women and LGBTIQ+ people. In an online media-training participants from all regions of the world learnt more about crisis communication strategies and their implementation. The successful webinar cooperation between the IOI and the African Ombudsman Research Centre was also continued. Here, IOI speakers actively discussed topics such as mediation, gender-based violence, and the work of Ombudsman institutions in the age of advancing digitalisation.

Publication and research

A paper on mediation as an effective instrument in the complaints proceeding was published in the IOI Best Practice Paper series. Ombudsman institutions around the world use mediation as a tool for dialogue and dispute resolution. As the author of this paper, the Ombudsman institution of Israel, shared its years of experience in this field and gave an overview of the methodology as well as illustrative examples of successful mediation cases.

Another project, which has also been received with great interest by the international Ombudsman community, is a comparative study by the University of Applied Science FH Campus Vienna on the role of Ombudsman institutions in the context of the increasing digitalisation of public services. The IOI supported this research project with an online survey among its members.

1.6.2 International co-opperation

United Nations

30 years of UN World Conference in Vienna

In September, an event organised by the University of Vienna and the Ludwig Boltzmann Institute of Fundamental and Human Rights was dedicated to the "UN World Conference on Human Rights in Vienna 1993 - Strengthening the Imperatives 30 years on". Numerous speakers, panellists and human rights organisations came together to reaffirm the three imperatives of the 1993 Vienna Conference: Universality, guarantees and democratisation.

AOB panel discussion

As part of the conference, the AOB organised a panel discussion dedicated to the role of Ombudsman institutions as human rights actors. The Acting Ombudsman of South Africa, Kholeka Gcaleka, emphasised the importance of Ombudsman institutions as key actors in promoting good governance and protecting human rights, even if they do not have an explicit human rights mandate. Through provisions such as the Council of Europe's Venice Principles, Ombudsman institutions have clear standards to work as independent and impartial institutions to protect human rights better. She

also emphasised that Ombudsman institutions can draw attention to human rights problems through individual complaints proceedings and can uncover systemic human rights violations through *ex-officio* investigative proceedings.

The Ombudswoman of Croatia, Tena Šimonović Einwalter, emphasised that human rights must have an impact on people's lives and that Ombudsman institutions should work at regional level to help citizens understand the daily impact of human rights and show that human rights violations can actually take place in their immediate environment. Barbara Liegl from the Ludwig Boltzmann Institute, who has worked primarily with countries in the Western Balkans, emphasised the importance of supporting institutions worldwide in training their staff and developing a human rights culture. In this way, Ombudsman institutions have the opportunity to change structures and initiate change.

In his closing remarks, an expert from the AOB pointed out that societies must also stand behind human rights concepts. To counteract the risk of a certain "human rights fatigue", all members of society need to know that human rights apply to everyone and not just to "the others", and that they can change or influence their lives. Ombudsman institutions are the ideal partner to get this message across, regardless of whether they have an explicit human rights mandate or not.

Universal Periodic Review (UPR)

As a National Human Rights Institution with A status, the AOB actively participated in the Universal Periodic Review (UPR) by the United Nations Human Rights Council. In preparation for Austria's next UPR, AOB experts took part in an exchange with representatives of the federal ministries, the *Laender* and civil society. They discussed the status of implementation of the recommendations addressed to Austria as part of the 3rd Universal Periodic Review. Based on a voluntary status report, the participants presented the measures already taken by Austria to implement the recommendations and discussed the jointly defined priority topics of inclusion and non-discriminatory education, violence against women, combating racism, asylum and the establishment of a complaints centre against police violence.

Economic, social and cultural rights

The UN Office of the High Commissioner for Human Rights organised a workshop on the promotion and protection of economic, social and cultural rights in the context of a slow decline in the inequalities that have arisen in the wake of the COVID-19 pandemic. An expert from the AOB participated in this event. In six thematic panels, the participants discussed possible practical measures to further promote and strengthen the promotion and protection of economic, social and cultural rights.

In December 2023, an exchange meeting took place between the AOB and the UN High Commissioner for Refugees (UNHCR). This year, a particular focus was placed on the welfare of children in the context of asylum. Topics discussed included the situation of unaccompanied minors in state

and federal care centres, family reunification proceedings, and how to deal with Ukrainian children's homes that were evacuated to Austria due to the war situation. Representatives of the AOB and UNHCR further discussed the duration and quality of asylum proceedings, the independence and quality of legal advice and the circumstances of asylum seekers in detention awaiting forced return. Other topics were the practical hurdles for persons eligible for a subsidiary protection status and asylum, and gaps in the protection of stateless persons and the prevention of statelessness.

National Human Rights Institutions

GANHRI celebrates 75 years of Universal Declaration of Human Rights

An AOB expert participated in the annual meeting of the Global Alliance of NHRIs (GANHRI), the international umbrella organisation of National Human Rights Institutions based in Geneva. This annual meeting marked the 30th anniversary of the Paris Principles on National Human Rights Institutions (NHRIs) and the 75th anniversary of the Universal Declaration of Human Rights.

10th Anniversary of the Netzwork of European NHRIs

At the European level, the AOB is also actively involved in the exchange of opinions and experiences within the Network of NHRIs in Europe (ENNHRI). More than 200 participants from NHRIs, the Council of Europe Commissioner for Human Rights Dunja Mijatović, and representatives of the OECD, the OSCE and the United Nations came together in Brussels. The conference was dedicated to visions for the next ten years. The focus was on the question of how to inspire countries to work more sustainably for human rights and for a just, tolerant and secure society.

Convention on the Rights of Older Persons?

Experts from the AOB also regularly contribute to various ENNHRI working groups. In January 2023, the AOB took part in an ENNHRI online meeting on the opportunities for NHRIs to participate in the drafting of a (planned) UN Convention on the Rights of Older Persons. The background to this project is that the UN Open-ended working group on Ageing is analysing the legal framework for the protection of the rights of older people since 2010, identifies gaps in existing legal frameworks and intends to draw up a convention to protect the rights of older people; similar to the ones for persons with disabilities or children. As part of this meeting, ENNHRI presented a guideline, which outlines the status of the work process and shows how NHRIs can contribute more actively to the development process of such a convention on the rights of older people.

ENNHRI Working Group on Asylum and Migration

The AOB is also represented in the ENNHRI working group on asylum and migration and took part in several meetings of this group during the reporting year. The exchange of experiences included the current problem of involuntary migration from Ukraine.

European Union

EU Twinning project Ombudsman Albania

The EU Twinning Project Albania, a cooperation between the AOB and the Ludwig Boltzmann Institute of Fundamental and Human Rights on the one hand, and the Albanian Ombudsman insitution on the other, which began in June 2022, was successfully completed on schedule in June 2023 after a one-year term.

A large number of recommendations were drawn up, for example on amendments to the Albanian law on the Ombudsman institution, on existing guidelines and manuals of the Albanian Ombudsman institution and on improving the complaints management system.

European Network of Ombudman institutions and Petitions Committees

As part of the European Network of Ombudsman institutions and Petitions Committees (ENO), the European Ombudsman Emily O'Reilly hosted the annual conference in Brussels. The topics covered included the use of artificial intelligence (AI), migration, and ethical standards in public administration. In the area of AI, the participants discussed the potential benefits and risks of AI and its general impact on the way public administrations interact with citizens. Another important topic of the conference was migration to Europe, which challenges policy makers and raises questions as to whether governments are doing enough to protect the human rights of those affected. Ethical standards in public administrations, what rules are required and how they can best be enforced were also discussed. An expert represented the AOB at the conference.

FRA project to strengthen NHRIs

The EU Fundamental Rights Agency (FRA) organised a study visit by NHRIs from Croatia, Latvia, Poland, Slovakia and Cyprus to the AOB in Vienna on the topic of protecting human rights and the rule of law. Topics discussed included the implementation of and compliance with the EU Charter of Fundamental Rights, concerns about the rule of law and the increasing pressure on Ombudsman institutions (especially in Poland), cooperation with civil society and the use of AI. The project will conclude with a virtual conference in February 2024, to which the AOB has also been invited.

Online training for Turkish delegation

In the previous year, a Turkish delegation visited the AOB in Vienna as part of the EU Pre-Accession Instrument. Building on this visit, an online training course on the "Institutionalisation of Human Rights in the EU" was organised for participants from Turkish ministries, the Ombudsperson's Office, the Human Rights and Equality Institution and the police. The AOB presented its mandate, organisational structure and working methods.

Every year, the European Commission publishes a Rule of Law Report, which highlights the most important issues and specific situations in the individual member states. The AOB also contributed to this report this year, which focussed in particular on the measures taken to implement the

previous recommendations of the 2022 report and examined new significant developments.

Other events and bilateral contacts

40 years of the South Tyrolean Ombudsman

On the occasion of "40 years of the Ombudsman of South Tyrol", Ombudswoman Gabriele Morandell invited representatives from Germany, Switzerland, Italy, Brussels and Austria to Bolzano to exchange experiences and improve networking. Ombudsperson Gaby Schwarz spoke as a guest speaker about the AOB's successful path from monitoring maladministration to becoming a centre for human rights. Ombudspersons present at the meeting, unanimously emphasised the importance of continuously standing up for people who suspect maladministration.

Meeting of Ombudsman of the Alpine countries

A conference was dedicated to cooperation and the exchange of experiences between the German-speaking Ombudsman institutions of the Alpine countries. Despite different systems, all Ombudspersons focussed on the desire to help people quickly and in a targeted manner. Through joint training, the challenges of the future - such as AI - can be managed better. Ombudsperson Gaby Schwarz and the Regional Ombudspersons of Tyrol and Vorarlberg, Doris Winkler-Hofer and Klaus Feurstein, represented Austria at this meeting, which is to be organised again in 2025.

Visit to Petitions Committee of the German Bundestag

Ombudsperson Schwarz and Ombudsman Rosenkranz welcomed members of the Petitions Committee of the German Bundestag to Vienna for an exchange of experiences. They discussed the differences between the Austrian and the German system of contact points for citizens' complaints. A further exchange between Ombudsperson Schwarz and the Petitions Committee took place at the invitation of Ambassador Michael Linhart on the premises of the Austrian Embassy in Berlin. "Sharing experiences also means learning from each other," emphasised Ombudsperson Schwarz, who continuously promotes networking at European and international level. The members of the Petitions Committee also emphasised the importance of regular contact, as it is always necessary to react to current developments.

Bilateral meetings with colleagues from neighbouring countries

The AOB intensified its exchange with its colleagues in neighbouring countries. During the reporting year, Ombudsperson Schwarz met her Hungarian colleague Ákos Kozma as well as the Slovakian Ombudsman Róbert Dobrovodský and the Czech Ombudsman Stanislav Křeček for working meetings in Vienna. In particular, an in-depth exchange in the activities of the National Preventive Mechanisms was discussed and joint visits to prisons are planned with colleagues in spring 2024.

2 Pension for victims of children's homes

2.1 The most important figures at a glance

Almost 30% increase in applications

In 2023, in total 661 applications for a home victim's pension (2022: 512) were forwarded to the AOB for processing. This corresponds to an increase of almost 30 per cent. 109 applications were submitted directly to the AOB by applicants, which were then forwarded to the decision-makers. This included 44 applications for benefit determination. People apply to have their entitlement to benefits determined although they do not receive a pension yet. Women submitted 47% of the applications (2022: 44%) and men 53% (2022: 56%). In 23 cases, the Austrian Pension Agency mistakenly contacted the AOB about further processing of applications, even though a compensation benefit had already been paid.

Many applications regarding "deaf-mute institutions"

The increasing number of applications based on violence in former "deaf-mute institutions" is striking. In 2023, 287 applications were submitted with information on violence in these institutions (2022: 194).

220 enquiries from home victims answered

Persons with legal representation submitted 13 applications. Five applicants died before the proceedings were completed. 36 people withdrew their application for a pension. 38 proceedings were terminated without settlement, as the applicants did not participate in the proceedings. Around 100 proceedings were concluded by way of a lump-sum compensation payment from care home operators or the competent authorities for child and youth welfare and protection. In addition, around 90 people contacted the AOB in writing and 130 by telephone with complaints or questions about the home victim's pension.

The Pension Commission dealt with 367 cases in eight meetings. After careful examination, it decided on 345 positive and 22 negative recommendations. The AOB closed one case as the person was awarded a lump sum compensation, which made no further recommendation necessary. In the year under review, 25 psychologists prepared 409 reports with the applicants.

In the applications, "deaf-mute institutions" and homes run by the municipality of Vienna were frequently named as places of violence. Neither the federal government nor the municipality of Vienna pay out lump-sum compensations. In the other Laender, it is still possible to apply for lump-sum compensation payments.

2.2 Challenges facing victims of homes

2.2.1 Error in the administration of applications pursuant to the Pension for Victims of Children's Homes Act by the pension insurance providers

AOB does not pay lump-sum compensation

On the one hand, pension insurance providers mistakenly do not forward applications to the AOB, on the ohter they send letters, which do not fall within the mandate of the AOB. In 2023, the Pension Commission was asked nearly 30 times to confirm the payment of a lump sum compensation. This problem occurs with all pension insurance providers. The Ministry of Social Affairs Service (*Sozialministeriumservice*) did not make any enquiries of that kind. The Pension Commission continuously informs the pension insurance providers that the AOB does not pay lump-sum compensation. Lump-sum allowances are only paid by care home operators and the competent authorities for childe and youth welfare and protection.

In addition, 25 applications were forwarded to the Pension Commission for investigation, even though the applicants had already received a lump-sum compensation. If applicants have already received a lump-sum compensation, the Pension Commission is no longer responsible. The forwarding was therefore unnecessary. The correct approach would be for the decision-maker to obtain a confirmation of the compensation payment from the respective care home operators or the competent authorities for childe and youth welfare and protection.

Missing application form

Furthermore, the Pension Commission had to do urgent follow-ups on applications to the pension insurance providers in 66 cases because the orders had been sent to the Pension Commission without the corresponding application. This applies to 10% of the applications. The application contains important information about the person concerned, such as their telephone number and important details about their accommodation. Without this information, processing is delayed. The pension insurance providers should optimise its processes to prevent such delays .

2.2.2 Rejection of victim's pension without referral to Pension Commission

Deaf-mute institution of Mils

Another problem in the administration of applications pursuant to the Pensions for Victims of Children’s Homes Act at the Austrian Pension Agency was the numerous rejections without consulting the Pension Commission first. In 2023, numerous people affected by the deaf-mute institution of Mils applied for a home victim's pension. At the same time, they also applied for lump-sum compensation from the *Land* of Tyrol. The Austrian Pension

Agency rejected many of these applications simply because the *Land* of Tyrol had also rejected the application for lump-sum compensation.

Competence of the Pension Commission

The fact is, however, that the lump-sum compensation paid by the *Land* of Tyrol for the placement in the deaf-mute institution of Mils does not constitute compensation within the meaning of the Pensions for Victims of Children's Homes Act. The *Land* of Tyrol pays the compensation payments to all persons who were in the deaf-mute institution in Mils without investigating whether violence occurred in the boarding school. The *Land* of Tyrol therefore confirmed that this was not a compensation payment pursuant to Section 1 of the Pensions for Victims of Children's Homes Act. Instead of forwarding these applications to the Pension Commission for recommendation, the Austrian Pension Agency immediately issued a negative decision in these cases. Dozens of applications were thus rejected without appropriate examination. This proceeding led to great irritation in the deaf community, as some of those affected from Mils received a positive decision and some a negative one. According to the provisions of the Pensions for Victims of Children's Homes Act, applications from people who have not received compensation or whose applications have been rejected must be submitted to the Pension Commission for assessment. The AOB therefore requested the Austrian Pension Agency to forward all applications concerning the institution in Mils to the Pension Commission.

The Austrian Pension Agency promised to annul all unlawfully rejected decisions and to submit them to the Pension Commission for investigation. The AOB attempted to inform those affected about their entitlements via the deaf counselling centres so that they could contact the AOB in the event of a rejection. Apparently, the Pension Agency's review of rejected applications pursuant to the Pensions for Victims of Children's Homes Act does not work, as those affected continue to contact the AOB.

Compensation from the Catholic Church questionable

Former pupils at the deaf-mute institute, who suffered violence at the hands of nuns, can address their applications for financial compensation to the Ombudsman's office of the Diocese of Innsbruck. For a long time, a religious order was in charge of educating the children at the institution. Nuns and priests are repeatedly named as perpetrators. However, the Diocese of Innsbruck has so far not given the impression that it is particularly interested in compensating the former pupils. Instead, those applying for financial compensation are told that it is an institution of the *Land* and that financial compensations must therefore come from the *Land* of Tyrol.

2.2.3 Special challenges in clearing proceedings for deaf applicants

Many children who were placed in so-called "deaf-mute institutions" were confronted with violence on an almost daily basis. Deaf children were abused by being beaten, deprived of food, or locked up. Communicating in sign language was prevented by force.

Problems of deaf people

Deaf organisations and the AOB cooperated on an information campaign, which led to many deaf people continuing to apply for a home victim's pension. For deaf people who are not in contact with a deaf organisation, it is difficult to obtain the relevant information. In the Austrian media landscape, content is hardly ever prepared for deaf people. According to the AOB's observations, there is also a major deficit in communication among deaf people because they have been banned from using sign language for decades. In addition, many have problems writing and reading texts. At the same time, the trauma of "not being understood" has left its mark on many. Deaf people are afraid and very reluctant to communicate or to communicate with people they do not know.

Too few qualified therapists

In 2023, deaf applicants submitted 287 applications for a pension for victims of homes. In order to enable an equal clearing proceeding for them, it is essential that these proceedings are accompanied by sign language interpreters. Effective communication, mutual understanding and a relationship of trust between the applicant and the clearing experts must be established in order to be able to conduct the already difficult dialogue in a trusting manner. The involvement of sign language interpreters is essential for this.

Deficiencies in reading and writing

The shortage of sign language interpreters throughout Austria should be criticised. This posed major challenges for the AOB. The AOB often used the Relay-Service (a provider of video interpretation services for deaf persons and persons with hearing impairments) to communicate with deaf people when submitting applications. Communication often took place with relatives of the applicants, as written contact was also not possible due to a lack of reading and writing skills. Many of those affected cite inadequate schooling and a lack of support in the deaf-mute institutes as reasons for this.

Help from outpatient clinics and associations for the deaf

Special mention should be made of the intensive support provided by the outpatient clinics for deaf perons and the associations for the deaf, which exist in some of the *Laender*. In 2023, over 250 clearing reports were completed with the help of eight sign language interpreters.

2.2.4 No compensation for those affected by the Speising and Kaltenleutgeben deaf-mute institutions

Between March 2012 and August 2017, the Austrian Federal Ministry for Education, the Arts and Culture (now Federal Ministry for Education, Science and Research) paid out compensation and therapy costs to 40 victims of violence in institutions under the jurisdiction of the Ministry of Education - including the so-called deaf-mute institutions and various federal convents. The compensation project, which was handled by the *Weisser Ring* (an association that offers assistance to crime victims) on behalf of the Ministry, was not advertised and most of the former boarding school pupils were not aware of it.

In 2022, the deaf associations in the *Laender* launched an information campaign for their members about the pension for victims of homes. This was the first time many affected persons learnt about their entitlements as victims of violence. All of the owners and operators of the former deaf-mute institutions in Austria (i.e. Salzburg, Linz, Mils, Klagenfurt and Graz) took the reports of abuse as an opportunity to recognise the injustice and grant financial compensation.

Many reports from victims of violence

Since the Pensions for Victims of Children's Homes Act came into force, 118 people have contacted the AOB who were victims of abuse in the boarding school of the former federal deaf-mute institutions in Speising or Kaltenleutgeben and have not yet received any remuneration. The victims reported of being beaten and slapped by teachers and educators. In some cases, the use of sign language was also forbidden. They were not allowed to go to the toilet at night, but were also punished for wetting the bed and humiliated in front of the whole group. The boarding school pupils found it particularly agonising that they had to stand in the corner, feeling completely isolated as they could not see what was going on behind their backs. The children were forced to eat everything under threat of violence and they had to eat until they vomited. Some children were even forced to eat their vomit. Punishment was completely arbitrary and fear was a constant companion.

The reports, which the AOB received, are shocking. Many of the former boarding school pupils still suffer from the traumatic memories of their childhood and adolescence. However, access to support and therapy is all the more difficult for deaf people. Those affected often lack access to information.

Speising and Kaltenleutgeben

People who were abused in the deaf-mute institutions in Speising or Kaltenleutgeben have not received any compensation since August 2017. When confronted with the allegations, the Austrian Federal Ministry for Education, Science and Researchexplained that – in its opinion – the

obligation to pay compensation ceased to apply when the Pensions for Victims of Children's Homes Act came into force. The payment of a pension pursuant to the Pensions for Victims of Children's Homes Act would recognise and sufficiently compensate for the injustice suffered.

For those affected, this differentiation is incomprehensible. They do not understand that other deaf people do receive compensation and are reimbursed for the costs of therapy. Those affected by the Speising and Kaltenleutgeben deaf-mute institutions hope that their reports will be heard as well, that they will receive compensation and that any therapy costs will be covered.

The AOB therefore reiterates its request to fulfil the wishes of the former pupils of the deaf-mute institution, to re-establish a contact point for those affected, and to make financial contributions.

Only Salzburg clarified incidents

Irrespective of this, the methods used in the deaf-mute institutions also require clarification. The teaching and educational methods were more than questionable. Deaf people reported of being pinched in the neck or face during lessons, having their heads knocked against the wall or being caned. Sign language was forbidden and disregarding the ban resulted in physical punishment. The AOB has abuse reports concerning Speising and Kaltenleutgeben from the 1940s to the year 2000. The federal government but also the *Laender* as the owners and operators of the institutions are therefore called upon to document and investigate the incidents. So far, only the *Land* of Salzburg has complied with this recommendation of the AOB and commissioned the University of Salzburg to conduct a scientific investigation into the incidents at the former deaf-mute institution in Salzburg. All other institutions are in default.

2.2.5 No entitlement to victim's pension in case of transitional or special retirement allowances

A person affected was granted compensation by the home operator in accordance with Section 1 of the Pensions for Victims of Children's Homes Act for the violence he suffered when staying in the home as a child. Due to his inability to work, he received a transitional allowance from the Austrian Social Insurance Institution for the Self-employed for a limited period until June 2023. Following his application for a home victim's pension, the Social Insurance Institution for the Self-employed informed him that he was not entitled to the pension while receiving a transitional allowance, as recipients of transitional allowances are not listed in Section 1(3) of the Pensions for Victims of Children's Homes Act. Since he considered himself a pensioner who had retired from working life, he could not understand why the application was rejected.

No pension despite incapacity to work

One year after the Pensions for Victims of Children's Homes Act entered into force the group of beneficiaries was reformed and extended. It includes recipients of rehabilitation allowances under the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*). Rehabilitation allowance is a benefit, which is paid in the event of temporary incapacity for work. However, recipients of transitional allowances under the Social Insurance Act for Trade and Commerce (*Gewerbliches Sozialversicherungsgesetz*) were not included in this reform, although these transitional allowances are also paid in the event of temporary incapacity to work. The AOB considers this unequal treatment between the persons insured under the respective acts.

No home victim's pension despite retirement

In addition, an insured person contacted the AOB who did not receive a pension pursuant to the Pensions for Victims of Children's Homes Act despite receiving a special pension under the Heavy Night Work Act (*Nachtschwerarbeitsgesetz*). This special pension enables employed persons who have performed heavy night work over a long period of their working life to retire earlier than with other early pension's schemes. This benefit is comparable in its effects to an early retirement pension. Insured persons who receive a special pension have also retired from working life. Thus, they should be entitled to a pension for victims of homes.

Legislative change urgently needed

The AOB therefore suggested that recipients of transitional allowances pursuant to Section 164 of the Social Insurance Act for Trade and Commerce and special pensions pursuant to the Heavy Night Work Act should also be included in the group of persons entitled to a victim's pension pursuant to Section 1 (3) of the Pensions for Victims of Children's Homes Act. Unfortunately, the legislators have not yet implemented this requirement.

3 Monitoring public administration

3.1 Labour and economy

3.1.1 Labour market administration – Public Employment Service Austria

Wide range of complaints

In 2023, the AOB initiated 219 investigative proceedings in relation to the Public Employment Service Austria (*Arbeitsmarktservice*). The complaints and investigative proceedings covered the full range of services provided by the Public Employment Service. They related both to its power prerogatives such as blocking or reclaiming payments in connection with statutory unemployment insurance, as well as to the services it provides to the private-sector, in particular the placement and support of jobseekers, as well as the granting of subsidies and financial aids.

Exemplary cooperation of Public Employment Service

As in previous years, cooperation with the Public Employment Service was extremely good. The Public Employment Service responded promptly and comprehensively to requests from the AOB for statements on complaints. If violations of legal provisions were identified in the course of the AOB's investigative proceedings or if complaints had to be made in individual cases, the Public Employment Service generally reacted quickly and made the necessary corrections in the interests of the unemployed persons concerned.

3.1.2 Discrimination through incapacity to work due to disability

In 2014, the Public Employment Service commissioned the Austrian Pension Agency to carry out a medical examination of a 21-year-old woman from Lower Austria because there were doubts about her ability to work due to a psychomotoric developmental disorder. The medical examination revealed permanent incapacity to work. As a result, her registration and support with the Public Employment Service was terminated.

No Public Employment Service funding despite practical test and commitment

Her family encouraged and supported her in the best possible way and according to her abilities. As a result, she was able to complete successfully a training programme for partial qualification in animal care at the integration school for adolescents and young adults in May 2023. She then proved herself in an internship at a horse farm with assistance and received a job offer there. As this was a subsidised job, a report was submitted to the Public Employment Service. However, the Public Employment Service denied the requested funding because the expert opinion from 2015 was in conflict with this and could not be revised. The incapacity to work, which had been established nine years ago thus excludes the woman from Public Employment Service benefits permanently or for life.

Protection against discrimination in the UN CRPD

The Republic of Austria ratified the UN CRPD (Federal Law Gazette III No. 155/2008, UN CRPD 2008) and undertook to implement it. Article 5 (2) of the UN CRPD (equality and non-discrimination) recognises that all persons are equal before the law. It calls on states parties to prohibit any discrimination based on disability and guarantees persons with disabilities equal and effective protection against discrimination, regardless of the grounds. States parties must take reasonable steps to promote equality and eliminate discrimination.

UN CRPD - Labour and Employment

Article 27 (1) of the UN CRPD (work and employment) obliges the states parties to recognise the right of persons with disabilities to work on an equal basis with all other persons. This includes the right to the opportunity to earn a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and barrier-free for persons with disabilities. Article 27 (1) (d) and (e) of the UN CRPD enables persons with disabilities to have effective access to general technical and vocational guidance programmes, job placement, vocational training and continuing education. It promotes employment opportunities and career advancement in the labour market, as well as support in finding, obtaining and keeping a job and returning to work. According to Article 27 (1) (i) and (k) of the UN CRPD, appropriate provisions for persons with disabilities in the labour market must be ensured and programmes must be promoted, which serve persons with disabilities with regard to vocational and professional rehabilitation, job preservation, and vocational re-entry.

Public Employment Service bound by medical reports

According to the current legal situation, the main prerequisite for the Public Employment Service to take action is the ability to work. A person is fit for work if they are not disabled or unable to work. According to Section 8 (2) of the Austrian Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*), unemployed persons - regardless of age - are obliged to undergo a medical examination if there are any doubts about their ability to work. This examination takes place at the "Assessment" competence centre of the Austrian Pension Agency. The Public Employment Service is bound by medical reports from these medical competence centres when determining fitness or incapacity to work.

Labelled incapable for work

For adolescents and young adults with disabilities, a determination of incapacity to work has a massive impact on their biography. This results in a (premature) lifelong determination in which the diagnosis of the type and severity of disability alone characterises people as deficient and therefore "unfit for work", without even beginning to take into account their development opportunities and abilities. The only thing that matters is whether the person's ability to work corresponds to at least half of that of a physically and mentally healthy person. In addition to the exclusion from counselling and training opportunities, the most far-reaching consequences of this medical assessment are the permanent exclusion from vocational

integration measures and active labour market policy support, as well as from access to compulsory social insurance on their own.

No examination until the age of 25

With the amendment to Section 8 (2) and (5) of the Unemployment Insurance Act, the possibility of ordering such examinations and the obligation to undergo them until the age of 25 will no longer apply from 1 January 2024. The Public Employment Service can therefore supervise and register adolescents and young adults with disabilities until the age of 25, who thus can take advantage of appropriate training courses.

The explanatory notes to government draft no. 2307 of 22 November 2023 state the following: "To this end, the Public Employment Service Austria must – within the meaning of the Convention on the Rights of Persons with Disabilities – refer adolescents and young adults with disabilities to youth coaching for clarification. Youth coaching must carry out an opportunity-oriented potential analysis in accordance with its basic mandate and draw up a perspective plan with a recommendation as a result. Any specialist medical reports or findings must be taken into account accordingly and, if necessary (e.g. to clarify medical or developmental psychological issues), external expertise must be called upon. In this process, the wishes and needs of the person concerned must be taken into account in the spirit of self-determination."

In order to avoid hardship cases, expert opinions ordered in 2023 shall also not be applied until the age of 25. The explanatory notes further state that the "exemption from the incapacity to work examination will be limited to the age of 25 in order to avoid a permanent and significant shift of the public authorities responsible for securing the livelihood of this group of people towards unemployment insurance (thus to the federal government)."

Still great need for improvement

The law amendment is therefore merely a first step towards avoiding obvious discrimination in the labour market due to disability. However, the legislators' goal and obligation is to implement the UN CRPD fully. There is still a great need for action. The social model on which the Convention is based understands "disability" not as an individual impairment, but as a lived experience of legal and social barriers that make it impossible to live on an equal footing with others. "Work incapacity classifications", which are based solely on deficit-orientated criteria, therefore constitute such a barrier that excludes those concerned from the services of the Public Employment Service.

Arbitrary age limit

A social model of disability does not fundamentally distinguish between age-related, accident-related, or birth-related impairments that open up or close off entitlements to benefits based on the Unemployment Insurance Act. An arbitrary reference to the age of those affected - as provided for in Section 8 (5) of the Unemployment Insurance Act - also contradicts the UN CRPD, which prohibits all discrimination without exception. Pursuant to Article 27

UN CRPD, the aim must be to ensure access to the general labour market for all persons with disabilities, regardless of their age.

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection, which dealt with the issue on behalf of the AOB, requested an extension of the deadline twice and then merely referred to the known new regulation on the incapacity to work of adolescents and young adults with disabilities up to the age of 25. For those affected who are of working age, this means that they are still excluded from Public Employment Service benefits. The work of the woman who complained to the AOB as an animal keeper at the pony farm is not subsidised.

3.1.3 No education support due to disability

A 20-year-old woman with a disability has been accepted onto the four-year BLuE university programme. She began her studies in October 2023. The university programme is the ideal education for the woman from Salzburg because tutors also provide individual support in the areas of personal and academic development, social participation and work. The woman was already able to make great progress in the introductory and orientation phase, and found and developed individual interests and specialisations.

Inclusive university programme

BLuE is an inclusive university programme of the Stefan Zweig Pedagogical University of the *Land* of Salzburg. The target group is people over the age of 18 with a cognitive or mental impairment who wish to pursue a career in an assistance role in certain areas. The aim is to be able to lead an independent life and develop career prospects. Students attend courses that are selected individually according to their interests. Work internships are completed each year; the BLuE university programme works closely with partners from the social sector and business.

Training offered by the Public Employment Service

The Public Employment Service of the city of Salzburg refused to support the BLuE training programme and justified its decision by stating that it was not a vocational training programme with a recognised qualification. Nevertheless, the BLuE university programme can be found on the Public Employment Service website.

According to Article 24 of the UN CRPD, persons with disabilities have the same right to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. The AOB therefore requested the Public Employment Service of the *Land* of Salzburg to support the BLuE training programme for the young and ambitious woman at the Stefan Zweig Pedagogical University in Salzburg.

As part of the *Bürgeranwalt* TV show, the Public Employment Service of the *Land* of Salzburg promised to come to an agreement with the Stefan Zweig Pedagogical University and to take a closer look at the content of the inclusive university programme. The review process had not yet been completed by the time this report was finalised.

3.1.4 Offsetting benefits for surviving relatives against emergency assistance

Reduction of widow's emergency assistance

An emergency assistance recipient from Carinthia turned to the AOB because she was awarded a widow's pension after the death of her husband and the Public Employment Service then significantly reduced the financial aid of the emergency assistance. This led to a "neutralisation" of the benefit she received as a surviving relative. Because of this reduction in the widow's pension, the unemployed widow was confronted with a significantly less favourable overall economic situation than during her spouse's lifetime.

Need for legislative action

The AOB initiated an investigative proceeding in the area of the Public Employment Service of the *Land* of Carinthia and found that the Public Employment Service had proceeded in accordance with the applicable legal situation and that the reduction of the benefits could not be reversed. The Public Employment Service had also correctly calculated the widow's pension. However, the AOB can understand that surviving relatives perceive the current legal situation as a hardship. The legal framework contains contradicting interpretations that should be rectified by legal means.

Survivors' benefits taken into account when calculating marginal earnings threshold

It is undisputed that the granting of a widow or widower's pension is intended by the legislators to provide a (partial) replacement for the maintenance contribution previously made by the deceased spouse. It is also undisputed that a widow or widower's pension from the statutory social insurance scheme constitutes income that needs to be taken into account regarding the amount of emergency assistance, thus reducing it. The definition of income under unemployment insurance law is based on the definition of income under tax law and regards such benefits for surviving relatives as income from gainful employment (Section 36a (1) and (2) of the Unemployment Insurance Act in conjunction with Section 2 (2) of the Austrian Income Tax Act). This means that the benefit for a surviving relative only does not reduce the emergency assistance if it does not exceed the marginal earnings threshold under social security law. However, if the benefit for the surviving relative does exceeds this marginal earnings threshold, the full amount (and not just the amount that exceeds the marginal earnings threshold) must be deducted from the emergency assistance.

AOB identifies contradicting interpretations

As of 1 July 2018, the amendment of the Unemployment Insurance Act (Federal Law Gazette I. 2017/157) abolished the general reduction in the

offsetting of spouses or partners' income that was originally enshrined in unemployment insurance law. Since then, there are no provisions for income to be offset in the case of a valid marriage (and a valid joint household between spouses). The marital union and the income of the higher-earning spouse therefore have no effect at all on the emergency assistance of the other spouse (usually the wife). In the event of death, however, the situation changes from one day to the next with the award of a survivor's pension, which in itself is merely intended to replace the lost maintenance payments. This is the first contradiction.

A second contradiction derives from the rules on maintenance payments for separated or divorced spouses. Section 36 (3) of the Unemployment Insurance Act, considers maintenance payments by an (ex-)spouse recurring income within the meaning of Section 29 (1) of the Income Tax Act. As such, they are to be offset against the emergency assistance, but by taking into account a "tax exempt allowance". Such maintenance payments shall only be considered to the extent that they exceed the marginal earnings threshold under social security law. This means that - in contrast to survivors' benefits from the statutory pension insurance - they are not taken into accoun in full if the marginal earnings threshold is exceeded.

Ministry sees no need for action

With reference to the legal situation in accordance with the amendment of the Unemployment Insurance Act (Federal Law Gazette I. 2017/157) and with reference to the "privileged treatment" of the reduced offsetting of maintenance payments within the meaning of Section 29 (1) Income Tax Act, the AOB contacted the Federal Minister of Labour and Economic Affairs. It asked whether he saw a need for legal policy action to mitigate the offsetting of widowers' pensions. The Federal Minister informed the AOB that he did not intend to change the legal situation and that he did not see any constitutional concerns against the background of the principle of equality.

Different legal nature of the claims

He argued that maintenance payments within the meaning of Section 29 (1) of the Income Tax Act were not comparable with a statutory benefits for surviving relatives. The legal nature of these benefits was completely different. The maintenance claim was anchored in private law. The specific amount was not permanently guaranteed either, but ultimately depended on fluctuations in the income of the spouse obliged to pay maintenance. Claims under statutory pension insurance, on the other hand, were claims under public law, the amount of which was stable, and the Federal Government was liable to the pension insurance institution for any shortfall. The Federal Minister also referred to statements by the Supreme Administrative Court of Austria as to which extent the offsetting provisions in the Unemployment Insurance Act could be interpreted in a "corrective" manner, in the light of a possible constitutional interpretation of the law. The Court denied that the regulations regarding the privileged offsetting of maintenance payments

could be applied analogously to the area of statutory pensions of surviving relatives (Supreme Administrative Court 25 October 2022, Ro 2021/08/0015).

Although the Austrian Ombudsman Board fundamentally understands the arguments of the Federal Minister and the Supreme Administrative Court, it nevertheless notes that there are contradicting interpretations based on the current legal situation. It is understandable that people who receive emergency assistance see this as a hardship. The death of a partner worsens the overall financial situation because not only does the partner's maintenance payment cease, but the survivor's benefit, which presents a replacement for the cancelled maintenance payment, also reduces the emergency assistance.

Above all, the AOB is not convinced that full crediting of survivors' benefits under social insurance law is justified due to the public law nature of these insurance benefits. At this point, it should be pointed out that statutory benefits from accident insurance (disability pensions) are also benefits under public law. Nevertheless, they are treated preferentially when being offset against emergency assistance benefits. In accordance with Section 36a (2) of the Unemployment Insurance Act, disability pensions from accident insurance shall be offset only at a rate of 50%.

3.1.5 No childcare facility allowance for contract employees

A woman from Upper Austrian applied for a childcare facility allowance for her two sons (born in 2018 and 2021) in January 2023. The boys both evidently attended nursery school and a day care centre (childminder). The mother had been employed as a contract employee at the Tax Office Austria since July 2006, working 20 hours per week after returning from maternity leave.

The Public Employment Service Braunau informed the woman that the childcare allowance could not be granted because she was in a non-terminable (civil servant) employment relationship. According to the guidelines applicable from 1 January 2023, funding is excluded in such a case.

The woman expressed her surprise at the rejection of her application for support. Contrary to the view of the Public Employment Service, she was not employed by the Tax office as a civil servant, but as a contract public employee. The error was clarified in the course of the AOB's investigative proceeding. The childcare facility allowance was paid retrospectively.

3.1.6 Coordination problems in the promotion of training programmes in the care sector

Switch from skilled labour scholarship to Public Employment Service nursing education scholarship

A jobseeker from Lower Austria began training in the care sector at a school for social professions at the beginning of September 2022. The regional office of the Public Employment Service granted her a skilled labour scholarship. She also applied to the *Land* of Lower Austria, i.e. the Lower Austrian Society for Research Promotion (*Gesellschaft für Forschungsförderung Niederösterreich*), for a nursing training bonus. The *Land* recognised the bonus and paid it out monthly from the start of training. The trainee then learnt from various classmates that there would be an additional benefit or an additional "education bonus" from the Public Employment Service from January 2023. She contacted the Public Employment Service office and learnt that the Public Employment Service scholarship for nursing education would be available from January 2023. The trainee decided to switch from the skilled labour scholarship to the Public Employment Service nursing education scholarship.

Cancellation and reclaim of the *Land* subsidy

Following this change, however, the *Land* of Lower Austria discontinued the nursing training bonus and reclaimed amounts already paid out for the months of January and February 2023. Overall, the trainee suffered a financial disadvantage. Although the Public Employment Service nursing education scholarship was slightly higher than the skilled labour scholarship previously received, the complete discontinuation of the Lower Austria nursing training bonus resulted in a lower total cash benefit for the duration of the nursing training.

The trainee complained to the AOB about the Public Employment Service because she never had the information that receiving the Public Employment Service nursing education scholarship would lead to the cancellation of the nursing training bonus from the *Land* of Lower Austria. She pointed out that she had subsequently learnt that some of her fellow students had been informed accordingly by their respective Public Employment Service advisors.

AOB initiates investigative proceedings

The AOB initiated an investigative proceeding in the area of the Lower Austrian Public Employment Service and the Office of the Lower Austrian Regional Government. Neither the *Land* nor the Public Employment Service were prepared to facilitate a good solution for the person concerned.

The Public Employment Service pointed out that against the background of existing court rulings on liability law of public bodies, the Public Employment Service was not obliged to provide information about funding or cash benefits from other bodies, such as the Lower Austrian Society for Research Promotion. The Public Employment Service was also not aware of the funding guidelines of the *Land* of Lower Austria. It also argued that the website explicitly states that the Public Employment Service can only provide binding information on Public Employment Service benefits and

cannot provide advice on funding from other sources. In addition, those affected must obtain information about the effects of Public Employment Service benefits on subsidies from other organisations from these respective organisations. The Public Employment Service rejected a subsequent switch from the Public Employment Service nursing education scholarship to the original skilled labout scholarship, stating that from 1 January 2023, the skilled labour scholarship would no longer be used to fund training in the care sector and that only the Public Employment Service nursing education scholarship would be available. Only "pending cases" could continue to receive the skilled labour scholarship, but the person concerned would no longer be eligible, as she had opted for the Public Employment Service nursing education scholarship herself.

The *Land* of Lower Austria pointed out to the AOB that the funding guidelines originally allowed for the parallel receipt of cash benefits from statutory unemployment insurance or Public Employment Service funding and that this would still be possible for pending cases. However, the receipt of the new Public Employment Service nursing education scholarship introduced by the Public Employment Service on 1 January 2023 excludes funding in the form of the Lower Austria nursing training bonus.

AOB demands "ban on deterioration"

Although there was no violation of the law by the Public Employment Service or the Lower Austrian funding agency, better coordination and, above all, improved information management would have been desirable. It became apparent that the funding guidelines of the *Land* of Lower Austria created a complex transitional law with regard to the funding opportunities for nursing training, which, in combination with the funding guidelines of the Public Employment Service, led to a funding regime that was difficult to understand. The risk of financial disadvantage in the event of a change in funding was placed entirely on the (legally inexperienced) nursing students.

3.1.7 Trade and commercial law

Introduction

140 business-related complaints

In 2023, the AOB received 140 business-related complaints. 82 cases concerned the area of plant permit law, with complaints from neighbours disturbed by noise, odours and other emissions predominating. Around a quarter of these complaints related to catering establishments. In 25 cases, it was the entrepreneurs themselves who sought help from the AOB. 11 complaints concerned surveying offices, 9 the Austrian Economic Chamber. Broken down by *Land*, most complaints came from Vienna, followed by Lower Austria and Upper Austria. The fewest submissions came from Tyrol and Vorarlberg.

Public administration is facing major challenges. On the one hand, it has to cope with tasks such as demographic change, digitalisation, technological progress and globalisation. On the other hand, it also has to meet the increasing demands and expectations of citizens and entrepreneurs. Within the scope of their financial and human resources, the authorities must endeavour to improve quality and shorten processing times. The AOB sees its intervention not only as a contribution to solving problems in the interests of those affected, but also as support for the authorities on the path to greater performance, quality, customer and employee orientation.

During the reporting year, the AOB found that the authorities' performance in implementing trade law in accordance with the principle of citizen-centred administration was quite good. In individual cases, however, there were errors or delays (see chapter on "tardiness on the part of trade and commercial authorities").

Noise nuisance

In 2023, the AOB was increasingly confronted with complaints about nuisance perceived by those affected as low-frequency noise, infrasound, structure-borne noise or humming sounds. Heat pumps (compressors, fans), cooling units and refrigeration, air conditioning and ventilation systems in operating facilities often cause these disturbances. Low-frequency noise can spread from the source into the neighbourhood through structure-borne or airborne sound. In the case of structure-borne sound propagation, vibrations are transmitted through solid materials such as foundations, floors, ceilings or walls. The propagation paths can be complex. Those affected complain of pressure in their ears, heart and circulatory problems, sleep disorders, anxiety, depression and feelings of fear. The spokesperson for a platform that deals with these cases in Styria and attempts to sensitise authorities and politicians to the issue, also approached the AOB. The *Land* of Styria has now set up a project group on the topic, which, according to media reports, shall work together with Graz University of Technology, the University of Innsbruck and environmental medicine specialists. In order to be able to measure the low tones, the *Land* of Styria has purchased new measuring devices.

Nuisance caused by photovoltaic system

A woman complained about noise nuisance from a neighbouring supermarket. She kept making new assumptions about the source of the noise and mentioned a photovoltaic system on the roof of the supermarket that was operated without consensus. The AOB informed her of a decree issued by the Ministry for Digital and Economic Affairs on 1 March 2021. According to the decree it cannot be assumed that photovoltaic systems – regardless of local circumstances and their specific design – are generally

endangering or impairing the interests protected under Section 74 (2) (1 to 5) of the Austrian Trade Act 1994,. The Ministry for Digital and Economic Affairs expressly states that such projects are not subject to authorisation as long as there are no specific unusual or dangerous local circumstances that speak in favour of the authorisation requirement in a specific special case. As there were no such circumstances in this case, this installation did not require a licence under the Austrian Trade Act.

Nuisance from catering establishments

In the year under review, the AOB had to deal with several complaints from neighbours of catering establishments. Those affected described noise nuisance caused by cooling units, air conditioning, ventilation and music systems, as well as loud behaviour by guests in gardens and in front of restaurants. The AOB also received complaints about odour nuisance and exceeding the closing time.

A neighbour of a restaurant in Vienna stated that since 2009 he had regularly been exposed to unreasonable noise pollution from 7 a.m. to 10 p.m. due to the pushing of trolleys and pallet trucks. Complaints to the trade authorities had had no effect. The AOB referred the matter to the Regional Court of Vienna and was initially able to clarify that the authority had imposed additional requirements in 2015 and 2017. The company had to create and maintain a smooth, seamless surface in the inner courtyard and in the driveway along the transport routes of the rubber-tyred hand pallet trucks. The AOB criticised the fact that the authority had only investigated compliance with the operating hours approved until 5 pm due to complaints from local residents. However, it did not check whether the restaurant met the additionally prescribed requirements. It was only after the AOB intervened that the authorities contacted the neighbour to clarify whether the noise nuisance was caused by the fact that the additional requirements had not been met.

Operations on roads with public traffic

As in previous years, in 2023 the AOB had to point out the difference between commercial operating facilities within the meaning of Section 74 (1) of the Trade Act 1994 and roads with public traffic within the meaning of Section 1 (1) of the Austrian Road Traffic Act 1960 in several cases. The AOB informed the affected parties that the driving of (company) vehicles on a road with public traffic could not be categorised as an activity belonging to a commercial operating facility. Only driving to and from the business premises (in the narrower local area of the business premises), but not driving past on a road with public traffic, shall be attributed to the business premises. The trade authority is not responsible for processes that take place outside the business premises on a road with public traffic.

Access to business documents

A lawyer from Vienna approached the AOB inquiring whether Section 338 Trade Act 1994 authorises the municipal department MA 59 to request written information on business documents, or whether such requests for information are unlawful and unconstitutional with regard to the right not to incriminate oneself. The lawyer was of the opinion that the authority may only inspect business documents and request that information and documents are provided during a company audit.

The AOB referred the matter to the Ministry for Labour and Economic Affairs. In the opinion of the Ministry, it is correct that business owners only had to co-operate during the limited period of the business audit in accordance with Section 338 Trade Act 1994. However, if these persons are repeatedly not present and on-site audits are not possible, it shall be regarded as accommodating and citizen-friendly behaviour if municipal department MA 59 gives them the opportunity to submit the documents to the authority in writing. This would spare the persons concerned criminal proceedings and further appeals. This approach is in line with the principle of "counselling instead of punishment" within the meaning of sections 371b and 371c of the Trade Act 1994 and Section 33a of the Austrian Administrative Penal Act (*Verwaltungsstrafgesetz*). It was also not objectionable that the authority used the written approach. The AOB informed the lawyer of this result.

Tardiness on the part of trade and commercial authorities

Schärding District Authority

A German citizen described environmental pollution due to petrol tourism in the border area between Germany and Austria. In a letter dated April 2022, he asked the Schärding District Authority for access to the "operating permit" of a petrol station, but received no response. The AOB obtained a statement from the District Authority. It turned out that the request had been lost "in the hustle and bustle of the crisis management tasks that had to be fulfilled as a priority during the COVID-19 pandemic". In January 2023, the District Authority promised the man access to environmentally relevant data from the petrol station.

Leibnitz Disctrict Authority

In June 2022, the neighbour of a transport company approached the AOB. She was exposed to noise and exhaust pollution from lorry movements and repair work as well as from the loading and unloading of containers using diesel forklifts. She had been complaining to the District Authority of Leibnitz since September 2018, but nothing had improved so far. During its investigative proceedings, the AOB found out that the District Authority had granted an application from the facility operator of November 2017, which allowed for the construction and operation of a parking area and the construction of a noise barrier, in February 2022. The Styrian Administrative Court dismissed an appeal by the neighbour in August 2022.

The AOB criticised the long duration of the operating facility approval proceedings. Moreover, the complaint was justified because the business premises had been operating for years without consensus and - apart from two administrative penalty proceedings - the District Authority had not taken any measures to restore the legal situation. Furthermore, despite numerous complaints from neighbours, the trade authority had not carried out any measurements or inspections until the AOB intervened. The AOB also objected to the fact that the operator had only started construction of the noise barrier (which had since been erected) in July 2023. The District Authority promised to carry out long-term noise measurements. In conclusion, the AOB noted that the District Authority had only taken the legally required measures after a considerable delay and informed the neighbour of this.

Murtal District Authority

A neighbour complained to the AOB about noise nuisance caused by a car dealership. In addition, numerous disused vehicles were parked on unpaved areas. The Murtal District Authority had been informed but had failed to act. The investigation revealed that the District Authority had been aware of unconsented changes to the operating facility since October 2022, but had not taken any measures to restore the legal status.

The District Authority had merely asked the operator several times (most recently in September 2023) to apply for a trade licence for the changes. It was only after the AOB intervened that he finally applied for approval in October 2023 to change the business premises into a car dealership with up to 75 parking spaces and a car service station. The District Authority scheduled an on-site hearing for December 2023.

During an investigation in August 2023, the responsible water manager of the construction district authority of Upper Styria West and the official waste expert found two vans, which were not in a roadworthy condition and had to be classified as waste. The District Authority then issued an order to remove the old vehicles immediately and take care of their prope disposal. With this information to the neighbour concerned, the AOB concluded its investigative proceedings.

3.1.8 Energy costs

Energy cost subsidy for companies

During the reporting year, several people approached the AOB with questions about energy cost subsidies for companies. There were no indications of maladministration in the investigative proceedings. On the contrary, the AOB was able to conclude the investigative proceedings with a clarification.

In one case, the AOB had informed a business owner that the assessment report from the auditor, tax consultant or accountant in accordance with point 11.1 of the funding guidelines for Energy Cost Subsidies for Businesses is a

prerequisite for a funding application and must therefore be commissioned and obtained by the business before the application is submitted. The application form shall indicate or declare on oath that the assessment report has already been obtained. Only if the processing office for the funding programme, i.e. the Austrian Business Service (*Austria Wirtschaftsservice Gesellschaft mbH*), requests the company to do so, does the company have to hand over the assessment report.

Flat-rate subsidy on energy costs for companies

The Federal Government is helping micro and small businesses to manage their energy costs with a flat-rate subsidy on energy costs for companies. Several of those affected highlighted problems with the subsidy process. A self-employed accountant fell under the small business regulation in 2022, but her gross income was above the limit of EUR 35,000, which is the upper limit for the lowest subsidy level of the flat-rate subsidy on energy costs. As the higher subsidy levels are based on turnover according to the advance VAT returns for the calendar year 2022 (which are not required for companies subject to the small business regulation), the woman's application was rejected at these higher levels. The woman was under the impression that she could not submit an application at any level.

The Ministry for Labour and Economic Affairs explained that the flat-rate subsidy on energy costs had been designed as a low-threshold, highly automated system. It enables several thousand applications to be processed within a few days. It is necessary to use concrete, available and easy-to-process key figures. The Ministry had to reject applications due to incorrect or unavailable data. These special cases should not have been rejected. Due to the fully automated process, a subsequent correction is not possible. Those affected could resubmit in 2024. The AOB informed the company accordingly.

3.1.9 Surveying offices

Clarification

The topics and content of the submissions received in 2023 remained unchanged compared to previous years. For years, the AOB has reported excessive expectations of the surveying offices. Those affected often have little knowledge of the legal duties and possibilities of the surveying offices. In these cases, the AOB clarifies the legal situation. The AOB also repeatedly informs people about the difference between property tax land registers and property lines land registers as well as the fact that details about the size of an area in the surveying documents have no binding effect. The AOB must repeatedly clarify that civil surveyors are not within the AOB’s sphere of responsibility of investigation.

Property owners often turn to the AOB with criticism because they do not understand the changes in the land register. After inspecting the documents, the AOB often has to point out, that they have agreed to the map corrections and the area changes and that they have confirmed this with their signature in the minutes.

3.2 Education, science and research

3.2.1 Education

Introduction

109 cases

In 2023, the AOB recorded an above-average number of cases (109) in the area of education (schools). 50 cases related to school education and 41 to services law, the rest to other areas. In contrast to 2022, when the focus was on school measures against COVID-19, the cases were spread across several key areas.

Several main topics

As an after-effect of the COVID-19 protective measures, there was an increase in problems with home schooling. There was a significant number of complaints in connection with the recalculation of teachers' salaries, which was necessary due to relevant case-law of the European Court of Justice (in particular procedural delays, especially at the Vienna Department of Education). Also worth mentioning are complaints due to fears of organisational deterioration at the Federal Institute for the Education of Deaf Persons and the AOB's efforts to improve the educational opportunities of children with disabilities (see the following point).

Improving the position of children with disabilities in the school system

Right to a voluntary 11th and 12th school year

The AOB repeatedly receives complaints from parents whose children have special educational needs. They would like their children to be taught in compulsory schools for longer than the minimum number of school years stipulated by law. Sometimes they even want their children to attend school for longer than the maximum number of school years stipulated by law. The AOB supports these concerns.

Vienna as a negative example

In Vienna, for example, the AOB criticised the practice of only approving applications for extended school attendance in the voluntary 11th and 12th school year on the condition that there are still enough "remaining places" available. Instead, the AOB argued in favour of allocating places solely based on educational criteria. However, this would require greater personnel resources, which are apparently not (yet) available. There is at least a step in the right direction: since the AOB intervened, parents are informed at the beginning of the school year whether their children will be able to attend school in the following year. However, binding confirmations are still only given at the end of the school year.

Legislative proposal of AOB rejected

Several years ago, the AOB advocated for the abolition of the rigid statutory maximum limits for compulsory school attendance and for the duration of school attendance to be determined based on educational standards solely. This demand has not yet been implemented. The Federal Ministry

of Education, Science and Research also rejected the AOB's most recent legislative initiative (launched in line with a citizens' initiative) to establish a legal entitlement to a voluntary 11th and 12th school year. Instead, the Ministry of Education, Science and Research referred to the "National Action Plan on Disability 2022-2030" adopted by the Federal Government on 6 July 2022. However, this does not contain any measures to this effect in its chapter on education (pp. 76 et seq.). Nevertheless, the Ministry of Education, Science and Research has taken organisational steps to reduce the large number of refusals of voluntary 11th and 12th school years in Vienna.

Legal entitlement to inclusion rejected

In Article 24 of the CRPD, the states parties, including Austria, undertake to offer persons with disabilities an "inclusive education system". However, the Austrian legal system does not provide for an individual legal entitlement to inclusive education. The AOB suggested that the Ministry of Education, Science and Research should launch a legislative initiative to close this gap.

Sections 8 et seq. of the Compulsory School Education Act (*Schulpflichtgesetz*) already provide for a proceeding in the current version that allows for inclusive schooling in mainstream classes and prioritises the will of parents. However, this path to inclusive schooling is subject to official discretion and resources (cf. in particular Sections 8 (2) and 8a (1) Compulsory School Education Act). Therefore, these provisions should be amended to explicitly establish a legal entitlement to inclusive schooling. In the opinion of the AOB, the principle of "in case of doubt, in favour of inclusion" should be enshrined.

No questioning of established institutions

However, institutions intended for children with disabilities - such as special education centres - should continue to be available if parents - after appropriate information and consultation - would prefer their children to be taught in institutions that offer specialised education. The same applies if a professional determines in individual cases that fulfilling the parents' wish for inclusive schooling would clearly run counter to the requirement to provide the best possible support for the child (Section 8 (1) last sentence of the Compulsory School Education Act).

The Federal Ministry of Education, Science and Research also rejected this legislative recommendation by the AOB and again only referred to the "National Disability Action Plan 2022-2030". However, this plan does not contain any measures in its chapter on education (pp. 76 et seq.) that would take up the AOB's recommendation.

Delayed official decision on home schooling

Delayed notification by Vienna Department of Education

A woman contacted the AOB in May 2023. She had reported home schooling for her sons on time in June 2022. She had received the positive notification for one son at the end of 2022, but was still missing the one for the other son, despite repeated requests to the Vienna Department of Education over a

period of months and although she had duly conducted the reflection meeting for both children. The examining school needed the positive notification in order to conduct the examination and urged her to provide it quickly.

After the AOB intervened, the woman was informed right away and as a result, the second son was also able to take the external exam without any problems. The Vienna Department of Education justified the long delay with "technical problems". As this answer was unsatisfactory, the AOB approached the Federal Ministry of Education, Science and Research again. In doing so, it started *ex officio* investigative proceedings and requested information regarding all external pupils in home schooling in Vienna for the school year 2022/23 as to when they had received positive notifications or refusals of home schooling.

Subsequently, the Ministry of Education, Science and Research and the Vienna Department of Education informed the complainant that the delay was due to incorrect electronic filing: the de-registration of the second son had been recorded at the same time as that of the first son and then inadvertently not processed further. Organisational changes at the Vienna Department of Education – the legal department now processes all de-registrations for home schooling – had also had an aggravating effect.

With regard to the general situation, it was stated that positive notifications and refusals for home schooling for the 2022/23 school year were issued in the following chronological order (figures based on projections by the Vienna Department of Education):

De-registration for home schooling		
month	**number of positive notifications**	**number of refusals**
August 2022	20	1
September 2022	80	21
October 2022	300 (!)	13
November 2022	25	12
December 2022	10	–
January 2023	5	–
April 2023	1	–
May 2023	1	–

For most pupils, it was therefore not clear until long after the start of the new school year whether they would be spending it at home or at school.

Follow-up problems

In view of these statistics, the AOB asked what measures the Vienna Department of Education had taken to better ensure the undisturbed

exercise of the constitutional right to home schooling in the future. The Vienna Department of Education replied that they had employed a trainee as of 1 September 2023 - and not in the crucial summer period.

The mother reported on the situation in the 2023/24 school year, which continued to be problematic: although the Vienna Department of Education issued the positive notification for home schooling for the second son about a week after de-registration, the first son was not informed until the beginning of the current school year. It had been difficult to obtain schoolbooks. These only arrived about a month after the start of the school year. This meant that the children lost school time during which they could have been working with the books if they had been properly informed.

Staff increase required at Vienna Department of Education

As early as 2022, the AOB found significant procedural delays after de-registration for home schooling (see Annual report 2022, volume "Monitoring Public Administration", p. 62). The situation has not changed since, or in a way that is hardly noticeably. The AOB therefore suggested that the legal department of the Vienna Department of Education be seriously staffed up (at best temporarily for the crucial period during the summer holidays). Furthermore, organisational improvements in the distribution of schoolbooks would be appropriate.

Voluntary 10th school year after home schooling

First accepted, then delayed cancellation

At the beginning of May 2022, the mother of a boy with a disability applied to the Lower Austria Department of Education for a voluntary 10th school year in the 2023/24 school year. The student had previously been in home schooling. Substantiated by a specialist report, returning to school now appeared to be the right course of action. At the beginning of June, the Lower Austria Department of Education informed the woman that her son would be allowed to attend school, and included a list of schools that could be considered. This was followed by an educational interview, which she experienced as positive and which was attended by staff from the Lower Austria Department of Education. However, to her surprise, she received a rejection from the Lower Austria Department of Education by the end of June. The mother did not receive the official notification until the beginning of October 2023 and lodged an appeal. By the editorial deadline for this report, the proceedings were still open.

Prior to the notification, the AOB attempted to reach a solution with the Lower Austria Department of Education and the Federal Ministry of Education, Science and Research. The legal situation is complicated and depends on the individual case. The Lower Austria Department of Education and the Ministry of Education, Science and Research justified their refusal by stating that external pupils are not pupils within the meaning of the Austrian School Education Act (*Schulunterrichtsgesetz*) or Compulsory School Education Act,

which is why the provisions for voluntary additional compulsory school years are not applicable to them.

Violation of equality principle and UN CRPD?

The AOB argued against this interpretation of the term "pupil" on the grounds of constitutional law: There is no apparent objective justification as to why external pupils should be disadvantaged compared to "regular" pupils when it comes to the issue of voluntary additional compulsory school years. Furthermore, this would amount to penalising children with disabilities who make use of the right to home schooling for this very reason. Finally yet importantly, such an approach would also contradict the UN CRPD, which focuses on the real (educational) needs of the child with regard to educational support, regardless of the child's formal "starting position" (here: home schooling or regular school attendance).

Amendment to the law rejected

Due to the court proceedings and the independence of the judiciary, it is not within the AOB's remit to asses the question of the boy's schooling. However, it criticised the delay in the official decision. If the decision had been made earlier, a successful appeal would have given the boy the chance not to miss too much of the current school year. The AOB's arguments also apply to a legal improvement for external pupils with disabilities. In its correspondence with the Lower Austria Department of Education and the Federal Ministry of Education, Science and Research prior to the court proceedings, the AOB therefore already criticised the complicated regulation of voluntary compulsory school years and suggested to simplify it. The Ministry rejected this improvement as well.

Delays in the completion of vocational school-leaving exams

The Vocational School-Leaving Examination Act stipulates that the competent Federal Minister must specify the exams for master's certificates, aptitude tests and other examinations that would ensure that this specific subject area is not included in the vocational school-leaving exam (*Berufsreifeprüfung*), which makes the exam considerably easier for the candidates. This ministerial legal act is called "Regulation on the omission of examination subjects in the vocational school-leaving examination" (*Verordnung über den Ersatz von Prüfungsgebieten der Berufsreifeprüfung*).

5 year waiting period

In 2018, the Ministry of Education, Science and Research issued an organisational statute for schools for social care professions. However, examinations at these schools did not initially lead to cancelling the relevant subject area in the vocational school-leaving exam, as they had not yet been included in the regulation. After that still had not happened in autumn 2022, a candidate for this exam contacted the AOB. The Ministry of Education, Science and Research assured the AOB that they would amend the regulation in the course of 2023. The AOB criticised the long delay in this

simple amendment, which is nevertheless important for the candidates of these exams.

Shortage of places in secondary schools

Positive development in Feldbach and Hermagor

The shortage of places in secondary schools has been a concern for the AOB for some time. One recent focal point was the Feldbach area in Styria. The AOB was already able to observe positive developments there in 2022 (see Annual report 2022, volume "Monitoring Public Administration", pp. 59 et seq.). For example, a separate secondary school site was established in Feldbach with the prospect of two classes per grade level. The positive trend continued in 2023. Initially, there were delays in assessing the demand for school places. The Federal Ministry of Education, Science and Research approved the Styrian Department of Education to run two classes per grade level for the lower grades at the Federal Secondary School Feldbach (*BORG/BRG Feldbach*). The AOB also received a complaint about a similar problem in the Hermagor area in Carinthia. However, the person concerned withdrew his complaint before investigative proceedings were initiated. He reported on the establishment of a lower secondary school class and the planned academic secondary school with eight classes in this region.

Delays in salary calculations

Problems with salary calculations at Vienna Department of Education

There have been no such positive developments with regard to procedural delays in the calculation of teachers' salaries (seniority) (see most recently Annual report 2022, volume "Monitoring Public Administration", pp. 63 et seq.). The Vienna Deparment of Education in particular still seems to have difficulties in carrying out such calculations in a timely manner.

Reduction in salary value due to inflation

In one case, a teacher was only paid correctly in his third year of service after the AOB intervened to finalise his calculation of prior service. Until then, he had to make do with a "provisional" monthly salary reduced by approx. 400 euros net. For one teacher, the calculation took a similarly long time. Another teacher had to wait around five years until the calculation was finalised after the AOB intervened. Similar complaints are also currently pending with the AOB. High inflation increases the disadvantage of such delays because the value is reduced by late payments. The AOB will report on further developments.

Problems in math lessons

Pedagogical deficiencies

Concerned parents contacted the AOB anonymously as there were difficulties in maths lessons at a higher technical school (*HTL*) in Vienna. Pupils were frustrated and frightened. Parents reported that conversations with the teacher concerned during office hours led to her treating children

in a derogatory manner in front of the whole class. In view of this, the AOB initiated *ex-officio* investigative proceedings.

According to the statement of the Federal Ministry of Education, Science and Research, there was a major drop in performance in the class in the school year 2022/23. Two out of three maths tests had to be re-taken due to the poor results, and 46.15% of pupils were given a negative maths grade in the school report. The Federal Ministry also confirmed a rumoured statement by the teacher that she did not care how many children she taught next year.

Countermeasures taken

After the AOB intervened, the school supervisory authority contacted the school and the management took extensive and professional measures. As a first step, a feedback meeting helped to address discrepancies and ensure that all pupils were treated with respect. In addition, the school supervisory authority requested classroom observations. The plan for the 2023/24 school year also included increased team teaching and an evaluation of the first maths test results in conjunction with a feedback meeting in the presence of the school supervisory authority. As there were no further complaints to the AOB as a result, the measures are likely to have achieved positive results.

3.2.2 Science and research

Introduction

In 2023, 33 complaints related to science and research. The focus was on the implementation of regulations in the area of academic affairs (15) and matters relating to tuition fees and student grants (7).

Allocation to the EU quota for the university entrance qualification examination for human medicine

75 % of university places reserved

In accordance with Section 71c (5) of the Universities Act (*Universitätsgesetz*), 75% of the university places in human medicine are reserved for holders of "school-leaving certificates issued in Austria", i.e. generally Austrians ("Austrian quota"). The Austrian quota also includes persons whose school certificates are deemed to have been issued in Austria based on the Regulation on Eligible Groups of Persons (*Personengruppenverordnung*). This regulation covers persons who have a certain close connection to Austria (e.g. five years of main residence in Austria, children of diplomats, graduates of Austrian schools abroad, etc.). 20% of the universtiy places are available to EU citizens ("EU quota"); 5% for foreign nationals.

University entrance qualification with EU quota

An Austrian citizen who took a university entrance qualification examination for the "Medical Studies" group at the Medical University of Innsbruck turned to the AOB. He criticised the fact that although he was entitled to take part in the selection process for studying human medicine, he was placed in the

20% EU quota. This drastically reduced his chances of success. For example, there are "only" 900 applicants on average for 300 universtiy places in the Austrian quota at the Medical Universtiy Innsbruck. In contrast, around 1,400 people apply for the 70 places in the EU quota.

The Ministry of Education, Science and Research said that an Austrian university entrance qualification certificate is not the same as a school-leaving certificate within the meaning of Section 71c (5) of the University Act. As a consequence, the holders of these certificates are not included in the 75% Austrian quota. An allocation could lead to the European Commission questioning the agreement on the quota regulation with regard to the prohibition of discrimination against EU citizens based on nationality. The AOB considered the view that the current legal situation allows the allocation of holders of Austrian university entrance qualification certificates to the EU quota to be legally justifiable.

However, the purpose of reserving 75% of the university places for holders of school-leaving certificates issued in Austria or persons listed in the Regulation on Eligible Groups of Persons is to enable a large proportion of Austrian citizens or persons with a close connection to Austria to study human medicine. According to the legislators, this aims to ensure a balanced, accessible and high standard of medical care for the population. A university entrance qualification certificate enables participation in the entrance test to the same extent as a school-leaving certificate.

AOB recommends changing the legal situation

For reasons of equal treatment, the AOB therefore believes that a regulation would be appropriate that also provides for the allocation of holders of Austrian university entrance qualification certificates to the 75% Austrian quota, at least if these persons have a close relationship to Austria. As a regulation like this would be based on the country of issue of the university entrance qualification certificate and not on nationality, as is already the case with school-leaving certificates, the AOB does not see any additional problems with regard to the ban on discrimination mentioned by the Ministry. The AOB suggested a change to the legal framework.

Ministry open to discuss change

The Ministry announced that after "clarification of the legal framework [...] it is not averse" to including graduates of the Austrian university entrance qualification examination to study human medicine in the selection process in the Austrian quota and to "put this up for discussion in the course of an amendment of the necessary provisions".

Including British academic degrees in public documents

One complainant criticised that academic degrees awarded at educational institutions in the UK before its withdrawal from the EU are no longer entered in Austrian public documents since Brexit.

Registration no longer possible since "Brexit"

Austria generally permits the use of such a degree. However, according to Section 88 (2) of the Universities Act, the possibility of registration is limited to academic degrees from a "domestic post-secondary educational institution, a recognised post-secondary institution of another contracting party to the EU Treaty of Accession, or another contracting party to the Agreement on the European Economic Area". The Universities Act does not contain an explicit (transitional) provision according to which registration would also have to take place if the academic degree was awarded before "Brexit" but the British educational institution was not an educational institution within the meaning of the cited provision at the time of the assessment of eligibility for registration.

Change in the legal situation in prospect

According to the legal opinion of the Federal Ministry of Education, Science and Research and the Federal Ministry of the Interior, there has been no legal entitlement to the registration of such an academic degree since 1 January 2021. However, the Ministry of Education, Science and Research, in consultation with the Ministry of the Interior, is examining a legal amendment to enable the registration of awarded academic degrees even after the UK's withdrawal from the EU. For reasons of equal treatment alone, the AOB is in favour of a legal clarification that academic degrees must be registered in any case if they were awarded before 1 January 2021 at recognised educational institutions in the United Kingdom.

Duty of universities to make decisions

University bodies must apply the General Administrative Proceeding Act (*Allgemeines Verwaltungsgesetz*) in official matters. This means, among other things, that unless otherwise stipulated in the administrative regulations, they are obliged to issue a decision on applications "without undue delay, but no later than six months after receipt" (Section 73 (1) of the General Administrative Proceeding Act). In some cases, the maximum period of six months was exceeded, in some cases considerably.

University of Vienna does not decide for two years

For example, the competent body of the University of Vienna did not issue a decision on a student's application in April 2021 to extend the deadline for completing her degree programme for more than two years. The University gave no reasons for this.

In May 2021, a student submitted applications to the University of Vienna for the acceptance of a publication or an exposé as a dissertation. This was initially not discussed for more than two years with reference to proceedings conducted at the Federal Administrative Court, although the applications in question were not the subject of the final court decision.

University of Innsbruck delayed in initiating proceedings

In another case, a man applied for admission to a Master's degree programme at the University of Innsbruck at the beginning of October 2022. The university did not process the application until mid-January 2023, citing

a very high number of applications for the programme in question and the time-consuming examination of the admission requirements. However, the AOB was unable to understand what reasons prevented the university from initiating the proceedings and at least handing out hinformation about which documents that had to be submitted.

Cost contribution for the assessment of foreign educational qualifications

The AOB dealt with the fact that the Federal Ministry of Education, Science and Research charges a fee of at least 150 euros for the assessment of a foreign higher education qualification in accordance with the Recognition and Assessment Act (*Anerkennungs – und Bewertungsgesetz*).

Ministry considers cost contribution appropriate and necessary

The Ministry justified the cost contribution with very high application numbers. This was appropriate and was to be understood as a "regulatory measure". The assessment of a university degree was an expert opinion within the area where the administration acted as a private entity. As the principle of legality only applied to sovereign administration and therefore did not affect the actions of the State in the context of private administration, a statutory authorisation for the implementation of cost contributions for the assessment under the Recognition and Assessment Act was not necessary. Furthermore, the Ministry pointed out that the Austrian Integration Fund (*Österreichische Integrationsfonds*) reimburses the cost contribution under certain conditions upon application.

Law does not provide for cost sharing

The Recognition and Assessment Act, which authorities have to enforce, explicitly grants persons with foreign educational or professional qualifications the right to an assessment in accordance with Section 6 (2), without making access to the assessment dependent on cost contributions. This may be because the law was enacted with the aim of simplifying the proceedings for recognising foreign educational and professional qualifications.

The AOB therefore recommends - irrespective of any reimbursement by the Austrian Integration Fund, to which there is no legal entitlement - that an explicit legal basis for cost contributions in proceedings under the Recognition and Assessment Act be created in the interests of legal certainty, should such a basis correspond to the legislator's intention.

3.3 European and international affairs

Introduction

Number of complaints doubled

There was a further increase in complaints in the area of the Federal Ministry of European and International Affairs. While the AOB recorded 47 complaints from this area in 2022, almost twice as many complaints (89) were received in 2023.

Assumption of non intention to re-enter the country

As in the previous year, most complaints related to visa proceedings before Austrian embassies. In most cases, visa applicants complained that the Austrian embassies carelessly assumed that the applicants did not intend to return and that the decisions were not sufficiently justified. This, in turn, leads to the applicant either taking the relatively expensive legal remedy of an appeal or giving up. Currently, they have to pay a fee of 200 euros to lodge complaints with the Federal Administrative Court against decisions by the Austrian representation authorities.

Black market for appointments in Iran

The suspicion that appointments to apply for visitor visas had been traded by the private service provider VFS in Tehran, which had already been expressed to the AOB several times in 2022, was confirmed by new complaints in this regard. The Federal Ministry of European and International Affairs investigated the allegations and took measures at the end of 2022 to counteract the illegal black market in this regard (see section 3.3.1).

Consular protection of dual nationals

Moreover, the AOB became aware of the problem of granting consular protection to persons with dual citizenships. Two persons concerned independently accused two Austrian embassies of not granting them consular protection or not granting them sufficient consular protection in emergencies.

3.3.1 Trade with application appointments – Austrian Embassy Tehran

Black market

Iranian nationals contacted the AOB because there were no appointment booking options for applying for visitor visas. On the website of VFS Global, the service company responsible for coordinating such appointments in Iran, did simply not show any available appointments, regardless of the time of day or night. On the "black market", on the other hand, it was possible to obtain appointments for applications without any problems but paying for it. Neither the Austrian Embassy Tehran nor VFS responded to their complaints in this regard.

Changes to the booking system

As in the previous year, the Federal Ministry of European and International Affairs stated to the AOB that it was aware of the general problems in connection with appointment bookings in Iran and was taking the reports

very seriously. Already in 2022 technical computer measures and changes in the booking system were implemented. The changes aim to make it impossible to cancel appointments booked with VFS and to book slots, which had become free with other names. This in turn should prevent that fictitious appointments are booked, sold and rebooked in the name of the "customer" after the original appointments had been cancelled.

Despite the measures taken, the AOB also received complaints about alleged sales of appointment in 2023. The Ministry responded that, until further notice, the Austrian Embassy Tehran itself was now responsible for applications for visitor visas for family members and friends.

Personal support from the Consul

Since the beginning of June 2023, the calender for "Visiting family members/ friends" appointments was managed directly by the embassy and no longer by VFS. The consul managed the calendar exclusively in person. This meant that the Austrian Embassy Tehran had direct and immediate access to the calendar administration and could rule out manipulation now, as they could fully trace the actions of all persons involved. Furthermore, the embassy implemented further technical measures to prevent misuse of the appointment booking system. In the event of concrete suspicions, these would be forwarded immediately to the Austrian Ministry of the Interior or the Federal Criminal Police Office.

Demand for appointments too high

At the same time, however, the Ministry of European and International Affairs emphasised that the demand for appointments obviously far exceeds the slots available. Even if the appointment booking system is improved, this problem cannot be solved to everyone's satisfaction. For capacity reasons, they cannot significantly increase the number of appointments available. The AOB remains in ongoing contact with the Ministry regarding the allocation of appointments for visitor visas in Iran.

3.3.2 Missing improvement orders – Austrian Embassy Tehran

An Iranian national living in Austria invited his parents and cousin to visit Austria. The Austrian Embassy in Tehran issued negative decisions, against which the Iranian living in Austria made an appeal "on behalf" of his parents and cousin in February 2023. With the administrative decision addressed to his parents and cousin, the Austrian Embassy Tehran rejected his appeal.

Rejections without improvement orders

The Ministry stated that the applications had been rejected "after a thorough examination by the embassy" at the end of January 2023 by means of an emergency administrative decision. The appeals were made to the embassy in writing in February 2023. As the inviting party had no authorisation and "the applicants did not make an appeal themselves", the embassy rejected the requests. The rejection had been send to the applicants by recorded delivery.

The embassy did not issue an explicit order for improvement to submit an authorisation form subsequently. From the point of view of the specialist division, it would have been more correct to issue an improvement order indicating the formal deficiency and subsequently reject the request. With regard to the substantive decision to refuse the visa, "nothing would have changed from the point of view of the specialist division". As stated in the instructions on the right to appeal, a written complaint could be submitted to the Federal Administrative Court within four weeks of notification of the decision in accordance with Section 7 (4) of the Federal Act on Proceedings of Administrative Courts (*Verwaltungsgerichtsverfahrensgesetz*). This would have to be submitted to the Austrian Embassy Tehran. The appeal period ended in mid-March 2023.

On the one hand, the AOB pointed out that the inviting party had appealed against the emergency administrative decision. If there was in fact no authorisation, the legally correct approach of the embassy should have been to address the rejection notice to him, due to his lack of status as a party.

If one assumes - as the Austrian Embassy Teheran apparently does - that the applicants themselves appealed against the negative decision via the submitting party without submitting an authorisation form, they should have received improvement orders before their appeals were rejected pursuant to Section 13 (3) in conjunction with Section 13 (4) of the General Proceeding Act.

Within the meaning of Section 57 (2) of the General Administrative Procedure Act in conjunction with Section 18 of the Consular Act the legal remedy of an appeal constitutes a written submission within the meaning of Section 13 (2) of the General Administrative Procedure Act. According to Section 13 (3) of the General Administrative Procedure Act, deficiencies in written submissions do not authorise the administrative authority to reject them. Rather, the administration must arrange for their immediate rectification ex officio. It may order the applicant to rectify the deficiency within a specific period with the effect that the application will be rejected if this period expires without result. If the defect is rectified in due time, the application shall be deemed to have been originally submitted correctly. Pursuant to Section 13 (4) of the General Administrative Procedure Act, paragraph (3) applies mutatis mutandis in the event of doubts about the identity of the applicant or the authenticity of a submission, with the provison that the submission is deemed to have been withdrawn if the deadline expires without result.

Violation of the right to trial before legally competent judge

The rejections without prior proceedings for improvement were to be qualified as a refusal to rule on the merits. This violated the right to a trial before a legally compentent judge. The AOB therefore criticised the proceedings of the Austrian Embassy Tehran as a case of maladministration within the meaning of Art. 148a (1) Austrian Federal Constitutional Law.

Only the fact, that the submitting party stated to the AOB that his relatives had now decided to appeal against the negative decision despite the high fees involved, prevented the AOB from recommending that the Federal Ministry for European and International Affairs shall cancel the rejection notice in question pursuant to Section 68 (2) of the General Administrative Procedure Act.

3.3.3 Assumption of non intention to re-enter the country – Austrian Embassy Moscow

An Austrian citizen living in Russia complained about the Austrian Embassy Moscow. She and her husband, a Russian national, were residents in Russia and had wanted to visit her mother in Austria.

Evidence of belonging provided

Her husband applied for a visitor visa in August 2022 and submitted all the documents and papers mentioned in advance. Among other things, he submitted an employment certificate from his employer, which proves a permanent employment relationship, as well as a statement from his bank account to prove his regular income. He had also provided proof of his property ownership in Moscow and the proper use of his previous Schengen visas, as well as his flight tickets and insurance confirmations. Despite the documents submitted, the Austrian Embassy Moscow initially rejected the application by means of an emergency administrative decision and subsequently by an administrative decision in October 2022 because the embassy did not recognise an intention to re-enter the home country and had reasonable doubts about the purpose of the stay.

When reviewing the file of the proceedings, the AOB noticed that the reasons for the Austrian Embassy's negative notification, were limited to the following statements: "You submitted your application within the deadline. After examining the documents and explanations you submitted, reasonable doubts were identified: Proof of return to your home country was not provided. No or incomplete documents were submitted. Your property ownership and your professional activity also show that you have few social roots, which means that you cannot provide evidence of a secure return. Furthermore, there are reasonable doubts regarding the credibility of your statements about the purpose and conditions of the journey."

Negative decision does not give reasons

The Ministry's explanations to the AOB regarding the reasons for the refusal of the requested visitor visa (regarding the return flight tickets only to Yerevan, the mobilisation of the conscripts, and the lack of travel within the Schengen area) are not reflected in the reasoning of the present notification. The reasoning does not contain any comments on the return flight tickets or the mobilisation of the conscripts in Russia, nor on why the purpose of the visit (the visit to the seriously ill father-in-law was stated)

did not appear credible. Neither did the embassy mention the fact that the Russian applicant's wife, an Austrian citizen, lives in Russia together with her husband.

According to the AOB's legal opinion, the justification of the decision of the Austrian Embassy Moscow was inadequate, which is why it established a case of maladministration pursuant to Art. 148 a (1) Austrian Federal Constitutional Law.

3.3.4 Proof of roots in the home country for younger persons – Austrian Embassy Moscow

Assumption of non intention to re-enter the country

An Austrian wanted to invite his stepdaughter, who lives in Moscow, to Austria for a three-week visit. His wife, who lives with him in Lower Austria, and his stepdaughter had not seen each other for some time. In the course of the application in Moscow in March 2023, his stepdaughter had submitted his electronic letter of guarantee and all the necessary supporting documents. The embassy had initially issued an emergency administrative decison and subsequently an administrative decision rejecting the application. The reasons given by the Austrian Embassy Moscow were not comprehensible. They implied that his stepdaughter had no intentions to want to leave Austria again and that she had not credibly explained the purpose of the journey.

Refrence to high costs

He had refrained from lodging a complaint. The complaint would involve high costs and would have to be lodged with the embassy again, which in his view was biased. A visit in the originally planned period was no longer possible anyway.

Visit of the biological mother denied

The file of the proceedings submitted via the Ministry for European and Foreign Affairs showed that the stepdaughter had stated that the reason for the desired stay was to visit her mother and stepfather living in Austria. The daughter had submitted the flight tickets for the outward and return flights and her stepfather's electronic letter of guarantee, which was classified as viable. The visa was refused in an emergency administrative decision issued by the Austrian Embassy Moscow in March 2023 because the "information provided about the purpose and conditions of the planned stay was not credible" and there were "reasonable doubts" about the intention to return.

The Stepdaughter, who lives in Russia, appealed against the negative decision, arguing that she was working at an internet company in Moscow and did not want to lose her employment. She wanted to spend her holiday with her biological mother, whom she had not seen for over a year. She enclosed a confirmation of the flight tickets she had already paid for, a confirmation of employment, as well as her mother's passport and marriage certificate.

In March, the legal remedy was rejected, citing the same two reasons as in the emergency administrative decision. In its statement of reasons, the Austrian Embassy Moscow merely stated that the Russian national had not succeeded in proving her roots in Russia.

In its statement to the AOB, the Embassy added that the Russian woman had a permanent residence in Moscow and was unmarried. She works for a company in Moscow and earns 800 euros per month. Her last Schengen stay was in 2020, so the Russian woman could not show "any recent travelling activity".

Lack of travel during the COVID-19 pandemic is interpreted negatively

The extent to which the lack of travelling during the COVID-19 pandemic in the last two years could substantiate the authorities' assumption of a lack of intention to return, or the implausibility of the purpose of the trip, remained unclear to the AOB. It was also not clear to what extent the purpose and conditions of the stay could not be "credibly" explained. The Russian stepdaughter of the Austrian stated that she wanted to visit her mother living in Austria, whom she had not seen for over a year. The submitted birth certificate and her mother's marriage certificate proved their first-degree relationship. The AOB therefore also found a case of maladministration in accordance with 148a (1) Austrian Federal Constitutional Law due to a lack of justification.

Visiting first-degree relatives not a credible purpose

Irrespective of the present investigative proceeding, the AOB raises the question of how the purpose of the desired stay could generally be presented more "credibly" to the Austrian authorities, especially in the case of visits by first-degree relatives.

In this case, an - insufficiently substantiated - assumption by the Austrian Embassy Moscow meant that a childless and unmarried applicant born in 1999 was unable to see or visit her mother, who lives in Austria.

3.3.5 Fee for lodging a complaint with the Federal Administrative Court – Austrian Embassy Islamabad

200 Euro fee

A Pakistani national complained to the AOB about the Austrian Embassy Islamabad, among other things. From her point of view, the Embassy charged an excessive fee of 200 euros for lodging an appeal with the Federal Administrative Court against the negative outcomt of her visa application.

Consular Fees Act

The AOB first pointed out that the collection of this fee was regulated by law in Section 15 (5) of the Consular Fees Act (*Konsulargebührengesetz*) in conjunction with the Annex to Section 1 of the Consular Fees Act and therefore could not be held against the Austrian Embassy Islamabad. According to Section 15 (5) of the Consular Fees Act, the processing of a

complaint, which pursuant to Section 12 of the Proceedings of Administrative Courts Act must be submitted to an Austrian representation authority abroad as relevant authority, and its forwarding to an administrative court require payment of the prescribed fees. In accordance with the Annex to Section 1 of the Consular Fees Act, Tariff Item 1, Annex 6, the fee specified for this is 200 euros.

The fee for filing complaints with the Federal Administrative Court and the Administrative Courts of the *Laender*, as set out in Section 2 of the Ordinance of the Federal Minister of Finance on the fees for submissions to the Federal Administrative Court and the Administrative Courts of the *Laender*, amounts to only 30 euros. Therefore, the AOB indeed considers the fee of 200 euros, as set out in the Annex to the Consular Fees Act, for filing a complaint with an administrative court via the Austrian Embassy, to be too high. The AOB therefore asked the Federal Ministry for European and International Affairs to comment and explain the reasons for 200 euros stipulated in the annex to the Consular Fees Act.

Justification of the Ministry

The Ministry replied that the legislators had introduced a consular fee of 110 euros for lodging a complaint against notifications by representation authorities in visa matters, with the amendment of the Consular Fees Act 1992, the Sanctions Law 2010, the Foreign Exchange Act 2004, and the National Bank Act 1984 in 2013. This decision was adopted with the votes of all parliamentary groups represented in the National Council except that of the "*Bündnis Zukunft Österreich*". With the Budget Accompanying Act 2018-2019 (*Budgetbegleitgesetz*), the legislator increased this consular fee to EUR 200 and extended it to all complaints against notifications in consular matters.

New application as alternative to legal remedy

Furthermore, the Ministry pointed out to the AOB that the applicants are "at liberty" to submit new visa applications "if the circumstances or framework conditions of the intended travel movements have changed, as a result of which the [high] appeal fee does not apply."

Proposal undermines system of judicial protection

The AOB stated that the purpose of filing a complaint with the Federal Administrative Court is to investigate exactly this Austrian representation authority. The argument that visa applicants could "simply" submit a new application to the same authority - which would be cheaper than lodging an appeal - instead of lodging an appeal with the independent Federal Administrative Court (in the event of a change in circumstances) would undermine the established system of judicial protection.

In this context, the AOB also referred to its statement in the Annual Report 2022 (Volume "Monitoring Public Administration", p. 68), according to which - not only filing a complaint to the Federal Administrative Court, but also a new application is an insurmountable financial hurdle for many visa applicants.

3.3.6 Granting consular protection – Austrian Embassy Tunis

Arrest of a person with dual citizenship

A man with Austrian-Tunisian dual citizenship and his mother were arrested at the airport in Tunis at the beginning of their summer holiday together. The dual national complained to the AOB that the Austrian Embassy Tunis did not grant him any or insufficient consular protection. His mother and he had spent six days in a Tunisian prison under very harsh conditions. After their release, they were not allowed to leave Tunisia for 30 days. Although he was an Austrian citizen and had never accepted his Tunisian citizenship, the Austrian Embassy Tunis did not help him.

The AOB first explained to him that an explicit assumption of Tunisian citizenship was not necessary. The AOB could not understand why he would not have been aware of his Tunisian citizenship. It also clarified that Austrian citizenship law does not permit dual or multiple citizenship. According to the AOB's state of knowledge, Tunisian nationals are currently denied the release from citizenship, which is why his case presumably resulted in dual citizenship.

No consular protection in case of arrest

Granting consular protection in the event of arrest or detention is laid down in Section 3 (2) (1) Consular Law. Paragraphs 3 and 4 define the conditions to restrict or refuse the granting of consular protection - including if the person concerned is a citizen of a third country in addition to Austrian citizenship. However, these requirements only refer to paragraph 2 (3 to 5) and do not apply in the event of arrest (subparagraph 1). The AOB therefore requested an informative statement from the Federal Ministry for European and International Affairs. In particular, the AOB requested the Ministry to explain the legal basis for not granting or restricting consular protection in the present case.

Possibilities of Austrian Embassy very limited

The Ministry subsequently issued two statements on the complaint of the dual national and included the correspondence of the Austrian Embassy in Tunis. The Ministry essentially pointed out that under Austrian law persons with dual citizenships are treated exclusively as Tunisian nationals in Tunisia. For this reason, the possibilities for the Austrian representation in Tunisia to help them were very limited.

Many states, including Tunisia, simply reject the principle of diplomatic protection for dual nationals with effective or predominant citizenship. Therefore, from an international law perspective, this principle could not be opposed in Tunisia. From the Tunisian authorities' point of view, the provision of information to the Austrian Embassy on detention cases involving dual Austrian-Tunisian citizens was not in accordance with Tunisian law and other legal provisions. The same applied to the authorisation of detention visits and trial observation by representatives of the embassy.

No warning on the Ministry's website

The AOB suggested publishing a warning notice for Tunisian-Austrian dual nationals on the website of the Federal Ministry for European and International Affairs. The Ministry stated that there were currently no comparable cases of detention.

3.3.7 Consular protection in the event of the arrest of dual national – Austrian Embassy Tehran

Imprisonment while shooting a documentary

A man with a dual Iranian-Austrian citizenship has lodged a complaint with the AOB regarding the non-granting of consular protection by the Austrian Embassy in Tehran. The dual citizen alleged that he was arrested by the Islamic Revolutionary Guard Corps (IRGC) in December 2021 during a stay in Iran, while filming a documentary about Kurdish smugglers. He was detained in solitary confinement for 76 days and subjected to torture.

The AOB asked the Ministry to explain what steps the Austrian Embassy Tehran had taken to grant the dual national consular protection pursuant to Section 3 (2) (1) in conjunction with Section 5 (4) of the Consular Act. Furthermore, the AOB requested that the Ministry indicate the date on which the explicit warning for travelling to Iran for dual nationals was added on the Ministry's website.

Non-recognition of citizenship

The Ministry first highlighted the limitations of consular responsibilities to dual nationals and the responses already provided in a parliamentary enquiry on this matter. It stated that the Islamic Republic did not recognise dual citizenship or Austrian citizenship in such a case.

The Ministry has experience in providing intensive consular support to the aforementioned Austrian citizens. This proves that the application of the Iranian legal system - also in relation to Austrian nationals - is not comparable with the application of the legal system in the Republic of Austria. In the present case, the relatives of the dual national did not agree on whether they should mak sue of consular assistance. Furthermore, it had come to light that the man with the dual Iranian-Austrian citizenship might have travelled to Iran with the intention of filming controversial issues in the Islamic Republic of Iran. The dual citizen had told the Austrian Embassy Tehran that he regularly made films as a hobby, e.g. about prostitution and "kolbars". He only showed the films to acquaintances in Austria, which is why he had not applied for a filming permit. Consequently, the Ministry was unable to rule out, that he would have been treated more severely and that the case would have been complicated by politicisation to his disadvantage if the Iranian law enforcement authorities had found out about his Austrian citizenship.

AOB assistance not possible

The Ministry's travel advice regarding Iran, which was publicly available at the time of the arrest, included the following wording: "Photography and

filming using drones, regardless of the purpose, will lead to immediate arrest. [...] The possibilities of support for persons who hold both Austrian and Iranian citizenship are severely restricted in cases of detention." The AOB emphasised to the dual national seeking assistance that it could not take any further steps against this background.

3.3.8 Wrong delivery – Austrian Embassy Islamabad

Criminal record extract only valid for 6 months

A Pakistani national has raised concern about the lengthy processing time at the Austrian Embassy Islamabad. She had required an extract from her criminal record to obtain Austrian citizenship. The complainant had prepared this document at the end of March 2022 and submitted it to the Austrian Embassy in Islamabad for authentication at the end of July 2022. After positive verification, the Austrian Embassy Islamabad had sent her an appointment to appear in person for authentication at the beginning of January 2023. However, this proposed appointment was sent to an invalid email address by mistake, which is why the Pakistani national only found out about it after the proposed appointment and received a new appointment in February 2023. In order to be able to attend the appointment, the Pakistani national's cousin took a day off work and appeared at the Austrian Embassy with an authorisation form and a criminal record extract. After a five-hour wait, the Austrian embassy finally informed the cousin that the criminal record extract had expired.

Delivery to the wrong e-mail address

In response to an AOB's enquiry, the Federal Ministry for European and International Affairs confirmed that the Austrian Embassy Islamabad had forwarded the criminal record extract, which was compiled in March 2022, to a trusted lawyer at the embassy for verification in August 2022 and that the result was positive. The embassy received a corresponding report in September 2022. The notification of the verification result was sent to the wrong email address in December 2022 by mistake. Unfortunately, the embassy was unable to trace whether they had received a notification of undeliverability in the embassy's mailbox. In any case, the letter had not been re-delivered to the correct address. When the embassy assigns appointments for the official certification of verified documents, it does not check which documents are involved. In view of the number of documents and limited personnel resources, this would be too much of an administrative burden, which would lead to further delays for the parties. The Austrian Embassy Islamabad very much regrets the "unsuccessful communication".

Ministry's instruction to Embassy in Islamabad

The Ministry instructed the Austrian Embassy Islamabad to allocate a prompt appointment in the event of a new enquiry, to forward the documents immediately and to have them checked by the lawyer of trust as quickly

as possible in order to ensure that the validity period of the criminal record certificate is observed in future.

3.3.9 Error in forwarding of documents – Austrian Embassy Tehran

An Iranian national stated to the AOB that she had personally submitted entry applications for herself and her four children to the Austrian Embassy Tehran in accordance with Section 35 of the Asylum Act 2005 (*Asylgesetz*) at the end of June 2022. However, only her children's applications appeared at the Federal Office for Immigration and Asylum, not her own. The AOB requested the Ministry for European and International Affairs to contact the Embassy in Tehran and to comment on this in a timely manner.

Request for improvement from the Ministry

The Ministry's enquiries revealed that the Iranian national had also submitted her application to the Austrian Embassy Tehran in person. However, the application had not been sent to the Federal Office for Immigration and Asylum due to an error in the office. In February 2023, the Federal Office for Immigration and Asylum contacted the Embassy in Tehran and pointed out that the application was missing. As a result, the embassy subsequently submitted the application and the documents to the Federal Office for Immigration and Asylum in March 2023. The embassy regretted the mistake. The Ministry asked the Embassy Tehran to pay more attention to the completeness of the applications submitted in the future.

3.3.10 Failure to deal with complaint about Austrian Embassy Prague – Ministry for European and International Affairs

A Czech national requested assistance from the Austrian Embassy Prague in an asylum matter. He complained to the AOB about what he considered to be unfriendly treatment by the embassy staff and the lack of response from the Ministry to his written complaint about the Austrian Embassy Prague.

The AOB asked the Ministry to clarify whether it had responded in any way to the European citizen's written complaint or whether it had actually forgotten to reply or enquire about it.

The Ministry explained that the Austrian Embassy perceived the behaviour described differently. They had informed the person seeking help that the Austrian Embassy did not have jurisdiction and had referred him to the Czech authorities. The person concerned had become very loud and angry. He was then asked to leave the embassy. The Ministry received the man's complaint. However, after consultation with the Embassy in Prague, the competent

specialist division refrained from responding to the complaint in writing "due to the behaviour" of the person seeking assistance.

Verbal statements cannot be verified

The AOB informed the Czech national about the Ministry's feedback, according to which the situation described by him had apparently been perceived differently by the Austrian Embassy Prague. In retrospect, the AOB could not clarify his allegations conclusively, which is why further proceedings in the matter were not expedient.

Feedback on complaint desirable

With regard to the statement that the competent specialist division had refrained from providing written feedback on the complaint "due to the behaviour" of the person seeking assistance, the AOB stated to the Ministry that it would nevertheless have considered a brief, albeit neutral, response to the complaint to be appropriate in the interests of good administration.

3.4 Family and youth

Introduction

In 2023, the AOB dealt with 243 complaints regarding family allowance, childcare allowance and maternity benefit.

Childcare allowance - need for reform

There is still an urgent need for improvement in the area of childcare allowance, both in terms of implementation and at a legal level. The AOB reported on the main problem areas at a press conference in May 2023 and called for appropriate reforms (see section 3.4.2).

Hardship provision extended

The legislature responded to one of the points of criticism and decided to introduce a hardship provision for income-related childcare allowance in October 2023. The reason for the AOB's criticism was a single mother who had not received any childcare allowance following the sudden death of the child's father. This was because the hardship extension in the Childcare Allowance Act (*Kinderbetreuungsgeldgesetz*) provided that one parent could continue to receive the childcare allowance of the partner for a maximum of three months if the partner died. However, this did not previously apply to income-related childcare allowance. In order to support all parents in hardship cases in which one parent is prevented from receiving childcare allowance for certain serious reasons due to the loss of the joint household with the child, regardless of the childcare allowance system chosen, an extension of entitlement will also be granted in the income replacement system in future. However, this can only be utilised for a maximum of two months.

New parent-child booklet

The AOB welcomes the creation of an electronic parent-child booklet through the Parent-Child Booklet Act (*Eltern-Kind-Pass-Gesetz*, Federal Law Gazette I No. 82/2023), even if it will still take some time before implementation (see section 3.4.2). It is also positive to mention that the family time bonus will no longer count towards childcare allowance received by the father from 1 January 2023 and that the limit on additional income for the flat-rate childcare allowance and for the income replacement system has been increased.

Duration of proceedings for family allowance

In the area of family allowances, this year the AOB again received complaints about the long duration of proceedings. The Tax Offices have up to six months to make a decision before an appeal can be made. They usually meet this deadline, albeit within a short time. For many families, however, the "shorter" waiting times of three to four months, which are often common in the experience of the AOB, represent a major financial burden. In 2023, the Austrian Anti-Poverty Network (*Armutskonferenz*) drew attention to the fact that family allowances are of great importance in preventing poverty as a necessary starting point for various transfer and welfare benefits. It also criticised the fact that the centralisation of the Tax Offices has meant

that the personal support that the staff previously provided at the local Tax Offices is no longer available. This was demonstrated by the case of a single mother, who had to resubmit her application due to missing or misleading information from the Tax Office. The process took longer than anticipated, with the Tax Office taking more than four months to grant family allowance for her son. In the case of a young family in which both parents work in Austria, the Tax Office assumed that the mother was employed in Germany, which was clarified after documents were resubmitted. This led to a delay in the proceedings. The family was required to wait a total of almost ten months for the family allowance for one of the two daughters, as well as for the dependent childcare allowance. Furthermore, it was evident that the statements provided by the Family Minister to the AOB lacked clarity on the finalisation of the benefit for the families and the reasons behind the delays.

Errors made by authorities corrected

Administrative errors were also corrected in 2023 and citizen-friendly solutions were found following the involvement of the AOB.

Time limits cancelled

In the case of a family living in Burgenland, the family allowance for the two children born in 2018 and 2020 were only granted for a limited period of approximately two years. The mother is a German citizen who has been living and working in Austria since 2012. The father and the children hold Austrian citizenship. They could clarify the existence of a German bank account with the Tax Office. The mother had submitted the other necessary documents to the Tax Office. Only after the AOB intervened she received the benefit until the children reached the age of majority, i.e. until they turned 18. In the case of Hungarian parents who have been living in Austria since October 2015 and have had the right of permanent residence for EEA citizens since 2020, the family allowance for both children was initially granted for five years and then only for one year. The Family Minister clarified that this had been done in error. The Tax Office cancelled the time limit.

Parents from Upper Austria only ever received the family allowance for their three children for a few months without any objective justification, although the family lives permanently in Austria. The father and the children hold Austrian citizenship, the mother had been recognized as an asylum seeker for several years. After the AOB intervened, the Federal Ministry for Women, the Family, Integration and the Media also granted the family allowance until the children reached the age of majority. This is in line with the recommendation made by the AOB years ago when it determined a case of maladministration and recommended that family allowances for families with a foreign connection should only be limited in time if there are objective reasons, e.g. if one parent only has a temporary residence permit. It further recommended that review periods should be defined appropriately.

Unclear information for students

A family allowance recipient rightly complained that the websites of the Federal Chancellery (www.bka.gv.at) and the information service of

the Austrian administration (www.oesterreich.gv.at) contained unclear or misleading information on the requirements for receiving the family allowance for students. It concerned the question of which proof of academic success within the meaning of Section 2 (1) (b) of the Family Allowance Act (*Familienlastenausgleichsgesetz*) students must provide after the first year of study. In the case of the person concerned, the Tax Office demanded the submission or proof of the seriousness of the son's studies in the form of 16 ECTS points. In contrast to this, the website www.oesterreich.gv.at under the heading "Family allowance for students/proof of academic success" stated: "Subsequently, no proof of academic success has to be provided. However, at the Tax Office's request, the seriousness of the studies must be proven by submitting certificates, as otherwise reclaims cannot be ruled out". The information sheet "Family allowance for students" on the website www.bka.gv.at also contained no reference to the requirement to provide proof of 16 ECTS points for each additional year of study. Instead, under the heading "Payment guidelines for family allowance", it stated "proof of academic success of 16 ECTS points [...] must be provided for the first year of study (one-off proof of achievement)".

The AOB was able to understand that this information could be misleading, especially as both websites are important and frequently visited sources of information on family allowances. In response to a query from the AOB, the Minister for Family Affairs confirmed that, for all subsequent years of study (once the requisite proof of success for the first year of study has been provided), a favourable academic outcome must be verifiable. This is the case if the student pursues their studies seriously and purposefully, if they do not exceed the planned period of study and submit proof of successful completion of courses and examinations. The Minister stated furthermore, that it is essential that there is a clear and visible commitment to achieving educational success.

16 ECTS points (only) as a guideline

This interpretation does not explicitly refer to the achievement of 16 ECTS points. This is in contrast to the Supreme Administrative Court of Austria, which stated (Ra 2017/16/0036) that a quantitatively precise definition of academic achievement must be provided for each academic year. However, the Tax Office is likely to regard the achievement of 16 ECTS points as a guideline for proof of serious and purposeful study, with each case being assessed on its own merits. It should be noted that, for example, a Bachelor's degree programme requires approximately 60 ECTS credits per year (180 ECTS credits for the entire degree programme), meaning that 16 ECTS credits is generally a lower limit.

Ministry corrects websites

The Ministry corrected the wording. On the website www.oesterreich.gv.at, the sentence "In the subsequent years, no proof of academic success must be provided." has been replaced by the following: "For subsequent years of study (once the requisite proof of success for the first year of study has

been provided), success/seriousness and determination in vocational training must continue to exist." On the website of the Federal Chancellery (www.bka.gv.at), the same sentence was added to the information sheet "Family allowance for students" under the item "Payment guidelines for family allowance".

In the case of two mothers who had fled from Ukraine, the family allowance was originally granted for different lengths of time - despite them arriving in Austria at the same time: One of the two received the benefit from March 2022, the other only from April 2022. After the AOB intervened, this was corrected so that both women received the family allowance from March.

Limit on additional income not exceeded

A father from Upper Austria was ordered to repay childcare allowance totalling EUR 2,500 as he had allegedly exceeded the limit on additional income. The AOB explained that this was due to a reorganisation gain from a debt reduction, i.e. it did not represent any real available assets. According to the Supreme Court's case law, reorganisation gains are not to be taken into account for the limit on additional income. The Austrian Public Health Insurance Office then announced an out-of-court settlement of the dispute and a waiver of the reclaim and apologised.

Residence permit for children after birth

The family and childcare allowances are only paid once a residence title has been awarded. However, a family living in Vienna only received a residence title for their son two years after his birth. The AOB was able to prove that this was a case of a child that was born after the parents had received a protection status within the meaning of Section 3 (5) of the Family Allowance Act or Section 2 (1) of the Childcare Allowance Act and that the family benefits were therefore already due from birth.

3.4.1 „Maternity benefit trap“ – legal situation must be remedied

Supreme Court finds infringement of EU law

A number of women have independently approached the AOB, expressing concern that they may be adversely affected by a regulation that the Supreme Court found to be contrary to EU law more than a year ago. Their concerns relate to potential disadvantages in terms of maternity benefit and subsequently childcare allowance.

The women were expecting a second child relatively soon after the birth of their first child. While they received maternity allowance and income-related childcare allowance for the first child, this was not the case for the second child. As their maternity leave for the second child began during parental leave but after the childcare allowance for the first child had expired, they did not receive the maternity benefit under the applicable provisions and consequently no income-related childcare allowance. In such cases, entitlement to maternity benefit is practically limited to instances where a

pregnancy occurred while the childcare allowance was still being paid (a situation known as the "maternity benefit trap").

Maternity Protection Directive is directly applicable

In its judgement of 30 August 2022 (8 ObA 42/22t), the Austrian Supreme Court ruled that this regulation is contrary to Union law and must remain unenforced due to the primacy of European Union law. "The current Austrian legal situation, according to which the plaintiff is unable to claim maternity benefit or continue remuneration due to her maternity leave, is therefore contrary to Union law [...]. The plaintiff may therefore also base her claims in the present proceedings directly on Article 11 (2) (b) of the Maternity Protection Directive 92/85/EEC".

Those affected can therefore invoke the directly applicable provisions of the Maternity Protection Directive vis-à-vis the health insurance carrier (Burger-Ehrnhofer, Austrian Supreme Court 30 August 2022, 8 Ob A 42/22t, DRdA 2023/23). In future, health insurance carriers must therefore refrain from applying those standards, which result in the fact that employees on maternity leave are completely excluded from entitlement to maternity benefits, at least for the 14-week period granted in the Directive. This is applicable even if there is no entitlement to continued payment of remuneration in accordance with the provisions of the Maternity Protection Directive.

Amendment to the law still pending

The AOB considers reorganising of the existing Austrian legal situation necessary in order to avoid a maternity benefit trap that is contrary to EU law. The cited supreme court decision has been available for almost two years, but the law has not yet been amended, nor - as far as the AOB is aware - has a legislative proposal been submitted. It is of the utmost importance that affected parties receive clarification as soon as possible, as they require this information in order to determine whether they are eligible for maternity benefits and, consequently, income-related childcare allowances. Establishing a transparent and legally sound framework, which aligns with EU law would also be highly beneficial for the administration to prevent further court proceedings.

Therefore, the AOB requested information from the Federal Ministry of Social Affairs, Health, Care and Consumer Protection on how they currently ensure enforcement in compliance with EU law and whether and when they intend to take account of the Supreme Court ruling by amending the law. At the time this report was prepared, no final statement was available.

3.4.2 Need for reform of childcare allowance

Press conference May 2023

Complaints received by the AOB in 2023, once again indicated that a reform of the childcare allowance is required in both the area of enforcement and at the legal level. The AOB highlighted the recurring issues at a press

conference in May 2023. However, the AOB is not the only organisation calling for the law to be simplified and improved. Other organisations such as the Austrian Court of Audit and the Chamber of Labour have also been advocating for change.

Simplify and improve the law

A significant number of parents concerned still find the regulations of the Childcare Allowance Act (*Kinderbetreuungsgeldgesetz*) too complex. This is partly due to the flexibility intended by the law. It should enable families to utilise the childcare allowance in different variants and constellations, adapted as far as possible to their respective life situations. Nevertheless, many of those affected turn to the AOB because they have received incomplete or incorrect information from the authorities, who are also often overwhelmed by the legal requirements, and have suffered a financial disadvantage as a result. Furthermore, the law is not family-friendly as errors and mistakes in the application process can in fact hardly or no longer be corrected, despite its extremely complex structure.

No childcare allowance without registered residence

The formal requirement of a joint main residence registration, which is mandatory in the Childcare Allowance Act, repeatedly leads to hardship cases. Parents turn to the AOB because they have to pay back the childcare allowance even though they have always lived together with their children and looked after them, but - often due to carelessness - do not fulfil this formal requirement. For example, a family with two children moved into a new, larger flat shortly before Christmas. The father had registered himself and the children there immediately. However, the mother herself only managed to update her registration a month later. Her daughter was in hospital for five days over Christmas, after which she had to go abroad for ten days and had to organise the move. She had to pay back the childcare allowance of more than EUR 5,000 because there was no joint main residence registration for that month and she therefore did not fulfil the minimum period of 61 days. Years ago, the AOB called for harmonisation with the regulations for family allowances: Here, the joint household is also a prerequisite for entitlement, but can be proven in another way. Even though the AOB's request has not yet been complied with, in October 2023 the legislators at least decided to extend the grace period from ten to 14 days in the event of late registration of the child's main residence at the home address.

Disadvantage through receipt of sick pay

In order to avoid hardship cases, the AOB continues to advocate a change in the law regarding the employment requirement for the income-related childcare allowance. This entitlement is lost if sick pay was received for more than 14 days before the birth of the child. This particularly affects and penalises women who try to continue working despite health problems during pregnancy. However, the Minister for Family Affairs has refused to make any changes.

Improvement through digital parent-child booklet

With the introduction of the digital parent-child booklet, an improvement is finally in sight with regard to mother-child booklet penalties. Proof of the examinations carried out on the pregnant woman and the child, which is required in accordance with Section 7 (2) of the Childcare Allowance Act in order to receive the full amount of childcare allowance, should thus be automatically available to the health insurance carriers in full and independently of the additional submission in paper form. This would eliminate the significant reduction in benefits of EUR 1,300 that parents had to face even if they had only forgotten to submit the examination certificates on time.

AOB recommends transitional solution

However, this new, electronic verification method will not come into force until 2026. Furthermore, according to the explanatory notes, the proportion of doctors and women using the electronic parent-child booklet will not reach 90% until the second quarter of 2026. The AOB therefore assumes that hardship cases will continue to occur during the realisation phase, which will still take around three years. In its statement in the review process, the AOB suggested a transitional regulation according to which the childcare allowance is due in full if parents complete the examinations or consultations in full, but only submit the evidence late. This is because reductions in childcare allowance would be even less understandable for those affected in the phase before the implementation of a better, automatic reporting system, and would cause hardship for families with small children in view of the rise in prices.

Another shortcoming of the new regulation is that the elimination of the obligation to submit paper documents apparently does not apply to all parents. The explanatory notes state that parents will be contacted by the competent health insurance carrier in those (individual) cases in which the data is not visible for whatever reason, e.g. in the event of technical problems. However, the proceeding is not clear in those cases in which, according to the explanatory note, "no entries are made in the electronic parent-child booklet database". Examples given include special cases, cases abroad, and examinations by healthcare providers who do not participate in the electronic parent-child booklet. In these cases, the parents themselves should provide proof within certain deadlines as before. In the interests of a citizen-friendly regulation, AOB requires clarification on how parents are protected from a reduction in childcare allowance in these exceptional cases. They should be informed by the health insurance carrier in a timely manner (e.g. in the form of a reminder letter) that there will be no automatic forwarding and that they themselves are obliged to submit the relevant documents manually. As far as can be seen, these suggestions by the AOB were not implemented.

Eliminate infringements of EU law

The reorganisation of the Childcare Allowance Act also appears necessary from a European law perspective. As the AOB has already stated several

times, the law contradicts EU legal requirements in several points. For example, Section 24 (2) of the Childcare Allowance Act only provides for income-dependent childcare allowance for gainful employment in Austria and does not recognise minor gainful employment for establishing responsibility under EU law, nor does it recognise periods of maternity leave after a child's second birthday. Furthermore, Section 6 (3) of the Childcare Allowance Act recognises non-comparable foreign family benefits for the childcare allowance. Section 27 (4) of the Childcare Allowance Act only assumes a default by the authorities if essential preliminary questions have been legally clarified.

Switch to special benefit 1

However, problems with which families approached the AOB in 2023 also show that it is necessary to change the implementation practice in the area of childcare allowance. For example, with regard to refusing income-related childcare allowance, which is problematic in respect of the rule of law: An informal letter informs parents that they do not fulfil the requirements for the income replacement system and should therefore switch to the - much lower - flat-rate special benefit 1 within two weeks. However, they were not informed of the reasons for the rejection or the options for appeal. The authorities' efforts to act in a low-threshold manner should be recognised in principle. However, it must not lead to the loss of legal options due to a lack of information. The Federal Ministry for Women, the Family, Integration and the Media has announced that it will examine whether the form can be optimised.

Authorities must act in a citizen-friendly and service-orientated manner. This also applies to the problems described in the next chapter on cross-border constellations.

3.4.3 Still no change in implementation instructions for cross-border cases

Working abroad means waiting for childcare allowance

The childcare allowance aims at providing parents of small children with a livelihood for the time in which they care for their children and therefore have a loss of earnings. For 15 years, the AOB has regularly pointed out that this purpose is often not fulfilled in families where one parent lives or works abroad. They have to wait many months to years and go through countless administrative proceedings before they finally receive childcare allowance. The AOB has long pointed out that this administrative practice - prescribed by the Minister for Family Affairs - is neither service-orientated nor family-friendly and also contrary to EU law. More and more supreme court decisions confirm this. However, there is no sign of the Minister for Family Affairs giving in.

6 years for decision, 8 years for money

In 2023 - more than eight years after the application was submitted - the Supreme Court awarded the full childcare allowance to the mother about whom the AOB had already reported on several occasions in its reports (Austrian Supreme Court 22 June 2023, 10 ObS 55/23w). It had previously taken six years for her to receive a decision against which she could take legal action. The courts ruled in favour of the woman in all three instances.

The family lives in Austria. The mother and children are Austrian citizens. In addition to submitting many other documents, the Austrian Public Health Insurance Office requested that the family also apply for family benefits in the Netherlands and submit the relevant notifications before Austrian childcare allowance can be granted. The family endeavoured intensively to comply with these demands and submitted several confirmations from the Dutch authorities that they were not entitled to family benefits there. However, the Austrian Public Health Insurance Office did not recognise these documents.

AOB has been calling for improvement for 15 years

The woman had filed the application in 2015 and brought it to the AOB in 2017, who contacted the Family Minister and the Austrian Public Health Insurance Office on several occasions. As the AOB's intensive efforts were also unsuccessful, the AOB reported on the case in 2019 in the *Bürgeranwalt* television programme and invited representatives of the then Federal Ministry of Labour, Family and Youth and the health insurance carriers acting on its instructions to a round table.

Case of maladministration identified

As all these steps failed to bring about any change, the Ombudspersons unanimously found in 2020 that this was a case of maladministration and a violation of EU law in the case of the woman concerned and in 39 other cases of complaints about cross-border childcare allowance.

The Minister for Family Affairs contradicted this in her statement and said that, in her view, there had been no error on the part of the Austrian authorities in any of the cases. Rather, the problems were due to a lack of co-operation on the part of the parents and the foreign authorities. Nevertheless, she held out the prospect of reducing bureaucratic hurdles and amending the instructions for implementation. This was in April 2020.

Instructions for implementation not changed even four years later

Four years later, there are still the instructions for implementation have still not been amended. Instead, parents continue to turn to the AOB, who have still not received a decision on their application for childcare allowance, even after submitting numerous documents, countless visits to authorities, including abroad, and a long wait. Moreover, there are often problems with health insurance protection, as this depends on the receipt of childcare allowance.

In October 2023, the AOB reported in the TV programme *Bürgeranwalt* about a family living in Austria who waited two and a half years for a decision on

childcare allowance because no notifications were submitted from Slovakia, where the father worked.

Problems also with health insurance

Another Austrian family living in Austria, who contacted the AOB in 2023, has been waiting for a decision on childcare allowance for more than three years. Furthermore, the family has had to pay for their own health insurance during this time. Once again, the extremely extensive correspondence proves the family's efforts to fulfil the authority's requests, but also shows the immense administrative burden on the authority. Here too, the family was informed that an Austrian compensatory payment could only be calculated once the legally binding and EU-compliant foreign notifications regarding four different family benefits from Italy, where the father works, are received. The confirmations from the Italian authorities, which the family had already submitted several times, were not recognised.

The administrative practice remains in place where families are required to apply often for multiple family benefits abroad, wait for the decisions on these and potentially appeal against them abroad before any benefit is granted in Austria. In exceptional cases in which a benefit is granted beforehand, the amount is set at a very low level to avoid potential reversals with the foreign country if Austria had paid too much.

Supreme Court rulings confirm AOB criticism

However, this administrative practice is - as confirmed by a number of Supreme Court rulings - contrary to EU law (Austrian Supreme Court 28 May 2019, 10 ObS 42/19b; 13 September 2019, 10 ObS 110/19b; 13 October 2020, 10 ObS 111/20a; 22 June 2023, 10 ObS 55/23w). The Supreme Court ruling states the following:

The purpose of the EU legal provisions is to ensure that families receive the highest family benefits from the state of residence in a timely manner. This shall apply even if one parent lives or works in another EU state and the verification of jurisdictio takes longer.

This provisional obligation to pay benefits applies to the state in which the family lives (state of residence), even if the primarily competent state of employment has not yet made a decision. If the two-month deadline for a statement from the foreign authorities expires without a decision, the Austrian public social insurance carrier must pay the childcare allowance as requested within six months, or issue a notification of rejection.

Whether a family applied for allowance abroad or not does not affect the entitlement to Austrian childcare allowance. Austrian childcare allowance must be paid even if no application has been submitted abroad. Furthermore, not all foreign family benefits are eligible and therefore relevant for the proceedings, but only comparable family benefits. The country of residence must pay the highest possible amount as a provisional difference. Any overpayment must be compensated in accordance with the proceedings provided for under EU law.

EU law requires payment of the highest possible amount

If the Minister for Family Affairs attributes the difficulties with cross-border childcare allowance to EU law, AOB must counter that it is precisely EU law which requires that the undisputedly often difficult investigation of cross-border childcare allowance cases must not be carried out on the backs of the families concerned.

Criticism from other sources too

However, not only the courts confirm the AOB's long-standing criticism of the implementation practice for cross-border childcare benefits. The 2020/24 report of the Austrian Court of Audit identified delays in the processing of cross-border cases, which it also partly attributes to the health insurance carriers. The Court of Audit therefore recommended taking measures to shorten the processing time and improve the counselling services for childcare allowance.

The Chamber of Labour supports many of those affected - including the woman in the case described above - in court proceedings. In an open letter to the Minister for Family Affairs, they also criticised that living or working in the border region means a bureaucratic odyssey for many when it comes to childcare allowance. At a joint press conference with the AOB in May 2023, the Chamber of Labour presented the results of a survey that emphasised the urgency of the problem. The survey recorded an extremely high level of participation and showed that 60% are not satisfied with the childcare allowance.

Furthermore, problems with cross-border childcare allowance are regularly the subject of parliamentary inquiry and motions for a resolution. Criticism even comes from the implementing authority itself. For example, the Vice Chairman and employee representative of the Austrian Public Health Insurance Office wrote in a press release from May 2023 "The overly strict catalogue of instructions from the ministry of Family Minister Susanne Raab leads to sometimes severe problems for young families when it comes to securing their livelihood and health insurance protection. Under the current conditions, it is not possible for our employees to offer customer-friendly advice. In fact, there are now even complaints to the public prosecutor's office from the Ministry of Family Affairs against employees of the Austrian Public Health Insurance Office who wanted to make decisions in an insurance-orientated manner." As far as the AOB is aware, the public prosecutor's office discontinued these proceedings.

At the beginning of 2024, a journalist who herself was affected wrote (news magazine *Profil* from 18 January 2024): "Parental leave allowance: How the authorities are harassing mums and dads. Working life and families are changing. However, the Austrian parental leave allowance is rigid and out of date. [...] If you are self-employed, move house, commute to a neighbouring EU country for work, or temporarily live separately, you are breaking the mould. The result is endless telephone loops, months of waiting and a flood

of bureaucracy. In my case, the problem was my partner's employment in exotic Germany - despite me working in Vienna and living here together. [...] The next problem: as long as I was waiting for the notification, neither I nor my two children were properly insured".

The AOB calls for a change of the instructions for implementation and, if necessary, for an amendment to ensure that childcare allowance is implemented in accordance with the law in future. It is unacceptable that families, often single parents, are put in situations that jeopardise their existence and face insurmountable bureaucratic obstacles, which are against the European law, simply because one parent works abroad. The Constitutional Court derives arbitrariness from a multiple gross misjudgement of the legal situation. There is nothing to add to this.

3.5 Finances

Introduction

In 2023, the AOB received 650 complaints relating to the Federal Ministry of Finance.

Energy Costs Credit

Although the number of complaints relating to problems with the Energy Costs Credit roughly halved compared to 2022, it remained remarkably high.

ID Austria

Furthermore, the AOB was made aware of difficulties with ID Austria, the further development of the mobile phone signature and the Citizen Card (*Bürgerkarte*) in many cases.

The topics of the complaints from the area of traditional fiscal authorities remained unchanged. Among other things, these included the long duration of proceedings at the Austrian Tax Office, the non-recognition of extraordinary expenses in the assessment, or the distribution of the Family Bonus Plus for separated parents.

Particularly cooperative

The AOB conducted the investigative proceedings swiftly. This was possible above all because the Federal Ministry of Finance always endeavoured to answer enquiries quickly. It should be emphasised here that the nationwide department and the Freistadt Rohrbach department of the Austrian Tax Office were particularly cooperative. Thanks to their support, an elderly couple was able to submit a corrected tax return form and thus still receive their tax credits.

3.5.1 GIS Fees Information Service Ltd.

In 2023, the AOB was again confronted with numerous complaints (135) about GIS Fees Information Service Ltd (the agency responsible for administering the fees for the public broadcaster ORF). Although the services provided by GIS Fee Information Service Ltd do not lie within the AOB's mandate, solutions could be found in many cases through good cooperation with the management.

As stated in previous reports, the majority of complaints related to the conduct of field staff. Particular criticism was voiced with regard to how they approached the signing of a protocol - without sufficient clarification. The exemption from the GIS fees depends on household income and on the receipt of a state benefit. This led to confusion among those liable to pay contributions. When the new legal situation, which will come into force in 2024, was announced, numerous enquiries were sent to the AOB. These mainly concerned the obligation to register new fee debtors, but also questions about the lack of an option to pay the new ORF fee monthly or semi-annually with a payment slip.

3.5.2 Austrian Postal Service

As in previous periods, the AOB received several complaints about delivery problems in 2023. The critic concerned the lack of delivery attempts although persons concerned were at home. Complainants often only found a yellow pick-up slip in their PO box with apparently no attempt to deliver mail items to the door of their house or flat. This affects particularly persons, for whom it is difficult to collect their mail from a post office or collection point due to their advanced age or reduced mobility. The AOB should emphasise that the Austrian Postal Service generally responded to complaints in a customer-friendly and timely manner. They followed up on the complaints and jointly developing solutions, despite the lack of investigative mandate of the AOB.

The AOB also received complaints in 2023 because proof of identity was not accepted when return receipt letters from the authorities were delivered. Recipients had difficulties receiving these letters, particularly with regard to the climate bonus, if the proof of identity did not exactly match the data on the collection slip (e.g. missed a middle name). The Austrian Postal Service referred the AOB to the requirements of the Service of Document Act (*Zustellgesetz*). According to this law, recipients of return receipt lettersmust provide correct identification data that exactly matches the address data on the return receipt letter in order to ensure that there is no misuse or attempted fraud during collection.

Abolition of post stamps

Unsettled and disgruntled postal customers were particularly critical of the fact that priority letters (PRIO letters) will be handled differently as of 1 September 2023 following a change to the general terms and conditions of the Austrian Postal Service. Since then, letter and special stamps can only be used for economy letters (ECO letters) and are no longer valid for PRIO letters. Instead, PRIO letters had to be provided with a so-called "PRIO label" and could therefore only be posted at a post office branch, postal partner or self-service centre. If customers use this label, they have no proof that the Postal Service has delivered their consignment on time. Moreover, the Postal Service refused to take back stamps that had already been purchased.

In this context, the AOB also strongly criticised the fact that there is no basis in the general terms and conditions for the purchase of "PRIO labels" in sets of 12. In this respect, the current handling does not comply with the general terms and conditions and the legal situation under the Postal Market Act.

When confronted with these cases in the TV programme *Bürgeranwalt*, the Austrian Postal Service announced to reverse the restrictions on the sending of "PRIO letters".

3.5.3 Energy Cost Credit

The Energy Costs Credit Act (*Energiekostenausgleichsgesetz*; Federal Law Gazette I 37/2022) entered into force on 9 April 2022. The goal was to relieve the burden of the households, given the sharp rise in energy costs. To this end, from the end of April 2022, vouchers were sent to all addresses at which at least one person was registered as having their main residence according to the Central Register of Residents.

Prerequisites for entitlement

Entitled to such a voucher is every natural person in Austria, who pays electricity for a household under an electricity supply agreement, and who was registered with their main residence in this household on at least one day in the period from 15 March to 30 June 2022 and whose income did not exceed a specified threshold. Each person could only redeem one voucher. Following an extension of the deadline (Federal Law Gazette I 160/2022), people could apply for new vouchers until 31 October 2022 and the deadline for submission was extended to 31 March 2023.

The Federal Ministry of Finances subjected the returned vouchers to an initial check, during which the details of the main residence, the electricity supply agreement and the metering point designation were verified. The vouchers were only forwarded to the respective electricity suppliers, who had to consider the bonuses in the next annual invoice or any earlier final invoice, once the initial check had been completed successfully.

Still many complaints

The number of complaints relating to the Energy Costs Credit was exceptionally high in 2022. However, a large number of people also turned to the AOB in 2023 due to deficiencies in the implementation of the Energy Costs Credit Act. Numerous people saw themselves confronted with the rejection of their vouchers, which they did not understand.

If the vouchers were rejected during the initial review, the Ministry of Finance sent information letters by email or post. However, these letters were only vague and contained several reasons that could have led to the rejection. For example: "The personal details stated on the voucher are either incorrect (e.g. typing error) or the person stated does not have a main residence at the property address", as well as "No valid electricity supply agreement with your energy provider could be determined with the data you provided".

People affected could only clarify the exact reason for the rejection on the hotline set up by the Ministry of Finance (generally for matters relating to the Energy Costs Credit). However, the telephone line was chronically overloaded. The AOB received reports of long waiting times of up to one hour. Those who could not or did not want to wait were left in the dark and were therefore unable to make the necessary corrections in order to receive the Energy Costs Credit after all.

The AOB's enquiries to the Ministry brought clarity for those affected. If necessary, the Ministry also sent new vouchers after the AOB intervened.

Incorrect delivery

In most cases of rejection, vouchers had been submitted, which were intended for a different address. The envelopes containing the vouchers were not addressed to named persons, but to a household with a specific address. As a result, many envelopes had not reached the correct recipient due to incorrect delivery. Anyone who did not carefully check the address given on the form as the addressee would therefore return a voucher, assuming it was not intended for them. The verification of the main residence therefore failed and the voucher had to be rejected. Neither the media advertising nor the FAQs issued by the Ministry on the Energy Costs Credit underlined the need to check the address carefully.

Name divergence

For some people, mostly those with two first names, the initial check of the main residence yielded a negative result, because they stated the name under which they had concluded the electricity supply agreement on the vouchers, as recommended in the Ministry's FAQs. However, if the persons concerned were registered in the Central Register of Residents with both first names, or a different spelling, the application was rejected.

Length of electricity meter number

In a large number of vouchers, the number of the electricity meter had not been filled in correctly. This meter number has 33 digits (numbers and letters) and usually contains several consecutive zeros. Errors in the information led to the voucher being rejected.

The AOB agreed with the Federal Ministry of Finance to collect the correct data from those affected and to forward the corrections. In this way, the initial verification could still be concluded favourably. In the opinion of the AOB, a great deal of displeasure could have been avoided if the information about the negative result of the initial verification had included the specific reason for the rejection in each case.

Duration of initial verification

The FAQs stated that the initial verification was to be completed around two weeks after receipt of a voucher. In many cases, this was not fulfilled. Technical difficulties and problems with verifying the main place of residence, as well as errors when scanning vouchers returned by post caused significant delays. Another factor was the large number of forms submitted. As a result, vouchers were rejected for people who were eligible for the Energy Costs Credit at the time of their submission but who then moved to a different main residence a few months later.

Final invoice before initial verification

These vouchers were placed on a special list ("final invoice before initial verification"), which was forwarded to the electricity suppliers. These were then supposed to correct the respective final bill and pay out the bonus. This approach was chosen because the electricity suppliers have the account

details of their former contractual partners. However, those affected were displeased that they sometimes had to wait months for the payment.

Long wait for bonus

The length of the initial verification also annoyed people who receive their annual electricity bill in autumn and winter because the Energy Costs Credit can only be taken into account in the following year.

In conclusion, the AOB notes that handling the Energy Costs Credit was associated with numerous deficiencies, which could have been avoided by careful planning.

3.5.4 Supplementary subsidy for electricity costs

The goal of the supplementary subsidy for electricity costs (Federal Law Gazette I 15/2023) is to provide larger households with further relief for high energy prices in addition to the basic quota of the electricity price control. The prerequisite is that more than three people are registered in the Central Register of Residents to have their main residence at the address to which an electricity mete is assigned.

Difficulties arose with family homes in which several generations live under one roof and with a joint electricity supply agreement, but with separate households.

Obstructive door numbers

A complaint reached the AOB stating that the Residence Registration Authority had assigned door numbers for each household without the residents' knowledge. As a result, they could not apply for the supplementary subsidy for electricity costs because different door numbers do not count as a common address.

The AOB had to point out that in addition to the name of the street and the city, the house number and - if available - the door number count as the address. The Ministry stated that it could only access the data stored in the Central Register of Residents when assessing whether the supplementary subsidy for electricity costs can be granted. With respect to the supplementary subsidy for electricity costs, it is irrelevant why the Residence Registration Authority assigns door numbers.

No relief for multi-generation homes

However, those affected are excluded from the Federal Government's relief measures for high energy costs in a twofold way. While the joint electricity supply agreement initially prevented each household from participating in the Energy Costs Credit, the separate households stood in the way of a successful application for the supplementary subsidy for electricity costs.

3.5.5 Inadequate information sheet from the Ministry of Finance

Family Bonus Plus

The Federal Ministry of Finance publishes numerous information sheets on various topics on its website. A complainant from Klagenfurt criticised that the information published on the Family Bonus Plus was inadequate and incomplete.

In the case of separated parents, the Family Bonus Plus is split between the parents, if the parent with whom the child does not live fulfils their maintenance obligations in full. If the maintenance payments have not been made in all of the months of a year, a new (spouse) partner of the parent receiving the family allowance can receive the Family Bonus Plus as well.

The man from Klagenfurt had claimed the Family Bonus Plus for his stepdaughter in his employee tax assessment because the biological father had not paid any maintenance for her. The deduction was initially granted. However, the income tax assessment was corrected around five months later and the Family Bonus Plus was reclaimed because the district court had granted an advance on the maintenance payments for the stepdaughter. The AOB pointed out to the complainant that he had in fact not been entitled to the Family Bonus Plus.

AOB recommendation

However, from the information published by the Federal Ministry of Finance on the Family Bonus Plus, it is not clear that an advance on maintenance payments shall be equated with the maintenance payments made by the separated parent. Thus, the AOB suggested a brief addition to the Ministry's information in February 2023. The Ministry promised to consider the issue in the next update of the published technical information. However, one year later, this still lacks implementation.

3.5.6 Probate proceedings – legislative recommendation

Diverging legal views at the Ministry of Justice and Finance

In the Annual Report 2021 (Volume "Monitoring Public Administration", pp. 87 et seq.), the AOB reported on diverging legal views between the Federal Ministry of Justice and the Federal Ministry of Finance on the question of who can – in the framework of probate proceedings – represent a deceased person in tax assessment proceedings.

The Federal Ministry of Justice was of the opinion that an authorisation granted by the probate court, pursuant to Section 153 of the Non-Contentious Proceedings Act (*Außerstreitgesetz*), and a corresponding authorisation the decision that ends the probate proceedings were sufficient, even if no heir is appointed.

The Federal Ministry of Finance referred to Section 19 of the Federal Fiscal Code (*Bundesabgabenordnung*), according to which only a universal legal successor, i.e. an heir, is authorised to represent the estate or a trustee of the estate appointed by the probate court. Otherwise, a possible tax credit could not be paid out.

Discussions took place in order to resolve this conflict of opinion. Judicial officers and the notary's office were involved in this process. In its ruling of 23 November 2022 (Ro 2022/15/0026), the Supreme Administrative Court of Austria confirmed the legal opinion of the Federal Ministry of Finance.

Probate proceedings are becoming more complicated

For probate proceedings, this means that the court must appoint a probate trustee in each case now, so that a declaration for employee tax assessment can be submitted for a deceased person or the tax assessment proceedings for the deceased can continue. Furthermore, if there is no appointment of an heir, a court order must assign a person with the right to dispose of any resulting tax assets. This not only causes increased costs in probate proceedings, but also delays.

AOB's legislative recommendation

In the opinion of the AOB, it would be desirable for the fiscal authorities to recognise an authorisation under the Non-Contentious Proceedings Act in order to be able to conclude probate proceedings as quickly as possible. This would require an amendment to Section 19 of the Federal Fiscal Code, which the Ministry of Justice also considers necessary and welcome.

The Ministry of Finance, on the other hand, emphasised that it was not opposed to an amendment, but that it expected the Ministry of Justice to bring the matter to the attention of the Ministry of Finance and justify it in a comprehensible manner. In the opinion of the AOB, however, the question of who should initiate the contact should not be the focus, but rather the solution to the problem.

3.5.7 Delays in proceedings

Several people complained about procedural delays, some of which were considerable. For example, following the sale of properties, notifications to finalise the tax attribution to the new owners were not issued until 3.5 years after the purchase agreements were concluded. Income tax return notices and decisions on appeals were also issued late.

The AOB does not fail to recognise that the personnel situation at the Federal Ministry of Finance is still tense. Nevertheless, it should be ensured that the Ministry adheres to the deadlines for decisions.

3.6 Interior

Introduction

2,064 cases

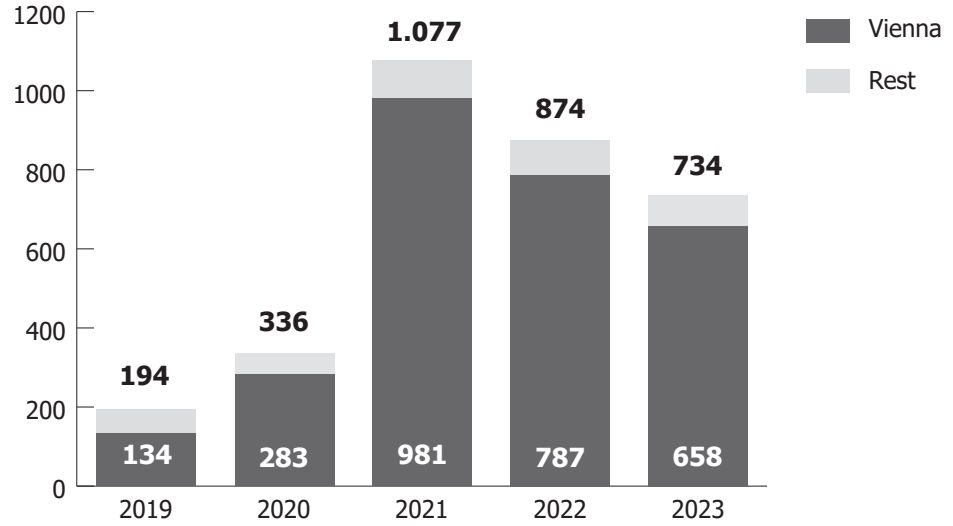
In 2023, the AOB handled 2,064 cases that fell within the jurisdiction of the Federal Ministry of the Interior. 77.4% related to asylum law, settlement law and aliens' police law. The police accounted for 14.3 % of the cases, followed by matters relating to residence registration law (1.6 %), services law (1.4 %) and civil status matters (1.2 %). Other complaints related to weapons law, passport law and association law (2.2% in total). Few cases concerned the enforcement of electoral law and the Austrian Pyrotechnic Safety Act (*Pyrotechnikgesetz*).

The AOB conducted six *ex-officio* investigative proceedings, which were based, for example, on media reports, observations by the AOB commissions or information from unaffected or anonymous persons. The topics of the investigations were federal care, residence title proceedings and abuse. In the cours of two investigative proceedings, the AOB found cases of maladministration.

Many complaints about proceedings to obtain residence permit

The number of complaints regarding the duration of proceedings for obtaining a residence permit is still high, but has once again decreased slightly. As before, Vienna accounted for most of the complaints. In 2023, 734 people submitted complaints (658 of which related to Vienna), in 2022 874 people (Vienna: 787), in 2021 1,077 people (Vienna: 981), in 2020 336 people (Vienna: 283) and in 2019 194 people (Vienna: 134).

Complaints about duration of proceedings to obtain residence permit



For many years, the AOB has drawn attention to shortcomings in the implementation of settlement and residence law, particularly in its reports to the Diet of Vienna. However, the situation continues to deteriorate. Although in recent years, the municipal department MA 35 has increased the number of staff and made organisational improvements, the AOB still receives many complaints. Especially the number of complaints regarding the duration of citizenship proceedings, which the municipal department MA 35 also handles, increased again in 2023 (2023: 437, 2022: 399, 2021: 223).

Proceedings at the Federal Office for Immigration and Asylum

There was also a sharp increase in complaints about the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*). 771 people complained about proceedings at the Federal Office (comparte to 418 in 2022), 735 of (2022: 301) which related to the implementation of the Asylum Act. The focus was on the duration of asylum proceedings (see chapter 3.6.1).

Seven complaints were submitted on the subject of "domestic violence", mainly relating to barring orders and prohibitions to return to the common home. People who claimed to be victims of domestic violence complained about inadequate measures taken by the police. However, people who stated that the police had taken unjustified measures against them also turned to the AOB.

Police complaints

296 people complained about the police (2022: 295). The reasons for complaints were, for example, the non-acceptance of reports, inadequate investigations, inactivity, unfriendliness, and inadequate provision of information. Furthermore, the AOB received complaints about arrests, searches, confiscations, traffic checks, barring orders, or prohibitions to return (domestic violence), surveillance or persecution by the police, as well as service law proceedings and non-admission to the police service.

Allegations of mistreatment

The AOB found 13 cases of maladministration. In 71 cases, it found no maladministration. In 199 cases, the AOB was unable to deal with the complaint because proceedings were pending, there was no affected party or court decision, or it was a non-comprehensible and therefore verifiable request. Some investigative proceedings had not yet been finalised at the time of going to press.

The AOB received 22 complaints about abuse or degrading treatment and found no cases of maladministration. The following table provides an overview of the allegations of mistreatment in recent years and the number of cases of mistreatment found. The AOB became aware of these allegations through individual complaints or in the course of AOB's ex officio investigations.

Investigation centre set up at Bureau of Anti-Corruption

In 2015, the AOB recommended setting up an investigative authority outside the police force to investigate allegations of abuse against law enforcement officers. In 2023, the Federal Ministry of the Interior prepared

a "Ministerial draft of an Act on the Federal Office for the Prevention of and the Fight Against Corruption". This draft intended to establish an investigative office within the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*), primarily to investigate allegations of ill-treatment. The AOB commented on this in the review process. The Investigation and Complaints Office for Allegations of Mistreatment (*Ermittlungs- und Beschwerdestelle Misshandlungsvorwürfe*) began its work in January 2024 (see chapter 3.6.2).

Allegations of mistreatment		
Year	**number of complaints**	**cases of maladministration**
2023	21	0
2022	14	1
2021	23	1
2020	9	0
2019	20	0
2018	20	1
2017	10	1
2016	17	1
2015	6	3
2014	11	2
2013	9	0
2012	8	1
2011	7	0
TOTAL	**175**	**11**

3.6.1 Asylum and immigration law

Federal Office of Immigration and Asylum

771 complaints

Following a sharp decline in complaints about the Federal Office for Immigration and Asylum since 2017 (2,175), the AOB recorded a significant increase in complaints from summer 2022 onwards, which continued in 2023. In the reporting year, 771 people approached the AOB with complaints about the authority, 35 of which related to the Asylum Act. 489 of these complaints were justified, primarily due to a breach of the duty to make a decision.

The majority of complaints about the duration of asylum proceedings (527) related to proceedings that are or have been pending since 2022. Asylum seekers from Syria lodged most complaints (455). 151 complaints related to the authority's Regional Directorate Upper Austria, 99 to the Regional Directorate Styria, 88 to the Regional Directorate Vorarlberg, 68 to the Regional Directorate Tyrol, 70 to the Regional Directorate Vienna and a few each to the Regional Directorates of the other *Laender*.

Duration of proceedings for family reunification

69 cases involved family reunification under the Asylum Act. Members of the "nuclear family", i.e. partners (marriages or registered partnerships that already existed when the person eligible for asylum entered the country) and underage children, can apply for international protection in Austria after an Austrian Embassy abroad has issued visas. However, the Austrian Embassy only issues visas after a positive prognosis decision by the Federal Office for Immigration and Asylum. 25 of these complaints were justified due to the long duration of proceedings. In one of these cases, the Austrian Embassy Damascus (in Beirut) submitted the applications to the Federal Office for Immigration and Asylum in October 2022. The Office did not take any procedural steps until November 2023, i.e. for more than a year.

Due to the sharp increase in complaints, the AOB held a meeting with the Director and Deputy Director of the Federal Office for Immigration and Asylum in December 2023. In 2022, around 112,000 people (112,272 according to the statistics of the Ministry for the Interior) had filed applications for international protection. In addition, the Federal Office for Immigration and Asylum had to deal with around 90,000 people from Ukraine under the Regulation on Displaced Persons (*Vertriebenenverordnung*). The workload was therefore higher than in the refugee wave of 2015/2016. The Office expected almost 60,000 asylum applications in 2023, which would be the third busiest year in the last 30 years (58,685 people according to Ministry's statistics). As of 1 December 2023, around 25,500 asylum proceedings were open; 9,000 of which had been pending for more than six months.

The staffing situation was tense. In 2018, 1,339 employees worked at the Federal Office for Immigration and Asylum. By 2021, the number of staff had decreased due to natural attrition. These staff were only occasionally replaced. On 1 November 2023, after an increase of 50 people, 1,203 people worked at the Office. Due to the increasing number of asylum proceedings, as many staff as possible had been shifted to the asylum area since mid-2021, which meant that other areas, such as the enforcement of the Aliens' Police Act, were also under increased pressure. Finding staff was particularly difficult in Vorarlberg and Vienna. If conditions remained the same, the Federal Office for Immigration and Asylum could reduce the existing "backlog" in 2024. The digitalisation of the file management from 2024 onward should also contribute to this. However, the Bureau is also dependent on the development of international crises and the associated migration movements.

The AOB can understand these arguments. Nevertheless, it receives a large number of complaints about the Federal Office for Immigration and Asylum, and has to process these without additional staff. The following examples are intended to illustrate the specific situations of those affected:

Application for tolerated stay delayed by over a year

A man from Liberia applied for a card for tolerated persons in January 2022. The Federal Office for Immigration and Asylum did not take any procedural steps until January 2023 and merely cited the high number of proceedings as the reason for the delay of at least one year. The AOB found a case of maladministration. As the proceedings had still not been concluded more than six months later, the man contacted the AOB again in September 2023. A new investigation revealed that the Office planned to reject the application. There were further delays in the application for a home certificate, which were also attributable to the Federal Office for Immigration and Asylum.

Application only processed after 13 months

A stateless person applied for a card for tolerated persons in April 2022 and did not receive any feedback from the Federal Office for Immigration and Asylum until January 2023. In a similar case, the Office received a corresponding application in May 2022. It did not take any procedural steps until June 2023. The Office justified the duration of proceedings with a massive increase in the number of applications.

Failure to take action on residence permits on grounds of Art. 8 ECHR

Under certain conditions, a third-country national residing in Austria must be granted a residence title *ex-officio* or upon justified application in accordance with Section 55 Asylum Act if this is necessary to maintain private and family life within the meaning of Article 8 ECHR. The general statutory decision period of six months applies to applications.

An Iraqi applied to the Federal Office for Immigration and Asylum by way of regular mail to obtain a residence title in February 2022 and submitted the application in person in April 2022. The Office did not take any procedural steps until at least mid-December 2023. Another man from Iraq submitted an application in January 2022 for a grant of a residence title on the grounds of Article 8 ECHR. He submitted various documents to the Federal Office for Immigration and Asylum in February 2022 due to a request for improvement. In this case, the Office remained inactive until September 2022. In its statement, it assured the AOB that the proceedings would be dealt with in a timely manner.

No procedural steps for many months

In a proceeding for issuing a "residence permit plus", the Federal Office for Immigration and Asylum did not take any steps for five months and did not answer any enquiries from the applicant during this period. Furthermore, the Office failed to send an improvement order that had already been prepared due to an oversight and only realised this error more than a month later. In July 2021, a woman applied for a further residence permit plus. The Federal Office for Immigration and Asylum set a four-week deadline for her to improve her application. The woman did not improve the application and

did not submit the required documents. As a result, the Office did not take any further steps until November 2022, but did not give any reasons for this 14-month standstill.

Delays in the delivery of documents

An Iranian man filed an application for international protection in October 2015. During his initial interview in August 2016, the Federal Office for Immigration and Asylum seized two of his documents. It subsequently rejected the asylum application and issued a return decision. The Federal Administrative Court dismissed an appeal against this decision. Although the Federal Office for Immigration and Asylum initiated proceedings to enforce the return decision, the City of Vienna by its municipal department MA 35, issued a residence card in July 2021. The Federal Office for Immigration and Asylum therefore discontinued its proceedings, but subsequently delayed handing over the seized documents, which did not take place until November 2023.

Default on foreign and convention passports

A Libyan woman applied for an alien's passport in June 2019. The Federal Office for Immigration and Asylum notified her in December 2019 that it intended to reject the application and informed her of the outcome of the hearing of evidence. Subsequently, the authority did not take any recognisable steps for three years. It only rejected the application with a decision in January 2023. In March 2022, a man submitted an application for an alien's passport to the Federal Office for Immigration and Asylum by email. The authority remained inactive between the end of July 2022 and the beginning of April 2023. An application for issuing an alien's passport reached the Federal Office for Immigration and Asylum in June 2021, but it was not until December 2022 that the authority took any recognisable steps by sending the results of the hearing of evidence. The authority therefore exceeded the decision deadline of three months in accordance with the Passport Act (Passgesetz) by at least 15 months. In May 2022, an man from Iran submitted an application for a convention passport to the Federal Office for Immigration and Asylum. In this proceeding, the Office did not take any recognisable steps after receiving the application until mid-July 2023.

No administrative notification

A Syrian man applied for his passport and other documents to be handed over in January 2022. In May 2023, more than a year after submitting the application, the Federal Office for Immigration and Asylum informed the man that the documents were not at the authority, but did not issue an administrative notification. As there is a (at least procedural) right to settlement, the Office should have dealt with the application by issuing a notification.

Poor communication with authorities

Occasionally the inadequate communication between the Federal Office for Immigration and Asylum and other authorities or judicial authorities causes considerable delays. Furthermore, delaying or omitting requests and enquiries about the status of proceedings makes proceedings particularly slow.

In March 2021, the Public Prosecutor's Office Vienna informed the Federal Office for Immigration and Asylum that charges had been brought against a Serbian national. The Federal Office for Immigration and Asylum initiated proceedings against the man to terminate his residence, but suspended them in order to await the outcome of the criminal proceedings. In July 2021, the court ended the criminal proceedings with diversion. According to a statement of opinion from the Federal Ministry of the Interior, the Prosecutor's Office Vienna did not inform the Federal Office for Immigration and Asylum that such a diversion had taken place.

The Serb applied for a residence title from the municipal department MA 35 in March 2022. The municipal department MA 35 learnt from the extract of the Integrated Central Register for Aliens that the Federal Office for Immigration and Asylum was conducting proceedings to terminate his residence but had suspended them. Until March 2023, the municipal department MA 35 did not take any steps apart from an enquiry with the Federal Office for Immigration and Asylum. In March 2023 (and therefore after the statutory decision period had expired), the municipal department MA 35 suspended the proceedings it was conducting in accordance with Section 38 of the General Administrative Procedure Act. It was not until September 2023 - approximately two and a half years after the suspension - that the Federal Office for Immigration and Asylum enquired about the status of the proceedings with the Vienna Public Prosecutor's Office for the first time.

The Federal Ministry of the Interior stated that the Public Prosecutor's Office was generally obliged to inform the authorities as soon as possible about the filing of charges, the withdrawal of the prosecution and the discontinuation of the criminal proceedings. As the Vienna Public Prosecutor's Office did not inform the Federal Office for Immigration and Asylum, the latter continued to assume that the criminal proceedings were pending. Independent investigations into the court proceedings' status are not always possible for the municipal department MA 35 in view of the large number of proceedings without concrete evidence. The legally standardised notification obligations serve precisely to prevent such delays. Nevertheless, the AOB is of the opinion that the Federal Office for Immigration and Asylum should have enquired about the status of the proceedings with the Public Prosecutor's Office at an earlier point in time.

Cancellation of an entry ban

In December 2021, officers of the Vienna Police Department checked a Bosnian man on a construction site. As he did not have a residence title or a labour market permit, the Federal Office for Immigration and Asylum issued a return decision and a three-year entry ban. In August 2022, the Bosnian applied to the Federal Office for Immigration and Asylum for the entry ban to be lifted. It was not until May 2023 that the Federal Office for Immigration and Asylum sent him the information of the hearing of evidence. The authority did not take any procedural steps over the entire period. The

Federal Ministry of the Interior informed the AOB that it intended to conclude the proceedings in the third quarter of 2023.

In December 2022, a Serbian man submitted an application to the Federal Office for Immigration and Asylum to lift his temporary entry ban. He submitted additional documents in January 2023, but it was not until mid-October 2023 that the authority took the first procedural step.

Web form for letter of guarantee not handed over

A visa may be issued to a foreign national who does not have sufficient financial means in a visa proceedings if the inviting person confirms by way of an electronic letter of guarantee that they will be able to cover all costs. By submitting this guarantee, the inviting party enters into a contractual relationship with the Republic of Austria in favour of the visa applicant. It is not possible to cancel this contract unilaterally by withdrawing this declaration of commitment - for whatever reason. Once all data has been recorded, a Web form is saved and printed out once together with the letter of guarantee, usually without comments, and presented to the inviting person for review. Any changes and additions to the Web form can still be made.

A woman wanted to invite a foreign national and signed an electronic letter of guarantee at the Josefstadt police station in May and June 2022, in which she undertook to cover the costs of the visit. The police station only handed her one copy of the declaration of commitment each time. The woman asked for a printout of the Web form that is used to forward the data. The police station did not provide her with these printouts, which the AOB criticised. The Federal Ministry of the Interior promised to sensitise the officers concerned.

Inadequate filing sysem

An Iranian man filed an application for international protection and handed over some documents (identity card, birth certificate, driving licence) to the Federal Office for Immigration and Asylum in the course of his interrogation in January 2019. In May 2022, the man applied for the return of these documents, which the Office could no longer find in its archive. Following an enquiry by the AOB in the summer of 2023, the authority was able to find the documents after all and informed the man that they had been misclassified due to a drop in numbers. In July 2023, the Federal Office for Immigration and Asylum handed over the documents to the Iranian.

A Russian man applied for international protection at the Vienna Police Department in June 2023. During the initial interview, the Land Police Department seized the Russian's passport and Ukrainian residence title and forwarded the documents to the Federal Office for Immigration and Asylum. Later, the Office could only find the passport, but not the Ukrainian residence title. They regretted the loss and informed the AOB that the man would receive a copy of the original document and a written confirmation of the loss.

Wrong travel document issued

An Iraqi and his family members applied for international protection in December 2015. The Federal Office for Immigration and Asylum seized the family's travel documents in October 2017, rejected the applications and issued return decisions. The family members successfully appealed against these decisions to the Federal Administrative Court, which granted them the status of beneficiaries of a subsidiary protection. In July 2020, January, March, June, October 2021 and April and August 2022, the family submitted applications to the Federal Office for Immigration and Asylum to obtain travel documents. As the authority did not process the applications, the family turned to the AOB. It turned out that the passports had been lost and could no longer be found. Moreover, the Federal Office for Immigration and Asylum initially issued the Iraqi a convention passport instead of an alien's passport by mistake.

Duration of immigration law proceedings at the Supreme Administrative Court

In June 2022, a Colombian man lodged an extraordinary appeal with the Supreme Administrative Court against a decision of the Vienna Administrative Court in a matter relating to immigration law. In June 2023, the proceedings were still pending, but the Supreme Administrative Court did not take any recognisable procedural steps. The Supreme Administrative Court stated that the proceedings are expected to be concluded in 2023.

Two siblings from Gambia lodged extraordinary appeals with the Supreme Administrative Court at the beginning of 2022. In June 2023, the proceedings were still pending. In its statement to the AOB, the Court cited the high number of cases in the area of immigration as the reason for the delay, without, however, describing any procedural steps in more detail. The Supreme Administrative Court of Austria concluded the two proceedings at the end of August 2023.

Duration of appeal proceedings before the Federal Administrative Court

59 complaints about proceedings under asylum law

In 2023, 59 people complained about asylum-related proceedings at the Federal Administrative Court, 46 of which related to the length of proceedings. The number of complaints therefore decreased compared to 2022 (90). In 27 cases, the AOB found that the Federal Administrative Court had violated its duty to make a decision and was therefore in default.

Asylum seekers from Syria lodged 39 complaints. Five complaints related to proceedings from 2023, 31 from 2022, and one from 2021. One complaint from a Turkish national related to proceedings that had been pending since 2020. According to its statement, the Federal Administrative Court wanted to conclude the proceedings in the first half of 2023. However, it has not yet reported the conclusion of the proceedings.

Since 2013, the Federal Administrative Court (previously the Asylum Court) has been informing the AOB about the completion of proceedings, about the duration of which persons have complained to the AOB. The following table provides an overview of the number of cases resolved in recent years.

Conclusion of proccedings at the Federal Administrative Court		
year	**number of complaints**	**concluded proceedings**
2023	46	20
2022	90	45
2021	189	144
2020	224	159
2019	268	235
2018	220	163
2017	265	164
2016	152	99
2015	238	115
2014	974	450
2013	683	368
TOTAL	**3.349**	**1.962**

Federal support

Visits to federal care facilities

As part of the *ex-post* monitoring, commissions of the AOB can visit facilities - even if they are not places of deprivation of liberty. Due to the developments in the migration situation in 2022 (i.e. very high numbers of asylum applications, influx of displaced persons from Ukraine), the federal institutions and facilities for the care of asylum seekers were heavily overloaded. During the reporting year, the Commissions visited seven federal care facilities. They also inspected waiting areas at the border crossing in Spielfeld.

Federal support for asylum seekers

Usually, applications for asylum are submitted to public security officers. After an initial interview, the police ask the Federal Office for Immigration and Asylum for instructions on how to proceed. The Federal Office for Immigration and Asylum usually orders asylum seekers to be taken to a federal care centre during the admission proceedings. Once the asylum

seekers are admitted to the asylum proceedings, the *Laender* are responsible for the care of the asylum seekers and the asylum seekers should be transferred to a facility of a *Land* that provides reception conditions under the Basic Provision Agreement (*Grundversorgungsvereinbarung*).

For many years, the AOB has been pointing out that the transfer of asylum seekers admitted to asylum proceedings to *Laender* facilities for the provision of reception conditions has been slow. Asylum seekers often have to remain in federal care longer than planned. According to the Basic Provision Agreement between the Federal Government and the *Laender*, the Federal Government is obliged to ensure sufficient reception capacities in an emergency (e.g. in the event of mass refugee movements).

Due to the sharp rise in the number of asylum applications and the importance of child-friendly accommodation, the AOB asked its commissions to visit federal care centres for unaccompanied minor refugees and families during the reporting year:

Federal care facility Korneuburg

In October 2022, the one commission visited the federal care facility Korneuburg, which is exclusively for unaccompanied minor refugees, and revealed numerous deficiencies in the care and accommodation of the children.

The Federal Ministry of the Interior conceded that the unaccompanied minor refugees are accommodated in the centre for an average of four to five months. Increased cooperation with the Laender and an increase in cost rates should lead to a faster transfer of those admitted to the asylum proceedings to the *Laender's* basic care.

The investigative proceedings resulted in significant improvements at the federal care facilityKorneuburg: lockers are now provided free of charge. The Ministry of the Interior implemented a hygiene concept and eliminated information deficits in relation to the house rules and scabies. Work began on structural adaptations for room partitioning and a child-friendly design of the facility. As it remained unclear when sufficient staff would actually be available at the centre, the AOB criticised the lack of care adapted to the children's needs, particularly at weekends.

Federal care facility Geiselbergstraße

At the federal care facility Geiselbergstraße, which was visited at the end of 2022, the AOB criticised the insufficient number of sanitary containers. There were only ten showers available for the 560 people accommodated. The AOB also criticised the unhygienic condition and the location of the containers outside the building.

Due to the high number of children, the AOB criticised the unsecured windows and the power connections on the floor of the inadequately equipped playroom. There was also a lack of childcare and leisure facilities for children and adults. Furthermore, the food was stored in the refrigerator

in the first-aid room. The Federal Ministry of the Interior acknowledged the shortcomings and rectified them immediately after the commission's visit. The Ministry of the Interior only refrained from implementing technical improvements, as the temporary operation of Federal Care Facility Geiselbergstraße was discontinued in March 2023.

Federal care facilities Mariabrunn

The AOB also criticised the housing and care situation for almost 300 people at federal care facility Mariabrunn, which it visited at the beginning of 2023. The AOB identified shortcomings in hygiene in the sanitary facilities and waste storage, as well as the equipment of the facility, inadequate care services and safety deficiencies.

The Ministry of the Interior acknowledged the shortcomings and stated that the number of beds was now well below the capacity limit. Improvements had been made through a new hygiene, education and care concept as well as an expansion of the equipment (kettle, playroom). The Ministry held out the prospect of repairing the corridor lighting and installing child safety locks on the windows of the entire upper floor in the near future.

Federal care facilities Finkenstein

At the end of January 2023, a commission visited the federal care facility Finkenstein at the request of the AOB. The AOB positively noted the high level of commitment of the management and the team, which was demonstrated, for example, by the self-organised school in the facility. The AOB also praised the native-language care provided to the separated children, as well as the training and supervision programmes offered to the staff. However, the AOB criticised the fact that the young people had to wait an average of six months to be transferred to the basic reception conditions system of the *Laender*. In addition, the residents were not able to store valuables safely.

In the investigative proceedings, the Federal Ministry of the Interior also demonstrated its endeavours to speed up the transfer of persons admitted to the asylum proceedings to the *Laender's* basic reception conditions system. As the rooms were quickly equipped with lockable lockers, the AOB considered the deficiency to have been remedied. The Ministry also took steps to improve medical care for the young people on site.

Critical media reports and information from concerned individuals about federal care facilities led to further Commission visits and official investigative proceedings:

Federal care facility Frankenburg

With regard to the federal care facility Frankenburg, which was visited in September 2022, the AOB observed that the accommodation of people in need of help and protection in a warehouse is only suitable to a limited extent due to the structural and infrastructural conditions. In particular, the AOB criticised the lack of privacy, the high noise level, the lack of sanitary facilities, and inadequate social care. The Federal Ministry of the Interior

quickly made some improvements. Three months after the audit was completed, the Ministry reported on bunks, a reduced number of beds, an exemplary care ratio, and integration projects. During its follow-up visit to the already decommissioned federal care facility Frankenburg in the summer of 2023, the commission confirmed the improvements that had been made.

Federal care facility Schwechat

The AOB initiated *ex-officio* investigative proceedings in November 2022 following a report of unsustainable conditions at the federal care facility Schwechat. The AOB criticised the hygienic conditions of the sanitary facilities in the overcrowded facility, which was in need of renovation. The AOB also found that the heating systems in the poorly insulated containers were undersized. The Federal Ministry of the Interior confirmed these findings. As the situation had already eased during the investigative proceedings, the number of occupants was now well below the capacity limit. The Ministry of the Interior rectified the hygiene deficiencies and turned to the proprietor to renovate the floors. The Ministry did not address the condition of the containers, which had already been criticised by the AOB in 2020, (see Annual Report 2020, "Monitoring Public Administration", p. 95). The AOB reiterated its recommendation to renovate the containers, which were only partially winterised.

Federal care facility Leoben

Following a letter from a concerned citizen, the AOB asked a commission to visit the federal care facility Leoben at the end of 2022. The facility, which is housed in a hall of a former DIY store, was last inspected in 2015.

Halls not suited for longer accommodation

In the opinion of the AOB, shared accommodation represents a major encroachment on autonomy. It is stressful for people, some of whom are traumatised, to live together involuntarily in a confined space without privacy and opportunities to retreat - combined with a permanently high noise level and few opportunities for activity - and it endangers their mental and physical health. This type of accommodation can also cause and encourage conflict. The commission criticised the living situation (lack of privacy due to the open-plan room partitions, room climate, high noise level, desolate drinking water supply, structurally unseparated Covid19 isolation area, undersized sanitary facilities). The commission also noted the poor care situation (limited medical and psychological care, lack of employment).

Improvements made

The Ministry of the Interior referred to the development of the migration situation and the impact on the basic reception conditions system. The federal care facility Leoben was reactivated in November 2021. The occupancy figures submitted showed that the facility was overcrowded in the period from October 2022 to January 2023. The Ministry took note of the criticism of the accommodation situation and promised improvements by installing bunks with raised sidewalls to reduce the noise level and ensure privacy. Furthermore, the Ministry adapted the drinking water extraction system and wanted to redesign the isolation area. To improve the indoor

climate, ventilation was provided at set times and the smoking ban was strictly enforced. By increasing the number of staff, it was possible to increase the learning and leisure activities on site.

Due to a decrease in the number of residents from March 2023 and the improvements, the AOB considered the deficiencies in the housing and care situation in the federal care facility Leoben to have been remedied. In summer 2023, the Ministry of the Interior closed all three federal care facilities that were housed in halls.

Inadequate accommodation in the waiting area in Spielfeld

Due to worrying media reports about the waiting area in Spielfeld, the AOB requested a rapid visit from the commission, which took place at the beginning of January 2023. The AOB last investigated the accommodation of asylum seekers at the Spielfeld border crossing in 2016.

Emergency supply

The Federal Ministry of the Interior stated that the Spielfeld waiting area was set up in October 2022 for those people who could not be immediately transferred to a basic reception conditions facility after the initial asylum interview by the police. As a result of the large influx of refugees, the capacity limits had been exhausted. The waiting area had been set up with tents for up to 300 people. The primary objective was to provide for those concerned. The use of the waiting area has been discontinued since the end of March 2023 due to declining numbers.

Incorrect legal opinion of the Ministry

The Federal Ministry of the Interior took the view that it was only responsible for the basic reception conditions of asylum seekers once they had been admitted to a distribution centre. However, this does not correspond to the legal situation. According to the EU Reception Conditions Directive (2013/33/EU), asylum seekers are entitled to basic care immediately after submitting their application. The Federal Government is responsible for basic care in the admission proceedings. This includes, for example, suitable accommodation taking into account the family unit, public health insurance, pocket money, transport costs, and measures for persons in need of care, as well as daily structuring for unacommpanied minor refugees, provision of clothing, as well as information and counselling. Only if there are legally defined reasons for exclusion (which do not include accommodation shortages) is there no entitlement to basic care.

Legal entitlement to basic care

In its assessment of the Spielfeld waiting area, the AOB took into account the case law of the European Court of Justice (Saciri case, C-79/13), according to which even fully utilised reception structures do not justify the temporary withholding of basic reception conditions benefits. The AOB concurred with the opinion of the Constitutional Court (A 15/2015) that care services within the meaning of the Reception Directive must be provided from the time

of application as long as no administrative notification refuses, restricts or withdraws the statutory entitlement.

The AOB is aware that the basic reception conditions system was under enormous strain during the reporting year. It was positive that no vulnerable groups (such as families with small children, the elderly, the sick, women travelling alone) were accommodated in the tents in the Spielfeld waiting area.

However, the control visits also revealed that the persons concerned were not provided with clean clothing in the Spielfeld waiting area, although this is a basic need. They were also not sufficiently informed by the mere posting of notices on tent walls in the waiting area. The AOB criticised the lack of an organised clothing distribution and information from October 2022 to the end of March 2023. As the operation of the waiting area was discontinued, no further steps were necessary. However, in the event of reactivation, the AOB suggested that the necessary information be provided to those affected in writing upon admission.

Hesitant information about federal care institution

Ministry did not reply within eight weeks

A woman from Salzburg contacted the AOB in mid-2023 and complained that the Federal Ministry of the Interior had not provided her with any information on the decommissioned federal care facility Salzburg. Section 3 of the Duty to Grant Information Act (*Auskunftspflichtgesetz*) stipulates that requests for information must be answered within an eight-week period. The AOB criticised the fact that the woman's first enquiry from October 2022 remained unanswered for more than three months. As the Ministry of the Interior had responded to this and subsequently two further requests for information, the AOB considered the reason for the complaint to have been resolved.

3.6.2 Police

Investigation and Complaints Office for Allegations of Mistreatment

AOB's request for years

As detailed in the AOB's last reports to the National Council and the Federal Council, the AOB has been recommending establishing an external police unit to investigate allegations of ill-treatment against law enforcement officers since 2015. Due to the intention set out in the current government programme to establish such an investigation unit, the AOB regularly informed itself about the status of implementation.

In the course of 2023, several discussions took place between the AOB and the Federal Ministry of the Interior on current developments regarding the planned Investigation and Complaints Office for Allegations of Mistreatment

(*Ermittlungs- und Beschwerdestelle Misshandlungsvorwürfe*). At the end of April, the Ministry of the Interior submitted a draft federal law amending the Act on the Federal Bureau of Anti-Corruption. This law provided for the establishment of an Investigation and Complaints Office for Allegations of Mistreatment within the Bureau of Anti-Corruption.

Review of draft law

In its statement of opinion on the draft law, the AOB considered the selection and position of the head of the Investigation and Complaints Office for Allegations of Mistreatment under services law, its nationwide responsibility, the specialised training of its staff and its interdisciplinary and multi-professional composition as positive. The AOB also welcomed the fact that the public prosecutor's office must be notified immediately in the event of suspected criminal offences. Furthermore, the AOB rated positively the independent advisory board, which is not subject to instructions and welcomed the fact that instructions must be justified in writing and submitted to the advisory board.

AOB criticism and concerns

The AOB criticised the fact that the Investigation and Complaints Office for Allegations of Mistreatment is anchored in the Federal Bureau of Anti-Corruption and thus in a department of the Federal Ministry of the Interior. This structure could not, or not completely, eliminate people's scepticism regarding independence if investigations were to take place "within its own ranks". The AOB also referred to international guidelines, for example from the CPT, which recommends independent investigations into complaints of abuse by the police. The Investigation and Complaints Office for Allegations of Mistreatment began its work on 22 January 2024.

Examining the powers of representation

A man had filed a complaint against his daughter for stealing furniture from his flat. He now complained that police officers from Juchgasse police station had not investigated the matter properly.

The Federal Ministry of the Interior confirmed his visit to Juchgasse police station. To clarify the facts of the case, the police officers contacted his daughter, who presented a health care proxy and stated that the man had been living in a care facility for some time. However, the man still had a key to the flat at the time of the interview.

Power of representation not sufficiently clarified

As could be seen from the stamp on the health care proxy, it had been registered in the Austrian Central Register of Representatives. However, this power of representation only becomes effective when the specific care case is entered in the Austrian Central Register of Representatives. The police officers did not clarify whether and when this was the case. Nevertheless, they assumed that there was a case of representation and did not initiate a criminal investigation.

Follow-up training announced

The AOB criticised this approach and suggested that the Federal Ministry of the Interior train the executive staff in particular with regard to a careful approach when conducting investigations to determine a power of representation or when verifying relationships of health care proxies. The Ministry announced a training programme. The AOB also welcomed the fact that the Ministry of the Interior promised clarifications in the internal instruction of the Vienna police department titled "Adult protection law - adult guardianship". This clarification will include information on the effectiveness of health care proxies.

Training after misjudgement of an emergency call

Emergency call not taken seriously

In its Annual Report 2022, volume "Monitoring Public Administration", p. 116, the AOB presented the case of a serious misjudgement of an emergency call by an emergency call officer. The officer had initially not taken a woman's request for help following a knife attack by her husband seriously and had not taken any action. It was only after another emergency call from a witness that the officer realised the seriousness of the case and informed the emergency services.

Ministry reports on training courses

The AOB suggested that the officers responsible for handling the emergency calls be sensitised accordingly as part of targeted follow-up training. The Federal Ministry of the Interior stated that because of the incident, all relevant law enforcement officers at the *Laender* control centres had been trained nationwide in connection with moments of security police risk assessment. The law enforcement officer concerned had been transferred to another department following the imposition of a disciplinary penalty.

Nuisance caused by aircraft noise from police helicopter

A man complained about noise pollution from police helicopters near Vienna Airport (Mannswörth), particularly in the evening and at night.

The Federal Ministry of the Interior explained that the Air Police have a comprehensive security mandate in the area of Vienna Airport for airport surveillance flights as well as securing the surrounding area of the airport and the Danube shipping channel. The helicopter flights are security police operations of the security administration, the officials act pursuant to section 145 of the Aviation Act. The focus is on maintaining flight safety and achieving the respective mission objectives.

Flight route also a question of safety

At night, the choice of a higher flight altitude represents a safety factor for the helicopter crew deployed. Every crossing of the active runways of Vienna Airport by the police helicopter is an interference with the ongoing operation of the airport. If the police uses the Mannswörth sector, this factor is eliminated. This means the airport can carry out the standard flight operations smoothly and without disruption.

The Ministry of the Interior also referred to a procedural instruction issued by Austro Control. This defines maximum flight altitudes to maintain the necessary safety distances from landing and taking-off aircrafts. The Ministry of the Interior's Air Police must strictly adhere to this in order not to jeopardise civil flight operations. However, the Air Police endeavour to avoid inconveniencing neighbours as far as possible, as long as this is justifiable in terms of the necessary airport safety.

Noise reduction measures

In response to the complaint, the head of the Vienna flight operations centre issued an internal instruction to comply with noise abatement measures in the Mannswörth sector. The staff at Vienna Airport was sensitised to the noise problem during a staff meeting.

No notification of the death of a family member

A woman complained that law enforcement officers from the Ziegelofengasse police station had not informed her or her family of the death of a close relative. According to the Federal Ministry of the Interior, police officers had gone to the person's address following a call from a neighbour and found the man dead. A doctor then carried out an inspection of the corpse and Vienna Funeral Services collected the body.

In general, it is the municipalities, who are responsible for dealing with deaths. In Vienna, this is the municipal department MA 15. If the police are called in in the event of a death, they are responsible for notifying relatives, but it is not up to the law enforcement officers to search for relatives. Instead, the police's enquiries should be limited to obvious indications of relatives. In this context, the Federal Ministry of the Interior also referred to the decree "Directive for a nationwide standardised regulation of coroner's inquests within the meaning of Section 128 of the Austrian Code of Criminal Procedure", which regulates the notification of relatives.

Search for relatives only possible to a limited extent

In accordance with this directive, the Vienna Police Department issued an internal instruction stating that homes or repositories may not be searched for the purpose of contacting relatives. The police can therefore only contact relatives if they live at the same address or if they can be traced through contacts on an (unlocked) mobile phone, an address book that can be found in the open, or by taking notes or asking neighbours.

Make the best possible use of leeway

In this case, the law enforcement officers had not noticed any evidence of relatives in the flat. The questioning of neighbours regarding relatives had also been negative. In this respect, the Ministry of the Interior stated that the law enforcement officers acted within the legally prescribed framework with regard to the search for relatives. However, the AOB recommended that a corresponding (revised) internal instruction be issued to ensure that the possibilities available in this context are utilised in the best interests of the relatives.

Contact details found

In another case, a woman complained that law enforcement officers had not informed her of her mother's death. The AOB's investigation revealed that law enforcement officers from Wurmsergasse police station were called to the mother's address because of a fatal accident. They established the identity of the deceased and attempted to identify relatives. The law enforcement officers found notes with names and telephone numbers in the flat and took a photo. However, one of the daughter's telephone numbers was entered incorrectly in the files so that it was ultimately not possible to contact her.

The police had actually tried to identify relatives. However, the failure to contact the daughter was attributable to the police due to the transmission error. In this context, it remained unclear why the law enforcement officers initially only took a photo of the number instead of contacting the daughter directly.

Unauthorised service of a summons

Replacement delivery of return receipt letter

A man rightly criticised the fact that an executive officer handed over a summons as a defendant to a family member by return receipt letter as part of a police investigation. A return receipt letter may only be delivered to the person addressed. The Federal Ministry of the Interior stated that the irregular delivery of the letter was made in the belief that a substitute delivery to the family members also living at the delivery address was permissible. A clarifying discussion had been held with the official.

Inappropriate choice of words in administrative offence report

Authorities regret the term "troublemaker"

The AOB upheld a man's complaint that an executive officer referred to him as a "troublemaker" in an administrative offence report. The Federal Ministry of the Interior confirmed that such a designation - regardless of the meaning or origin of the word - should be avoided. It regretted the impression created by the wording and announced a dialogue with the officer.

Issue of a life certificate

A man complained that law enforcement officers at the Deutsch-Wagram police station did not issue a life certificate. A form for the annual submission of a life certificate for persons living abroad can be found on the website of the Pensions Insurance Institution. In addition to a list of organisations that certify such a confirmation, the form also contains the information that the police can also confirm the identity.

No obligation to issue by the police

Upon enquiry, the Austrian Pension Agency informed the Federal Ministry of the Interior that the life certificate does not have to be completed by

a consulate or a notary. The only important thing for the Austrian Pension Agency (*Pensionsversicherungsanstalt*) was the official nature of the office. The Ministry pointed out that the law does not stipulate any obligation to cooperate on the part of public security officers in connection with life certificates. Accordingly, law enforcement officers are not obliged to issue such certificates.

Pension Agency sees no need for change

In the AOB's view, the missing obligation and the note on the Austrian Pension Agency form contradict each other. In order to prevent misunderstandings, the AOB therefore asked the Federal Ministry of the Interior to reach an agreement with the Federal Ministry of Social Affairs, Health, Care and Consumer Protection and adapt the information. After consulting with the Austrian Pension Agency, the Ministry of Social Affairs, Health, Care and Consumer Protection informed the AOB that both the website of the Federal Ministry for European and International Affairs and that of the Pensions Agency state that the life certificate is a postal item addressed exclusively to persons residing abroad. The life certificate is not required for pension recipients residing in Austria, as in these cases the Austrian Pension Agency is automatically notified of a person's death. According to the Ministry of Social Affairs, Health, Care and Consumer Protection, this is an isolated case. The form of the Pensions Agency has proved its worth to date and no textual changes are planned.

Body search in the visitors' toilet of the police station

A man complained that law enforcement officers had searched him in the visitors' toilet of the Brandstätte police station after having sold children's toys in the city centre of Vienna.

Toys seized

The Federal Ministry of the Interior reported that the man had voluntarily accompanied the police officers to the police station for questioning. There they provisionally seized 120 glowing children's toys that the man was carrying. The man had been angry about this, gesticulating with both hands and repeatedly reaching into his trouser pocket, which is why the law enforcement officers had assumed that he might be carrying dangerous objects. The search of the man in the visitors' toilet next to the interrogation room where the official act had taken place had been carried out to "protect his privacy". No dangerous objects were found.

Search in toilet inappropriate

The AOB could not understand why privacy should be guaranteed in the visitors' toilet of a police station rather than in an interrogation room. The search was inappropriate in this respect. The AOB also criticised the fact that the search was not documented. The Federal Ministry of the Interior announced that it would hold a staff meeting with the law enforcement officers.

Loss of a report submitted by fax

Whereabouts of the fax unclear

A man complained that law enforcement officers had not processed a report submitted to the Wattgasse police station by fax in October 2022. When asked in December 2022, a law enforcement officer explained that reports were only processed if they were received in person or by emergency call, but not by fax. The Federal Ministry of the Interior was no longer able to understand the reason why the report had not been filed. The same applied to the question the arrangements made for this and when and how the submission was possibly lost. The AOB criticised the fact that the authority was unable to clarify the whereabouts of the fax submission. According to the Ministry of the Interior, the civil servant had not claimed that a report by fax was not possible in principle. The AOB was ultimately unable to clarify this point of complaint. However, it welcomed the announcement by the Ministry that the incident would be addressed in internal training sessions at Wattgasse police station.

Designation of the victim as a party in a report confirmation

Status change no longer traceable

A woman described that she had reported a teacher who had injured her daughter's knee at school to the Langobardenstraße police station. In the report confirmation, her daughter was not described as a "victim", but only as a "party involved". The Federal Ministry of the Interior explained that the teacher was listed in the file as the accused and her daughter as the victim. The Ministry of the Interior was unable to clarify why the status of the persons listed in the file, which is to be automatically transferred to new forms by the electronic Police system for filing, reports and data, was apparently changed manually to "party involved" in the report confirmation. However, the designation on the report confirmation was irrelevant for the investigative proceeding. The AOB criticised the fact that this change was no longer comprehensible. Even if the designation has no significance in the proceedings, it still led to irritation and a need for clarification on the part of the mother.

No recording of a report

Reference to civil law proceedings

A woman wanted to file a report at Linzer Straße police station because her dog had been stolen. She stated that she had concluded a free protection contract for the purchase of a dog and that the dog had been handed over to her on the same day. A few days later, the dog's former owner came to give her the dog's vaccination certificate and other documents. However, the former owner had taken the dog away again without authorisation. The officer did not file the report and referred the woman to civil law proceedings. He explained to her that there was no criminal offence, as she had not become the owner. The AOB criticised the officer's approach as he ruled out possible criminal liability from the outset and refused to file the woman’s report.

Insufficient information about a report

Misunderstanding about the outcome of the field report

A man reported a forgery of documents to Vöcklabruck police station because a parcel delivery person and not he himself had confirmed receipt of a parcel with his signature. The police officer doubted whether this was a criminal offence. However, he informed the man that he would still report the offence to the public prosecutor's office and let him know if there is any initial suspicion. If that was not the case, he would not contact the complainant. The man turned to the AOB because he did not know what would happen with his report and in what form he would receive information. In its statement, the Federal Ministry of the Interior regretted the "suboptimal" flow of information, which also prompted the AOB's criticism.

Symbol photo as evidence in a report

A woman filed a report for assaultat Taxenbach police station against her ex-husband and the father of her child. She showed an officer a photo on her mobile phone of a haematoma he had inflicted on her. As the injury had almost healed, the officer asked her to send the original photo of the injury, which she did on her return from home. However, the officer said that the woman did not send him the photo she had shown him at the police station, but a recent one in which the haematoma was barely visible.

Negative consequences for the victim

The woman denied this and claimed that the photo she had sent was the one she had shown the officer. As the officer did not believe this, he attached a similar symbolic photo from the internet to the police file. The perpetrator's lawyer then charged the woman with giving false evidence and defamation. She was acquitted, but legal fees were incurred. She was also concerned that these criminal proceedings could have a negative impact on the custody dispute over their child. Although the AOB was unable to identify which photo was involved, it criticised the fact that the police used a symbolic photo as the result of an investigation in criminal proceedings.

Disclosure of personal data in investigation

Residential address was visible

A woman from Lower Austria complained that the police had not complied with her request not to disclose her home address to the accused, although her mother and her lawyer had pointed out a possible danger. The AOB found that the suggestion to exclude the woman's home address from the inspection of files had been received by the Styrian Office of Criminal Investigation in April 2022. The accused accessed the files in May 2022. The authorities submitted a redacted copy of the interrogation of the alleged victim. However, the residential address was visible in the copy of a witness interview that was also submitted.

Protection for people at risk

Section 51 (2) of the Austrian Code of Criminal Procedure regulates the possibility of excluding personal data and other circumstances that allow conclusions to be drawn about the person at risk from the inspection of files and handing over copies in which this information has been made unrecognisable. According to Section 74 (2) of the Code of Criminal Procedure, the criminal police must observe the principle of legality and proportionality when processing personal data. In any case, the interests of the person concerned in maintaining confidentiality must be protected. The AOB criticised the incomplete anonymization of a witness interrogation by the Styrian Office of CriminalInvestigation. In the AOB's opinion, the protection of the confidentiality interests of alleged victims should be a top priority for the police.

Criticism of penalty orders and non-disclosure of service number

A motorist complained about the course of a traffic check carried out by three law enforcement officers. These officers had issued administrative penalty orders in which the place of offence was stated as "A 23" instead of "A 22". Furthermore, the officer in charge of the official act had not given his service number despite being asked to do so, but had referred to a note on the administrative penalty orders.

Ministry admits error in designation of location

The Federal Ministry of the Interior acknowledged that the wrong location of the offence had been entered on some of the penalty orders. The Ministry stated that it had spoken to the law enforcement officers about the careful completion of these orders. The competent municipal police headquarters also regularly emphasised the correct issuing of administrative penalty orders during training and service checks.

By referring to notes on the penalty orders, the civil servant had fulfilled the requirements of Section 9 (2) of the Directive on Interventions by Members of the Public Security Services (*Richtlinienverordnung*), which regulates the disclosure of service numbers. The provision reads as follows: "As a rule, the service number shall be disclosed by handing out a card bearing the service number, the name of the department and its telephone number. If it is ensured that the person concerned is informed of the service number immediately by other means, it may also be communicated by other appropriate means. The officer is at liberty to add his or her name".

Reference to penalty order not always sufficient

In the AOB's opinion, the police can fulfil their obligation to disclose the service number by referring to an administrative penalty order. In this case, however, four administrative penalty orders were issued on which three different service numbers appeared. It was therefore not easily possible to assign the service number to a specific person (in this case the senior officer). This circumstance should therefore also be addressed in dialogues and training sessions.

Unauthorised stamping of passport

A woman complained about the stamping of her husband's passport when he entered Austria via Schwechat Airport in August 2022. The husband held an EU residence card for family members. According to the border control regulations, no stamp was therefore required in the passport. In addition, the border official had refused to give his name and show his identity card.

Sensitisation of the border official

The Federal Ministry of the Interior stated that the woman had already contacted the Ministry in August 2022. Following internal investigations, the Schwechat municipal police headquarters contacted the woman and apologised for the official's wrongful actions. A sensitisation meeting was held with the border official concerned. In it, the relevant provisions on border control and the obligation to disclose the service number were pointed out. In addition, the Ministry announced that the issue would be addressed as part of the daily morning briefing. The AOB judged the complaint to be justified, but welcomed the apology and the sensitisation meeting.

Photo requirement for new e-card

In the course of registering a passport photo for a new e-card, a man complained about the different requirements at two police stations in Vienna. The registration centre in Vienna's 20th district required a photo that met the criteria of a passport photo. The Donaustadt police station stated in its appointment confirmation that an EU passport photo with date of issue or invoice had to be presented.

No invoice required for photo

The Ministry of the Interior confirmed that the photo must not be older than six months and that the person must be clearly recognisable on the passport photo. There is no provision for submitting an invoice; it contradicts an internal instruction of the Vienna Police Department. The management of the Donaustadt police station had been instructed to hold a clarifying discussion with the officers.

Until 31 December 2023, all e-cards without a photograph had to be exchanged, unless an exception applies (person under 14 or over 70 years old, high care level). If the umbrella organisation cannot access a photo or if the person is not an Austrian citizen, they must submit the photo to the police department of the corresponding Land in accordance with Section 31a (9) of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz).

Sensitisation takes place

The provisions of the Passport Act Implementation Regulation (Passgesetz-Durchführungsverordnung) apply for the identity verification and the requirements for the photo to be submitted. Accordingly, the photo must not be older than six months. The submission of self-made photos is not excluded, provided they fulfil the passport photo criteria. Due to the steps taken by the Ministry of the Interior to standardise the implementation of the internal instruction, the AOB considered the error to have been rectified.

3.6.3 Residence registration law

Inadequate surveys in official deregistration proceedings

A woman suspected that the Residence Registration Authority had not properly investigated her report of a registration offence. Her brother was registered at the same address as her, but no longer lived there.

The AOB found that the municipality of St. Gotthard im Mühlkreis did not adequately investigate the facts of the case in official deregistration proceedings. Despite the woman's indication that her brother had his centre of vital interests with his family in another municipality, the municipality did not carry out a site inspection and did not question the other persons living at the address. The municipality did not send the request for a statement of opinion in the official deregistration proceedings to the alleged main residence of the person obliged to register, but to the address of his partner in a neighbouring municipality. The municipality then was satisfied with the fact that the person concerned stated that he worked part-time in agriculture and forestry on the complainant’s farm and that their father had confirmed that he lived there. There was no verification which of the two residences was the centre of vital interests. Ultimately, the municipality wanted to reopen the proceedings due to new evidence.

According to the case law of the Supreme Administrative Court of Austria, the police report is only an indication of the existence of a main residence at a particular accommodation. The Registration Act (*Meldegesetz*) does not standardise an inspection by the Residence Registration Authority in official rectification procedures. However, the AOB's experience shows that it is customary for the Residence Registration Authority to make enquiries about the actual living conditions on site. The AOB criticised the error in the transmission of the statement of opinion to the person obliged to register and the inactivity of the authority. Due to the prospect of resuming the procedure, the AOB assumed that the authority had been sensitised.

3.6.4 Passport law

Inactivity of passport authority

A mother complained about the refusal of the Abuja Embassy to issue passports for her children over a period of several years.

No settlement by administrative notification

The Federal Ministry of the Interior stated that the Austrian Embassy had doubts about the identity of the two applicants. Furthermore, they had not co-operated in the proceedings. The Embassy Abuja had not issued any decisions on the rejection of the passport applications in 2014 and 2015. The applicants withdrew all applications in November 2016. With regard to the two passport applications submitted in November 2022, the Ministry of

the Interior stated that the Austrian Embassy Abuja had suspended these proceedings as declaratory proceedings under the Austrian Citizenship Act (*Staatsbürgerschaftsgesetz*) were pending at the Office of the Vienna Regional Government at the same time.

According to Section 17 of the Passport Act 1992, authorities must decide on applications within three months. Section 38 of the General Administrative Procedure Act authorises the authority to clarify preliminary questions arising in the investigative proceedings that are to be decided as main questions by other administrative authorities or by the courts itself. However, it may also suspend the proceedings until the preliminary question has been finally decided. This is the case if the preliminary question is already being dealt with in proceedings before the administrative authorities or a court or if proceedings are pending at the same time.

The Ministry of the Interior stated that the Abuja Embassy was informed in February 2023 that the declaratory proceedings under the Citizenship Act had been discontinued. However, no decision was made on the passport applications. In a similar case at the same Austrian embassy, the Ministry of the Interior took the view "that a passport applied for must be issued as long as the lack of citizenship has not been established, provided there are no reasons for a passport refusal."

Authority inactive for more than five years

The suspension of the proceedings until February 2023 was correct, as citizenship is an essential requirement for issuing a passport. However, the AOB was unable to understand why the Abuja Embassy remained inactive after the declaratory proceedings were suspended. The AOB criticised the more than five-month delay in the proceedings. The passport authority also did not inform the mother that passport applicants must appear in person at the authority.

3.6.5 Civil status matters

Correction of birth certificate takes too long

Proceedings pending since December 2021

As already explained in the Annual Report 2022 (Volume "Monitoring Public Administration", p. 133), a man applied to the Wien-Zentrum civil registry office in mid-December 2021 to have his birth certificate corrected. As the promised procedural steps had not led to the conclusion of the proceedings, the man contacted the AOB again in November 2022.

The Federal Ministry of the Interior stated that the applicant had been informed in detail in June 2022 about the proceedings to date and the need to commission a local expert for on-site surveys. He had agreed to this, which is why the Austrian Embassy in New Delhi had been commissioned with the further examination in August 2022. According to the Ministry, the

preparation of such reports usually takes at least four to six months. The civil status authorities had urged the report in December 2022. In the absence of a response, the civil registry office did not take any further steps, but informed the man promptly about the status of the proceedings.

Waiting for report from New Delhi Embassy

In principle, the AOB shares the view of the authority that corrections to birth certificates must be examined in detail if there are divergent requests - as in this case. Moreover, the Wien-Zentrum civil registry office initially took procedural steps. However, the AOB could not understand why the civil registry office did not urge the report earlier and at regular intervals, but waited for more than four months. This was particularly the case given that the authorities are aware of the long duration of investigations abroad and that the statutory deadline for a decision had already expired in mid-June 2022. In March 2023, the AOB therefore criticised the civil registry office's hesitant approach in the proceedings that had still not been concluded after fifteen months.

The person concerned contacted the AOB again in October 2023, as the proceedings were still pending. According to the Ministry of the Interior, the report received from the Embassy in May 2023 revealed inconsistencies. In June 2023, the *Land* Government of Salzburg informed the Wien-Zentrum civil registry office that it was now investigating the granting of citizenship to the applicant. The civil status authorities had suspended their proceedings until the outcome of the citizenship proceedings, as the existence of citizenship has a significant influence on the correction of the Austrian birth certificate.

Suspension of proceedings not legally correct

The expiry of the statutory decision period is deemed to be suspended only if the requirements of Section 38 General Administrative Procedure Act are met (at least simultaneous pending proceedings to clarify the preliminary question) and the authority formally suspends the proceedings with an administrative notification. The AOB shares the view that the clarification of citizenship is important for the rectification proceedings. However, the requirements for suspending the proceedings in accordance with Section 38 General Administrative Procedure Act were not met in this specific case. The proceedings under civil status law have been pending since December 2021, but the proceedings under citizenship law were only initiated in June 2023.

The AOB objected to the continued delay in the rectification proceedings after the receipt of the report of the New Delhi Embassy from May 2023. As the proceedings have already been pending for two years, the AOB requested a swift conclusion.

Insufficient information from civil registry office

A man complained that the civil registry office for Vienna's 9th district did not provide him with information about his ex-wife's current marital status. This

information was important to him because of maintenance payments. He had been sent to the civil status authorities by the court. The civil registry office informed him that he should contact the court.

No party status

According to Section 52 (1) (2) of the Civil Status Law (*Personenstandsgesetz*), information from the Central Civil Registry must be granted to those persons who can credibly demonstrate a legal interest in the information. According to case law of the Supreme Court, mere economic interests do not establish party status. In the opinion of the Ministry of the Interior, the man would have had to clarify his legal interest by filing an action for reduction of maintenance payments with the court in order to justify access to his ex-wife's protected personal data. According to the civil registry office, the man would not have been referred to the court without justification if he had produced the correspondence he had with the court. The civil registry office regretted the misunderstanding.

Information would be citizen-friendly

The refusal to provide information from the Central Civil Registry was lawful, but the civil registry office should have informed the man of the reasons why the information was not provided in the interests of good administration. As the investigative proceedings revealed that the authority was aware of the problem, the AOB considered the deficiency to have been remedied.

3.6.6 Public employment law

Default by the authority

An employee of the Lower Austria Police Department submitted a complaint to the AOB. The authority had not decided on his application for an upgrade of his job from October 2021.

The Federal Ministry of the Interior explained that the police department had evaluated the workload in the unit where the man works in June 2021. Due to the significant increase in legal activities, the police department did not seek to upgrade the job, but to create a new legal workplace. The competent Federal Ministry of Arts, Culture, the Civil Service and Sport established this new job on 1 May 2022 following an assessment. In April 2023, the Lower Austria Police Department concluded the proceedings under public employment law.

17 months duration of proceedings

In principle, an authority must issue a decision on applications within six months in accordance with Section 73 (1) of the General Administrative Proceeding Act. The proceedings under public employment law were only concluded after seventeen months, thereby far exceeding the statutory decision deadline. The Police Department was also subjectively responsible for the delay in conducting the proceedings. They could not explain why a decision on the employee's application was not made immediately after the

new legal workplace was set up at the beginning of May 2022, but instead waited a further eleven months.

Rejection of several applications

Inadequate action by the authorities

In November 2022, a man applied to the Ministry of the Interior for several advertised positions and complained that he only received a blanket rejection by email. There had been no response to his request for information. The AOB found that the letter from the Federal Ministry of the Interior did not specify which of the six applications it referred to. The man's request for clarification by email also remained unanswered.

3.6.7 Citizenship

Award of citizenship in the special interest

Ministry transmits file only after eight months

Implementing the Austrian Citizenship Act (*Staatsbürgerschaftsgesetz*) is generally a competence of the *Laender*. However, in cases of Section 10 (6) of the Austrian Citizenship Act, in which the Republic of Austria has a special interest in the naturalisation of a person due to their past or future extraordinary achievements, the Federal Government as a collegial body is called upon to make the assessment. This is why this provision also has constitutional status.

Federal Government also delays proceedings

A woman turned to the AOB because the application she submitted to the Office of the Vienna Regional Government, municipal department MA 35, in April 2021 had not yet been completed in September 2022. The investigation revealed that the municipal department MA 35 had submitted the file to the Federal Ministry of the Interior in August 2021. Although the Ministry closed the file in February 2022, it only forwarded it to the Ministerial Council Service at the Federal Chancellery in October 2022, i.e. with a delay of eight months.

As a collegial body pursuant to Section 4 of the Regulation of the Federal Government on the Proceedings for Obtaining a Confirmation pursuant to Section 10 (6) of the Austrian Citizenship Act, the Federal Government must decide once every six months on granting or non-granting the corresponding confirmations. The AOB's investigative proceedings revealed that in 2021, 2022 and 2023, no decisions were made in the first half of the year as required by law, which is why the Federal Government is also responsible for a procedural delay.

3.6.8 Pyrotechnics

Inadequate authorisation for fireworks

Noise nuisance in the neighbourhood

In October 2021, a fireworks display to demonstrate pyrotechnic products to the organiser's customers took place at a fireworks site in the municipality of Gablitz, which had already been deemed suitable by the St. Pölten District Court in 2013. A resident of a housing estate which is located around 200 metres away in the municipality of Riederberg complained about the noise, which lasted for over an hour. In addition, the neighbours had not been informed before the fireworks display.

Based on the statements of opinion obtained from the Federal Ministry of the Interior, the AOB found two cases of maladministration in connection with the official authorisation of the fireworks. On the one hand, the District Authority approved the use of 50 ball bombs with a calibre of 125 mm, but contradicted this by stating in the conditions of the decision that only the firing of ball bombs with a calibre of 100 mm was permitted.

Inadequate investigations

Secondly, the St. Pölten District Authority did not sufficiently determine whether or to what extent a noise nuisance must be expected within the meaning of Section 28 Austrian Pyrotechnic Safety Law (*Pyrotechnikgesetz*) when the pyrotechnic objects are burned. The AOB came to this conclusion because the District Authority also based its investigations on the results of the 2013 assessment of the fire site. However, the licence application examined at that time concerned significantly fewer and smaller ball bombs.

3.7 Justice

Introduction

The AOB received 1,190 complaints concerning the Federal Ministry of Justice. The majority of these (721) related to the penitentiary system and forensic institutions, followed by 93 complaints concerning adult guardianship and 74 about the duration of proceedings before the courts.

Jurisdiction

The total number does not include complaints about the decisions and conduct of proceedings by the ordinary courts and the public prosecutors' offices, which do not fall within the AOB's mandate. In relation to the public prosecutors' offices, criticism was frequently voiced, because the persons concerned considered that decisions to refrain from initiating preliminary proceedings or to discontinue them were made too hasty.

Adult protection

Complaints about adult guardianships have once again decreased. As in previous years, this did not affect the activities of adult protection organisations. The main complaints concerned the lack of personal care and the inadequate provision of funds.

3.7.1 Data protection – duration of proceedings at the DPA and the Federal Administrative Court

In the area of data protection, the AOB mainly dealt with complaints about the duration of proceedings, both with regard to proceedings before the Austrian Data Protection Authority (DPA) and the Federal Administrative Court. It should be noted, that the complaints brought to the AOB came from a small number of individuals who placed undue demands on the authority and the court initiated the vast majority of proceedings.

Although a man had been repeatedly informed about the jurisdiction and was aware of the legal situation, he persistently lodged complaints against officials in Italy with the Austrian DPA and not with the Italian data protection supervisory authority. In October 2021 alone, he submitted 24 such complaints to the DPA. In view of the situation described above, the DPA therefore increasingly feels compelled to refuse to handle complaints pursuant to Art. 57 (4) of the General Data Protection Regulation (*Datenschutz-Grundverordnung*) due to excessive procedural conduct.

Nevertheless, the AOB criticised the fact that the DPA took around two years to transfer some of these complaints to the Italian data protection supervisory authority as a case of maladministration.

The DPA repeatedly described their strained staffing situation to the AOB. It also pointed out that it was dealing with mass proceedings (e.g. GIS data leak, vaccination information letter). In order to process all submissions

appropriately, complaints that concern urgent matters and bring new issues to the attention of the authority must sometimes be prioritised, in comparison to the excessive submissions described above.

3.7.2 Facilities of the penitentiary system and forensic institutions

Introduction

Consultation days at the institutions

In 2023, the AOB received 721 complaints from inmates at facilities of the penitentiary system and forensic institutions. In addition, the AOB held 13 consultation days in correctional institutions and in the forensic wards of public hospitals. The concluding meetings provided an opportunity to discuss the challenges facing the penal system.

When announcing a consultation day, the AOB always requests that the staff representatives of the executive and non-executive service be informed of their attendance and invited to meet. In some cases, individual staff members also take advantage of the opportunity to make an appointment.

"Talking to the AOB"

Apart from staff shortages in all occupational groups, the working conditions in the individual facilities cannot be generalised. In order to understand the specific needs better, the AOB adhered to its plan to offer staff group discussions.

In order to allow sufficient time for these discussions, separate meetings were scheduled. The Head of the Federal Commission also attended some of these. In 2023, the focus was on institutions that were or are confronted with structural changes, such as the Vienna-Favoriten forensic therapeutic centre or the Gerasdorf and Vienna-Simmering correctional institutions.

Participation in working groups

Last year, the AOB again participated in several working groups of the Federal Ministry of Justice. The final reports contain a list of recommendations for improvement that should be implemented quickly. A further working group is to be set up at the beginning of 2024 on the topic of juvenile detention, the results of which are not yet available.

At the end of October 2023, the Federal Ministry of Justice set up a working platform on the topic of "Making work in facilities in the penitentiary system and forensic institutions more attractive - improving the staffing situation of prison guards and other professional groups". The experts on this platform are expected to support the Ministry in the search for qualified specialists, but also to provide feedback on the job satisfaction of staff in the individual institutions. In view of the high fluctuation on the labour market, the aim is not only to recruit staff for the detention in forensic institutions, but also to prevent an increase in the number of staff leaving the prison administration. In view of the dramatic bottlenecks in medical and nursing care that have

been highlighted repeatedly, the AOB is particularly concerned to get involved with this subgroup.

3.7.2.1 Suicide and attempted suicide

Report with 48 recommendations

One of the interdisciplinary working groups focussed on "Safety and care settings in crisis situations". After five intensive meetings, the participants were able to agree on a final report comprising 48 recommendations.

The most important demands undoubtedly include reassessing the suicidal tendencies of inmates after a period of around eight weeks following their admission to a correctional institution, expanding the care criteria that indicate a special need for care, and defining minimum standards for the care of isolated persons.

Quick action necessary

The General Directorate's hope that the positive trend of the first few months of 2023 would stabilise did not materialise. Contrary to reports launched in the media, there were already more suicide attempts in the middle of the year than in the previous year. By the end of 2023, the number of deaths had more than doubled compared to the previous year. The worrying trend, which the AOB has already highlighted on several occasions, is therefore continuing.

Most suicides (and/or attempts) are still committed by strangulation. What is striking, however, is the sharp increase in serious cuts caused by razor blades, knives or spectacle lenses. A cluster of incidents was recorded this year in the Graz-Jakomoni (6), Vienna-Josefstadt (5) and Stein (4) correctional institutions. The prevention concepts there should be evaluated as a matter of urgency.

Ministry is in default

Overall, the AOB urges a swift implementation of the working group's recommendations.

The ECtHR has repeatedly stated that "regardless of the State's knowledge or negligent ignorance ... prison staff must take basic precautions to protect the life and health of detainees (e.g. 17 October 2013, Keller v. Russia, Appl. No. 26824/04, paragraph 82 with further references). The individual correctional institutions and forensic therapeutic centres can only fulfil these duties of protection and care if they receive the corresponding instructions and guidelines from the Federal Ministry of Justice.

3.7.2.2 State of repair and equipment

Inhuman prison conditions – Vienna-Josefstadt correctional institution

During a consultation day in February 2023, several inmates who depend on a wheelchair spoke to the AOB. The majority of them were accommodated in

the infirmary. Not even one of them could use the toilet independently. The doorframes in all the rooms were too narrow.

Lack of barrier-free accessibility for persons with disabilities

If an inmate depends on the assistance of a fellow inmate, this constitutes a violation of Article 3 ECHR (see ECtHR 20 May 2010, Bsw. 46857/06, Z 27). Another person who has had a leg amputated has to hop to the toilet on one leg. The space between the washbasin and the bed is too narrow for the wheelchair to reach the toilet door. The swinging door of the toilet is fitted with a spring so that the patient cannot use crutches either. Until a few days before the consultation day, he did not have a prosthesis to put on.

Vienna-Josefstadt correctional institution is by far the largest prison in Austria. It is the only correctional institution that has the status of a special medical facility. It is particularly sad that such precarious conditions prevail in this facility, especially in the infirmary.

Blatant case of maladministration

During the consultation days, it also became apparent that not a single inmate in a wheelchair is able to spend time in the fresh air every day because a slope at the exit to the yard cannot be overcome without assistance. Apparently, none of the prison guards feels responsible for giving the inmates the support they need.

Criticism of specially secured cells – Wiener Neustadt correctional institution

As the management of the facility reported at the beginning of May 2023, a whole series of projects have been implemented since the last visit by the AOB. The shared accommodation has been expanded, the detention room management system has been reorganised for both detainees awaiting trial and inmates, a leisure concept has been developed, the employment rate has been improved and a workshop on dealing with mentally disturbed inmates has been held. Staff training on suicide prevention shall be organised in the near future.

In stark contrast to the positive changes (which are also visible in the building) is the condition of the specially secured cells. The Wiener Neustadt correctional institution has three of these cells.

Risk of injury

The first inmate cell is in the women's section. It contains an iron bedstead with a mattress. One negative feature is a stainless steel washbasin with sharp edges. The knobs on the tap have been removed so that it is not possible to draw water. The toilet area with a stainless steel seat toilet is 15 cm higher than the rest of the room and is therefore not barrier-free.

Long distances

The second inmate cell is located in the penal section. It is in perfect hygienic condition and equipped with a cuboid for sitting and lying down. The camera illuminates the entire inmate cell. The sharp-headed screws criticised in the

Annual Report 2019 (available only in German), have been ground down to such an extent that no injuries can be sustained. Drinking water can be taken at will through a hatch. The emergency call button can be operated via another hatch. The specially secured cell is located at the far end of an L-shaped corridor and furthest away from the duty room. The distance from the duty office to the specially secured cell and back is 143 metres, as the department officer stated when questioned. If someone needs help, valuable time is wasted.

Risk of strangulation

The third specially secured cell, located also on the penal section of the second floor, will be moved to the other end of the corridor. It is currently not safe to use. In particular, the solid inner bars enable strangulation. It remains unclear when the room will be adapted. During reconstruction, a second entrance shall be created so that the emergency team can access it from both sides if necessary. The structural work is considerable, as the inmate cell door is low and narrow and the door frame is set into thick brickwork.

Plastic cutlery is to be used for all specially secured cells. However, the cutlery used here is made of wood. The sharp prongs of the wooden fork pose a risk of injury.

Water temperature in showers not adjustable – Hirtenberg correctional institution

It has been known for more than two years that the water temperature in the shower rooms at Hirtenberg correctional institutional cannot be individually regulated. As early as 2021, it was discovered that there is only one inlet in the respective anteroom of the actual shower area. The water temperature is set between 35°C and 40°C as standard.

Unsustainable condition

In fact, there are considerable temperature fluctuations. It often happens that the water is very hot in the morning and only cold in the afternoon. One inmate who works in the metalworking shop and wants to clean his hair of metal dust after work has no other option than to heat water in a kettle in his cell, which he then takes into the shower in a rubbish bin to pour over his head. The fine metal dust could not be washed out of his hair with cold water alone. In addition to this, some detainees turn on all the showers in the morning to raise the room temperature and thus waste hot water unnecessarily, which the detainees coming after them then lack.

No hot water batteries

In the opinion of the AOB, the independent determination of the water temperature when showering is a standard that can also be expected in prisons. Inmates must be given enough warm water every day to enable them to clean themselves thoroughly. In addition, they must be given the opportunity to take a warm shower or full bath as often as necessary, but at least twice a week. Having sufficient hot water for personal hygiene is

therefore not a luxury. The management of the correctional institution replied that retrofitting would incur high costs and was currently not possible for budgetary reasons.

The AOB remains of the opinion that it must be possible to select the temperature in the showers individually. Qualified inmates could install the new pipework. This would not only make construction cost-efficient, but would also increase the level of employment in Hirtenberg correctional institution.

Mould infestation in the staff shower – Vienna-Favoriten forensic therapeutic centre

Moisture damage

During a consultation day at the Vienna-Favoriten forensic therapeutic centre, staff members drew the AOB's attention to a mould infestation in the shower for the staff. The problem had been known for several years and the head physician had already criticised it. However, due to a conflict of responsibility between the General Directorate and the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*), the premises had not been renovated for years.

Late refurbishment

The Federal Ministry of Justice informed that an inspection of the affected premises took place in mid-December 2022. They decided to refurbish the shower rooms in general and to install a supply and exhaust air system at the beginning of 2023. The AOB welcomes these measures. However, in view of the fact that the mould infestation has been known for four years and was also criticised by the head physician, prompt action could have been expected.

Successful reconstruction of regional court field office – Salzburg-Puch correctional institution

In 2021, interrogation rooms for the court and the public prosecutor's office as well as common rooms for inmates awaiting the start or outcome of a trial were set up in the basement of the Salzburg Regional Court.

Eight detention rooms have been created. All of them have seating (armchairs, table) and a separate toilet with barrier-free access. One room is equipped for persons with disabilities. There is a shower facility in the associated wet room.

Completely barrier-free

The entire area is impressive in terms of the spaciousness of the inmate cells, especially with regard to the barrier-free and disabled-friendly bathrooms. The staff were involved in the planning and are very satisfied with their working and recreation areas. The only downside is the narrow entrance gate, through which a minibus barely fits.

3.7.2.3 Living conditions

Criticism of cell opening hours – Vienna-Simmering correctional institution

During daytime, inmates shall be accommodated in community with others for as long as possible, considering their individual needs and suitability. Insofar as it is appropriate in view of the nature of the detention and other circumstances, accommodation shall be in residential groups or in unlocked cells or common rooms.

In order to maximise cell opening hours and to fulfil this legal mandate, the facility management must draw up binding concepts for prison design and the forms of accommodation for detainees in accordance with the structural, staffing and organisational framework conditions and submit them to the Federal Ministry of Justice.

Risk of breach of duty

In accordance with these guidelines, inmates in one unit of Vienna-Simmering correctional institution are also permitted to spend time outside their cells after work. This time outside the cells - referred to as "free time" by the inmates - is used for phone calls, showering and socialising with other inmates. However, the end of the cell opening hours is not announced, which is why inmates sometimes "chat away". The late arrival in their own cells can, as has been complained about, lead to disciplinary consequences.

The manager of Vienna-Simmering correctional institution made it clear that he sees no obstacle to an announcement being made in the wards shortly before the end of the cell opening hours. He would order this.

Delayed opening of cells

Several inmates in another ward complained that the cells were not opened at 7 am in the morning but sometimes 15 minutes later instead. As inmates who are employed are taken to work at 7.30 am and inmates who are not employed have to be back in their cells by this time, morning activities such as getting breakfast, handing out medication etc. cannot always be completed on time.

Already on the day of the consultation, the AOB was assured that the officers in the department would be sensitised and reminded of the applicable service order, which stipulates that detention rooms must be opened at 7 am.

Lack of sports and leisure equipment – Stein correctional institution

At the consultation day at the end of November 2023, inmates from various departments complained that there was no leisure and sports equipment. There was no table football equipment or table tennis table in the ward corridor or in a recreation room. There were also no ergometers to work out outside the time for yard exercise. Sport could only be practised in the

designated fitness rooms. It was only possible to exercise if officers were not assigned to other activities. In one department, there was a dartboard in the corridor, but no darts.

The facility management admitted that the wings were equipped differently and that there were individual wards lacking equipment completely. In response to the complaints, the management promised that the recreation and sports officer would conduct a house-wide survey of the available, functioning equipment and that additional orders would then be placed.

Loss of property – Hirtenberg correctional institution

Objects disposed of or stolen

An inmate was transferred from Hirtenberg correctional institution to Stein correctional institution. However, many of his belongings were not "forwarded". As the Federal Ministry of Justice confirmed, a fan, a blue-ray player, a table lamp and a clock radio were noted as "remaining" in the Hirtenberg correctional institution's deposit report and were therefore made available to the inmate there. The items never arrived at Stein correctional institution. It was not possible to determine where they were. For this reason, the inmate had been informed about the possibility of claiming compensation. The AOB stated to the Ministry of Justice that a realistic claim by the inmate should be recognised in a timely manner.

Wireless headphones retained – Stein correctional institution

An inmate was transferred from Hirtenberg correctional institution to Stein correctional institution after an escape attempt. He criticised that "wireless headphones", which he had been given in Hirtenberg, were not returned to him after his transfer to Stein correctional institution.

Unlawfully retained

The AOB pointed out that the possession of the wireless headphones as a "technical device" had probably been granted as part of a benefit and that the benefit had been formally withdrawn.

In response, the Federal Ministry of Justice stated that the wireless headsets had been taken away "for security reasons" and had since been stored in the depository. The Ministry also stated that benefits once granted would continue to apply in the event of a change of prison location and could only be withdrawn if legal requirements were met. The Ministry of Justice promised to take appropriate supervisory authority measures.

Delayed delivery of pocket calculator – Innsbruck correctional institution

Benefit "follows you"

A prison inmate complained that he was not given a pocket calculator in Innsbruck correctional institution, which he had been given as a benefit in a previous correctional institution. According to the Federal Ministry of Justice,

possible security concerns first had to be ruled out. As the device was a benefit, and there was no suspicion that it had been tampered with, possible security concerns could not justify the delay. After the AOB was consulted, the device was ultimately handed over to the inmate in a timely manner.

Late transfer to inmate account – Stein correctional institution

In March 2023, an inmate in Stein correctional institution complained that EUR 50 had not yet been credited to his inmate account. This amount had been debited from the inmate account of his mother, who was detained in Schwarzau correctional institution, at the end of November 2022, but had not yet been transferred to his account. As the Federal Ministry of Justice admitted, the amount was only recorded as "offset" and not yet "credited" to the account. The inmate was actually able to dispose of the amount as of December 2022. However, this does not change the fact that Stein correctional institution failed to "credit" the "offset" amount in a timely manner. There was therefore a risk that the inmate spent more money than he had.

Exemplary employment opportunities in women's wing – Krems correctional institution

In mid-February 2023, the AOB was able to gain an impression of the employment situation of the inmates at Krems correctional institution. All women are offered a daily structure. Those who wish to do so work in the creative workshop, where various handicrafts are produced. These are sold at the courts' Christmas and Easter markets, for example.

Good equipment

At the time of the AOB's visit, some of the women were busy crocheting children's toys, while others were making greeting cards. Finished items of clothing for small children and neck cushions were also on display. Crafts are made in a large, light-flooded social room with paper, wool and fabric. There are also two sewing machines. The work is carried out under supervision and guidance. Those who do not wish to participate can withdraw to their own room.

Overall, the women's ward made a comfortable impression. At the end of each wing, you can get some fresh air at any time, either in a small, partially covered inner courtyard or on a loggia. The women have their own landscaped area for their daily walk around the courtyard.

Good prison climate in ward for unoccupied inmates – Krems correctional institution

A tour of Krems correctional institution gives an impression of the structural condition of the building. In addition to weak points, such as the lack of

barrier-free accessibility for persons with disabilities in the main building, the lack of sufficiently accessible cells for the disabled and a cracked, sharp-edged Perspex screen in one of the specially secured inmate cells, the design of the department where mainly non-working inmates are housed stood out positively. The corridors made a bright and well-kept impression. The walls were freshly painted and decorated with murals created by the inmates themselves.

The good atmosphere in the correctional institution is also reflected in the leisure programme organised by the staff: once a week there is a group outing where sports are played or a cultural programme is planned.

3.7.2.4 Administrative penalties for juveniles

Missing sanction catalogue

Perceived injustice

The AOB frequently receives complaints about how violations of rules are dealt with in prison. Inmates feel that they are wrongly involved in proceedings and complain about their outcome. Legal protection options are rarely utilised, whether due to ignorance of the legal situation or language barriers. Fines are often imposed, which are paid with the feeling of being at the mercy of others.

In the report *"Jugend in Haft"* ("Youth in Detention") of 2022, which is only available in German, the AOB emphasised how important it is for a smooth day-to-day enforcement process that young people in particular know which offence is punishable by which sanction. The law currently contains different types of sanctions. However, it does not specify which offence is to be prosecuted and how. In practice, this means that the same misbehaviour is sanctioned differently depending on the correctional institution.

Catalogue creates justice

The AOB therefore calls for a "catalogue of criteria" that specifies what sanction the inmates can expect for what offence. The sanctions available under the Penitentiary System Act (*Strafvollzugsgesetz*) are manifold: they range from reprimands, (temporary) restriction and withdrawal of benefits or specific rights, and fines to house arrest. In some cases, they have a serious impact on personal circumstances. This can lead not only to hardship, but also to unequal treatment and disadvantages. In the interests of transparency and prevention, the type and duration of the measure should therefore be specified.

The Federal Ministry of Justice refuses to create such a catalogue, which would also be binding on the authorities. Categorisation would mean that the aspects of the individual case could not be adequately addressed.

The AOB does not see any incompatibility here: a sanction catalogue with guidelines guarantees legal certainty for all parties involved. This could be waived in individual cases with sufficient justification.

Educational measures rather than penalties

Joint processing

Especially for juveniles, sanctions should be the last resort. It often leads to a reaction of defiance without bringing about a change in behaviour. This is why the "educational measures" pilot project was launched at the Vienna-Josefstadt correctional institution, which is home to Austria's largest juvenile ward. This means that not every offence in the juvenile ward leads to administrative penalty proceedings. Alternative measures - such as warnings, reparation, or dealing with the incident - should be considered beforehand. Removing the television or banning the inmates from participating in joint activities for a certain period may also be considered.

The young people should be involved in the process. They should learn that they have to take responsibility for their behaviour and that misconduct cannot remain without consequences. This undoubtedly means additional work for the caregivers. Instead of a quick punishment, it takes time, patience and persuasion to deal with incidents. In order to rule out any suspicion of arbitrariness, the discussions about the measures must be documented.

Untrained staff

Despite fundamental approval of the project, difficulties arose during its implementation. Unfortunately, these have to do with the staffing levels in Austria's largest correctional institution.

After the project was completed, the Federal Ministry of Justice determined that almost half of all the administrative penalty proceedings were filed by officers who do not normally work in the juvenile department. Due to a lack of appropriate training and qualifications, these officers were unable to take any educational measures. It was therefore decided to form a separate group consisting of prison guards who are normally not assigned to the juvenile ward. They were to be familiarised with the concept of "educational measures" and then (regularly) assigned to duty in the juvenile department.

There was resistance to this order from the employees. It remains unclear to the AOB whether sufficient efforts were made to win the employees in question over for this project. It is also unclear whether sufficient information was obtained as to why they are opposed to further implementation.

Ministry sticks to its plans

The adolescents were surveyed after the end of the project. They consistently stated that they felt the educational measures were appropriate and fair. The Ministry of Justice also considers the educational measures to be a good additional option that expands the educational component of the detention of juvenile offenders and can steer their behaviour in a socially desirable direction. All correctional institutions are now instructed to apply "educational measures" to juveniles in case of administrative offences and where possible and appropriate.

Solitary confinement as a means of disciplining

Disproportionate hardship

The most severe penalty for misbehaviour is house arrest. It is nothing other than solitary confinement. The detainee is isolated in a detention room and is only allowed to leave it to go out into the yard alone, without their fellow detainees. According to the law, house arrest can be imposed on juveniles for up to one week. This penalty was imposed on juveniles 16 times in the period from September 2022 to October 2023.

Legislative recommendation

In the opinion of the AOB, the statutory provision should be amended: No house arrest should be imposed on juveniles. The CPT also criticised the solitary confinement of juveniles (CPT/Inf(96)11m, UK-PM2 § 138).

3.7.2.5 Torture, abuse and degrading treatment

Permanent electric light – Vienna-Josefstadt correctional institution

Inhuman prison conditions

The AOB initiated investigative proceedings based on a complaint that the light had been switched on all night for a detainee on remand. In its Annual Report 2021 (volume "Protection & Promotion of Human Rights", p. 126) the AOB referred to a comparable situation in Innsbruck correctional institution. It the report, the AOB stated that being permanently exposed to light - even if unintentionally - is one of the prohibited methods of torture (for references to the case law of the ECtHR, see Grabenwarter/Pabel, ECHR7 (2021) Section 20 (43) in footnote 259). Many people cannot sleep when the lights are on. This disrupts the sleep-wake rhythm and creates a stressful situation that leads to somatic and psychological consequences.

However, neither the cameras nor the video surveillance server at the Vienna-Josefstadt correctional institution allow monitoring using residual light amplifiers or infrared. This means that no suitable image quality can be achieved.

Quick remedy necessary

The AOB only refrained from making a recommendation in view of the fact that the installation of such cameras will take place with the functional and stock renovation of the building. However, until the refurbishment is made, it should be ensured that the switched on lights during the night are at least reduced to a level sufficient for monitoring (e.g. by means of a dimmer).

Omitted report to public prosecutor's office – Vienna-Mittersteig correctional institution

Immoral request

An inmate at the Floridsdorf field office of Mittersteig correctional institution complained that a fellow inmate had offered him and other inmates money if they made themselves available as "test subjects for rectal examinations at the medical university". He "as a former doctor and employee could organise this".

After he had reported this matter to an officer in the facility, he had been visited by the psychological service in mid-December 2022. He was informed that charges would be filed against the instigator and that he, as the victim, would be informed about the further course of events.

Bodily injury

The Federal Ministry of Justice relativized the information. The perpetrator had inserted rubber tubes into the victim's mouth and nose. The victim had suffered nosebleeds as a result. After failing to hand over the promised money, the victim had refused further "examinations".

After the incident became known, the two detainees were immediately separated. The management of Vienna-Mittersteig correctional institution had wanted to report the incident to the police. Unfortunately, however, it was no longer possible to determine whether the report had been made to the public prosecutor's office. A statement of the facts was subsequently made after the AOB was consulted.

The person concerned had not suffered any disadvantage insofar as he had filed a complaint with the public prosecutor's office himself at the beginning of April 2023. He had requested a statement of reasons against the discontinuation of the investigative proceedings, which he had received.

Inadequate labelling – Hirtenberg correctional institution

Degrading

Several inmates complained at the consultation day in mid-March 2023 that the yoghurt pots, which are used to dispense substitution medication, were labelled with the word "poison". They found the labelling degrading.

The AOB determined on site, that the medical staff dispense the medication in the surgery and take it from the main building to the individual detention facilities. The inmates have to report to the respective departmental base at a certain time of day, where they receive the medication. To ensure that the inmates take the medication correctly and consistently, they must swallow it with a yoghurt in front of the officer.

An immediate inspection did not reveal any yoghurt pots with such labelling. However, on the same day, the facility management instructed the staff in the departments to stop labelling the yoghurt pots improperly.

3.7.2.6 Health care

Allocation of HCV therapies – Federal Ministry of Justice

Decree promises remedy

In its Annual Report 2022, volume "Monitoring Public Administration", pp. 163 et seq., the AOB summarised its criticism of the practice of the medical superintendent in the allocation of HCV therapies, which it had brought to the attention of the Federal Ministry of Justice on several occasions. The Ministry took these complaints as an opportunity to

reorganise the procedure and documentation for obtaining approval from the medical superintendent.

This means that as of February 2023, applications for authorisation by the medical superintendent must be entered for each patient directly in the Electronic Patient Record Module (electronic medical record). This eliminates the need for a manual authorisation. The office of the medical superintendent and the respective hospital department can make a call for applications. Another advantage is the consistent documentation in the medical history. A list can be created in the Electronic Patient Record Module on a daily basis, which can then be used by the medical superintendent to process the referrals.

No change in practice

The AOB therefore assumed that there would be no further complaints about long waiting times or withheld therapies, neither from patients nor from the nursing staff, who often vividly described their futile efforts to reach the medical superintendent. It was therefore even more surprising to learn at the last consultation day at the Klagenfurt correctional facility in October that nothing had changed in practice.

The Federal Ministry of Justice replied that the Klagenfurt correctional institution had not acted in accordance with the decree, but had used other forms of communication (e-mail, telephone enquiry). It would therefore examine what steps should be taken under service and/or disciplinary law. It was not stated whether the three patients (ever) received the therapy.

In July 2023, staff from the infirmary sent an email requesting HCV treatment for a prison inmate. Despite repeated telephone and telemedical requests, no response was received, so another request was made in September. There was still no response by the consultation day in October 2023.

In April 2023 and August 2023, the infirmary requested HCV treatment for two more prison inmates by email. Despite repeated telephone enquiries, no response had been received by October 2023.

Medication prevents health consequences

As these are obviously not isolated cases, the AOB asked the Ministry of Justice for an explanation. Once again, it must be pointed out that medical treatment often only takes three months, has hardly any side effects and leads to a complete cure in over 90% of cases. If hepatitis C remains untreated, however, this can lead to serious liver diseases such as liver cirrhosis or liver cancer after many years. Any delay in administering indicated therapies therefore has health consequences.

The AOB likes to add that two patients were earmarked for treatment in January 2024. The third patient was discharged untreated in November 2023.

High paper workload for medical specialists – Vienna-Josefstadt correctional institution

Little time for patients

The Vienna-Josefstadt correctional institution employs five assistant doctors at 50%, two specialist doctors at 70%, and one specialist doctor at 50%. During a visit in March 2023, the assistant doctors explained that they had 110 patients to care for, with detainees in facilities in the penitentiary system and forensic institutions requiring particularly intensive care. In addition, documentation did take up a lot of time. Setting up a secretariat to take care of the paperwork would relieve the pressure; in return, the doctors would have more time for the patients.

The Federal Ministry of Justice stated that five workstations are set up in the office for hospital matters of the Vienna-Josefstadt correctional institution. The area of competence also includes paperwork. In addition, one civilian service worker is assigned to the psychiatrists in forensic institutions for paper work. In addition, two further civilian service workers from the hospital's internal office can be called upon if necessary. It is not possible to increase the number of positions for paper work due to a lack of available permanent positions in the management reserve for permanent positions.

Relief for documentation

The AOB is aware of the additional financial burden. However, in view of the notorious shortage of doctors and the chronic undersupply of psychiatrists in the prison administration, consideration should be given to relieving medical staff of administrative tasks as far as possible.

Consequences of a scabies infection – Vienna-Josefstadt correctional institution

Itching and washing compulsion

An inmate of Vienna-Josefstadt correctional institution complained that he had contracted scabies in the access ward because of dirty mattresses. A doctor had diagnosed the mite disease. He was prescribed pills and an ointment. Since then, however, he has suffered from a compulsion to wash.

The Federal Ministry of Justice confirmed the diagnosis and the treatment. It could no longer be established that the mattress had been soiled, as it had been disposed of. The officers of the ward check mattresses after each detainee leaves. In the event of contamination or damage, the mattress is cleaned, repaired, or disposed of via the main storage department.

Psychosomatic symptoms

With regard to psychological care, it should be noted that the patient regularly took advantage of the opportunity for clinical-psychological counselling. After clarification by the medical service, it must be assumed that there are no somatic causes for the itching that continues to be experienced and the resulting compulsion to wash. The disease was undoubtedly triggered by the scabies infection, whereby additional stressors tend to worsen the symptoms.

The creation of a daily structure is useful in order to limit thoughts about health problems. The correctional institution prioritised the patient in terms of employment and is planning to refer him to a psychiatrist for possible psychopharmacological treatment.

Compensation for treatment costs – Hirtenberg correctional institution

Due to an injury sustained by an inmate during his escape, treatment costs of around 390 euros were incurred at the Vienna Neustadt Regional Hospital, which were debited from the inmate's account.

Basis of claim

The Penitentiary System Act (*Strafvollzugsgesetz*) provides for a separate liability for costs incurred as a result of an escape. Compensation must be paid in accordance with the provisions of civil law unless the correctional institution waives the claim. A waiver of up to 3,000 euros can be granted, if the maintenance of the person liable to pay compensation, or of the person entitled to maintenance from him, or his own continued existence is jeopardised. Claims can initially be settled by mutual agreement between the facility management and the inmate. If no mutual agreement can be reached, claims must be asserted under civil law and enforced by way of judicial execution.

Missing power of execution

According to information from the Federal Ministry of Justice, the deduction of costs was neither mutually agreed nor was a corresponding power of execution obtained. The AOB suggests examining whether the claim should be waived. In any case, a lawful situation must be established, either by reversal or by obtaining a power of execution.

3.7.2.7 Personnel

Staff shortages facilitate violence – Stein correctional institution

During the consultation day at the end of November 2023, it became clear just how much pressure the staff shortage is putting on the working and prison climate in Austria's largest correctional institution. The position of the manager of Stein correctional institution has been vacant for some time, as has the position of the head of the psychological service. There is also a shortfall of 16 hours in this specialised service. The head of the facility’s forensic department has resigned. His contract expired at the end of the year. A social worker has been sought for the department for two years. There is a lack of applications. In addition, 40 prison guards will be retiring in 2024 due to upcoming retirements.

Effects in everyday prison life

The staff shortages are noticeable at all levels. For example, the head of the department that accommodates inmates undergoing substitution treatment has been absent for over four months. Although her deputy is endeavouring

to cover the additional workload, the concerns of the inmates often have to take a back seat. For example, three detainees who share a cell for multiple inmates have been waiting for weeks for a faulty light switch in the toilet to be repaired. They have to leave the door open when they go to the toilet or go to the bathroom in the dark. Even simple repair work that has already been repeatedly requested, such as a blocked sink drain or the installation of a hinge in the kitchen, has not been carried out.

Since Garsten correctional institution will become a forensic therapeutic centre at the beginning of 2024, only Graz-Karlau correctional institution will be available as a correctional institution for inmates serving long sentences in addition to Stein correctional institution. In the event of assaults among inmates or on staff, transfers will only be possible to this facility. However, criminal proceedings will continue to be conducted at Krems Regional Court. Hence, inmates at Graz-Karlau correctional institution must be transferred to Stein for trial and back to Graz-Karlau again afterwards. If officers are also questioned as witnesses, this can bind up to 12 prison guards one day, who are absent from their workplace (at least) on that day.

More inclusion

As a result, the working spaces are closed. The inmates are locked in their cells, they are neither called to work, nor are they offered any leisure activities. Disputes and assaults occur in the wards. This is often due to debts that exist among the inmates despite the legal ban on doing business.

The staff shortages therefore not only have a negative impact on the working atmosphere, but also have an effect that favours violence in everyday prison life. In addition, 25 inmates with convictions under Section 20 of the Austrian Criminal Code ("criminal offences against the public peace") are housed in Stein correctional institution, many of whom have committed terrorist offences and 35 of whom are members of organised crime. Because of the shortage of staff, the prison also lacks a security officer, which is particularly serious in view of the situation described above.

On a positive note, the specialised medical services are almost fully staffed. This applies to general medicine as well as psychiatric care and the nursing service. The use of telemedicine in the field of psychiatry has also proved to be a relief.

Overstepping boundaries

However, the coordinator and head of the medical service complained that inmates overstep boundaries in their behaviour towards medical staff significantly more often, which included insults and threats ("I know where you live"). Inmates were becoming more and more demanding, especially when asking for (more) medication.

Lack of involvement in changes to the detention of juveniles – Vienna-Simmering correctional institution

In mid-December, the AOB honoured its promise to be available for a group discussion with the staff of Vienna-Simmering correctional institution. Many staff members were visibly upset; they had only recently learnt from the General Directorate that part of the building was to be made available for the detention of juvenile offenders. The decision had been taken without consulting or informing them. They had not been involved in the processes so far.

Missing concepts

People are sceptical about the fact that implementation is scheduled for mid-2024. 93 inmates in relaxed detention will have to make way to free up the wing for the juveniles. It is still unclear, which structural adaptations need to be made. Moreover, it is unclear who will be on duty in the new building, which shall be run separately from Vienna-Simmering correctional institution in organisational terms.

Although assurances had been given that the detention of juvenile offenders would not lead to any additional workload for the staff of Vienna-Simmering correctional institution, the changes were seen realistically. Whenever there were bottlenecks at the new location for the detention of juveniles, Vienna-Simmering correctional institution would be asked to help due to its proximity.

Foreseeable frictional losses

The smoking ban affecting young people was also viewed critically. It should not only be observed in everyday prison life and education, but also at the work facilities, which include male and female detainees. It was foreseeable that the directives would be met with great resistance from the adult inmates at Vienna-Simmering correctional institution. They understand the young people's urge to exercise, but are concerned about the future unrestricted use of the facilities own sports ground.

Lack of car parking spaces

It is particularly painful that the inner courtyard has to be vacated and will no longer be available as a car park for commuters. As 70 % of the staff reportedly come from neighbouring *Laender*, and - as some vividly asserted - depend on travelling by car, the question arises as to where to park their cars during working hours in the future.

The Vienna-Simmering correctional institution did not have any land available for this purpose. The reallocation of a neighbouring plot of land is out of the question, apart from the fact that the ownership situation is unclear. The only remaining option is to park the vehicles on public property. Not all employees of the executive service would benefit from an exemption from the short-stay parking zone ordinance that also applies in Vienna-Simmering, and colleagues from the non-executive service would not be able to benefit at all. Envy and resentment would be inevitable. Some had already applied for

work in other facilities. The dissatisfaction of the employees was particularly evident at this point.

Just a few weeks later, the problem of parking spaces was solved. Staff were given the opportunity to purchase a parking sticker for the district and park their cars in public spaces.

The staff in the infirmary also expressed reservations. They were unable to say where the surgery area for adolescents would be located in future, how it would be equipped, or who would be on duty there. They were only told that the dentist would be responsible for both facilities.

Missing appreciation

In conclusion, the employees regretted the course of events to date. They emphasised that they were ready to face the changes and are also to accept them. They are, however, disappointed with the flow of information to date and the lack of involvement in the decision, which is said to have been made at the beginning of the year. Although a colleague is now to be involved in a working group that will be set up in spring 2024, this does not change the disappointment.

The AOB regrets the situation, especially as Vienna-Simmering correctional institution is an indispensable facility in the Vienna area, which not only has to cope with the challenges of disproportionately high capacity utilisation, but also handles the entire electronically monitored house arrest.

Blatand understaffing of the social service – Vienna-Favoriten forensic therapeutic centre

Months of waiting times

In February 2023, there were several complaints at the Vienna-Favoriten forensic therapeutic centre about the very long waiting times at the social service. Day release prisoners in particular reported that they sometimes had to wait four to five months for an interview. The few employees would concentrate entirely on the inmates in facilities in the penitentiary system and forensic institutions.

The head of the correctional institution and the head of the special services confirmed the long waiting times. The social service has been understaffed with two employees for some time; there are not enough hours to fulfil all tasks to a reasonable extent. In addition, some of the people concerned are accommodated outside of the centre. This would result in additional work, as the follow-up care facilities, which are often far away, would have to be visited to check on the inmates.

Frightening undersupply

The high capacity utilisation of employees is not a suitable justification for the delayed support given to inmates. Waiting times of four to five months are too long. The lack of services also stands in the way of resocialisation. The few employees of the social service also run the risk of not surviving

the permanent overload without suffering damage to their health. In this respect, the employer is also required to fulfil its duties of protection and care.

Lack of skilled labour increase lock-up times – Graz-Jakomini correctional institution

Desire for more staff

During a consultation day in autumn 2022, the AOB learned that an occupational therapist would be needed at Graz-Jakomini correctional institution. A civilian cook would also be desirable to provide the necessary occupational opportunities. Civilian specialists would have been particularly useful in the sheltered workshops. In addition, more hours would be needed for a psychiatrist, especially in view of the fact that a long-standing psychiatrist will soon be retiring.

The Federal Ministry of Justice rejected the wishes for more personnel for Graz-Jakomini correctional institution. No occupational therapist was planned for the prison, nor a civilian specialist in the area of "manual labour". Only five additional hours per week would be made available for the psychiatric and psychotherapeutic medicine departments. They were tendered.

Staffing ratio no longer up to date

The AOB regrets that additional staff is not envisaged. Nationwide surveys have shown that more staff are needed to establish a modern penal system with longer cell opening hours and an adequate range of activities and leisure activities, despite the fact that the allocated posts are full (see Annual report 2019, volume "Protection & Promotion of Human Rights", pp. 132 et seq.). Human resources must be adapted to the real requirements of modern prison life in order to ensure appropriate living and accommodation conditions for detainees and prevent human rights violations.

In order to enable successful resocialisation, inmates should spend a large part of the day outside of their cell and receive an adequate range of employment and leisure activities. Unfortunately, too few activities and lock-up times of 23 hours a day are still a depressing reality in many correctional institutions (especially in court prisons). This is often due to insufficient staff resources.

Unattractive salary scheme deters those interested – Garsten correctional institution (forensic therapeutic centre), Federal Ministry of Justice

Many vacancies - too little pay

The AOB was repeatedly informed that there are too few social workers and that vacancies often remain unfilled for a long time. One of the main reasons for this is the salary. Employed social workers receive different salaries, depending on whether they are employed by the federal government, the recruitment agency for justice supporting staff, or the *Neustart* association.

Both, the salaries at the federal government and at the recruitment agency are below the collective labour agreement of the Austrian social economy.

There are currently just under 120 full-time social workers working in the correctional institution, of which around 81 are positions in the A2/2 pay grade, and 38 full-time staff are available through the recruitment agency for justice supporting staff. Of the 100 social worker positions made available to the correctional institutions, 18.5 are currently unfilled, with this number increasing every month. Long-serving employees are resigning because they can find better-paid work in the private sector. It is also becoming increasingly difficult to find suitable staff for unfilled positions.

Upgrading the workplace

Social workers are currently categorised in pay grade A2/v2. However, this no longer corresponds to their training. The Federal Ministry for Arts, Culture, the Civil Service and Sport then announced that social workers would be categorised in A2/4 or v2/3 pay grades in future. Managing positions in the social services would be categorised as A2/6 or v2/3 pay grades. The new categorisations will result in salary increases.

Salary adjustments

The AOB takes note of the measures taken and hopes that the salary increases will at least enable the current staffing levels to be maintained.

3.7.2.8 Return and release

Consequences of an escape after day release – Klagenfurt correctional institution

Detainee has to "make up for" total day release

At the consultation day in Klagenfurt correctional institution, an inmate complained that a day release was not included in his sentence. He had consumed a two-day release and only decided not to return to the field office just before it expired. He had already bought the train ticket from Vienna to Klagenfurt. Nevertheless, the Klagenfurt correctional institution had submitted an application to the Klagenfurt Regional Court that the time out should not be included in the sentence in its entirety.

It is undisputed that the inmate's day release had been authorised, but he did not return on time. Instead, he was picked up by the police in Vienna months later and sent to Vienna-Josefstadt correctional institution, from where he was subsequently transferred back to Klagenfurt correctional institution.

No obligation to submit an application

The Klagenfurt correctional institution initially stated that it had to file the application in order to enable the enforcement court to take a decision in this matter. This view is not correct. The enforcement court decides *ex-officio*. This act does not require an application.

There were also concerns about the application itself: In his recorded interview, the prison inmate stated: "I wanted to come back and was already

on my way and then I had an argument with my ex-partner about our daughter. I wanted to spend the summer with my daughter and I wanted to start my sentence again in September. The police caught me at a checkpoint and I was taken to the Josefstadt correctional institution".

Thin factual basis

If an application is made, it must be based on facts. Since the inmate stated that he wanted to come back and was "already on his way", the AOB would have expected the correctional institution to question him about when the argument with his ex-partner began and thus when he made the resolution not to return.

The AOB clarified to the Klagenfurt correctional institution that (only) its report and not the subsequent decision of the Klagenfurt Regional Court was being investigated.

Misleading promises of day release – Graz-Jakomini correctional institution

A prison inmate at Graz-Jakomini correctional institution turned to the AOB. He had initially been offered the prospect of working on day release from January 2023. He had announced this date to his potential employer. He was subsequently informed that he would not be able to go on day release until April 2023.

Double confirmation

The person concerned referred to a letter from his mother to the correctional institution in which she asked for clarification. On this letter, there is a handwritten note from a senior official: "Inmate should inform the mother about the decision that day release will be possible as of January 23". During the consultation day in October 2022, the site management also mentioned January 2023 to the AOB as a possible start date for the release.

Breach of promise

The Federal Ministry of Justice emphasised that the inmate had been informed at all times that an application could be submitted in January 2023, but that the day release itself could only begin in April 2023. The AOB cannot share this view. The prison inmate was promised - by the note on his mother's letter and by the information provided to the AOB and passed on to him - that he would be on day release as of January 2023. Among other things, this information prompted the inmate to tell his potential employer that he would start work in January 2023.

Complicated procedure at day release wing at Stein correctional institution – Krems correctional institution

During the consultation day at Krems correctional institution, the AOB visited the day release wing. It is part of the main building and offers space for fifteen day-release prisoners. The two houses are managed separately. The day release wing is accessed from the street.

Years ago, the day release wing had to be ceded to Stein correctional institution due to a lack of capacity utilisation. Today, the management of Krems correctional institution regrets this step. They have to register inmates who are intended for day release in their own house at Stein correctional institution. These inmates have to wait until a place becomes available for them. This means that Krems correctional institution lacks an important motivating factor.

3.7.2.9 Detention in forensic institutions

Long duration of classification – Federal Ministry of Justice

The concerned mother of a detainee approached the AOB in autumn 2023 as she felt that the medical and therapeutic care her daughter was receiving in Vienna-Josefstadt correctional institution was inadequate. The young woman was being accommodated in accordance with Section 21 (1) of the Criminal Code; she should start therapy as soon as possible.

Custody instead of treatment

The Federal Ministry of Justice confirmed that the judgement was issued at the beginning of May 2023. The decision on the place of further detention, however, was not made until November 2023. A few days later, the woman was also transferred to the institution assigned to her, i.e. the Asten forensic therapeutic centre. The Ministry emphasised that the woman had already received "adequate medical and therapeutic care" at Vienna-Josefstadt correctional institution from the time of her admission at the end of November 2022.

The AOB does not fail to recognise that it can be time-consuming to determine where someone is best accommodated. Nevertheless, the decision on the further place of detention must be made and implemented as quickly as possible, as structured care often only begins in the adequate facility.

Lack of therapeutic services – Vienna-Josefstadt correctional institution

Desolate everyday life

A woman sentenced under Section 21 (1) of the Criminal Code complained about the lack of therapy in Vienna-Josefstadt correctional institution. She had been in the facility for about a month. Although there was an occasional painting or discussion group, she did not receive any psychotherapy, even though she wanted it. According to her, the only daily structure was the cleaning chores that were assigned to her as a house worker. Furthermore, she explained that there was too much idle time; everyday life was slow. She felt that she was losing all sense of time. She stopped taking her medication the day before the interview, having the feeling that the medication was not doing her any good.

In the debriefing, the attending doctors confirmed that the number of women in detention in forensic institutions had increased disproportionately in recent times. There were regular ward rounds. A group had also recently been set up, but the woman concerned had only attended once. However, as a regional court prison, the facility is not geared towards treatment in detention in forensic institutions. They try to bridge the time here until the women are classified either to the Mauer Regional Hospital or the Asten forensic therapeutic centre.

No targeted therapies

In the opinion of the AOB this constitutes a breach of the intensification requirement. Detainees in forensic institutions must receive targeted therapy as quickly as possible. In addition, Vienna-Josefstadt correctional institution has been a field office of the Göllersdorf forensic therapeutic centre for over one and a half years. Therefore, it is also a forensic institution. For this reason, an adequate therapeutic programme can be expected for both men and women.

Inadequate treatment and care – Stein correctional institution

Simply locked away

A mother turned to the AOB. Her son was being detained in the forensic department of Stein correctional institution. The frustration over the lack of therapy and the inadequate living conditions would lead to violent impulsive outbursts in him. Because of these seizures, her son was permanently accommodated in the high-security wing. There, he is locked up alone in an inmate cell for 23 hours a day, with nothing to do. He receives no therapy.

As the AOB found, it was not possible to stabilise the detainee within a year. His temporary transfer to a medical facility only brought about a short-term improvement. Due to the lack of consistency in taking the medication, his state of health deteriorated again quickly after his transfer back to Stein correctional institution.

System overwhelmed

His clinical counsellor visited the inmate weekly in the security wing. The social service and the head of the forensic department had also held numerous discussions with him. However, the transfer to the forensic-therapeutic department of Stein correctional institution was not possible due to concerns regarding danger to himself and others.

The aim is to achieve behavioural stability over a longer period, at least one month. In addition, the willingness to take the prescribed medication is a prerequisite for transfer to a regular ward in a forensic institution.

During an inspection at the end of November 2023, the inmate was latently aggressive, disorientated and unkempt. According to the officers, he hallucinated at times. He did not want any contact with his only caregiver, his mother. When the two met, the situation escalated within minutes to such an extent that the task force had to be called.

The AOB demands that persons who suffer from such a serious mental illness or disorder and who refuse to take their medication be transferred immediately to a forensic therapeutic centre or a public psychiatric hospital in order to stabilise their state of health. Penal institutions cannot meet this need for treatment and care. They are neither structurally nor staff-wise capable of doing so.

Notorious undersupply

The Federal Ministry of Justice confirmed that more beds and an expansion of these specialised departments for people in need of forensic psychiatric treatment are urgently required. However, there is a lack of resources. Due to a lack of free space, a transfer is not possible in such cases.

The AOB cannot allow this view to stand unchallenged: The problem of bed shortages in psychiatric wards with a forensic focus has been known for years. It is not an isolated case. The lack of places may explain the inadequate medical care, but it does not justify it. The prison administration must provide detainees with adequate care. If it cannot do this itself, it has to buy in the services. Any failure to do so can lead to an even more severe course of irreversible damage to the health of those affected.

In December 2023, the Ministry of Justice finally announced that the patient was to be transferred to the Asten forensic therapeutic centre.

Good offer of leisure activities and ergotherapy – Vienna-Favoriten forensic therapeutic centre

Cooking group

The Vienna-Favoriten forensic therapeutic centre is endeavouring to expand the leisure activities on offer for those accommodated there. In January 2023, a cooking group was organised for the first time, where pizza bread and kebabs were made. The inmates were allowed to taste the food straight away. Further activities of this kind are planned.

Various sports

Prisoner inmates and detainees play together in a football group. It takes place externally in the Soccerdome and works well, as the day release prisoners motivate the inmates. Several excursions with sporting activities are also planned, such as Nordic walking, football golf, mini golf or disc golf. An in-house exercise group meets twice a week, where the detainees can choose games such as football, volleyball or badminton. Once a week there is a gymnastics group under the guidance of a physiotherapist.

Cultural excursions

Once a month, the occupational therapist organises excursions with people interested in culture. The detainees choose the destination themselves and take on smaller tasks, such as guiding the participants to the destination or reading a text aloud on site. The next excursion is to the Art History Museum.

The aim of all these measures is to motivate the inmates. The individual activities also represent social training in which various skills are practised, such as decision-making and dealing with criticism within a group.

Reconstruction of the attic

In order to expand the in-patient occupational therapy work area, the facility management applied to the Ministry of Justice to remodel the attic level. As the building is not insulated, it gets very hot under the roof in summer. Air conditioning is to be installed. In addition, a kitchen that can be used for therapeutic purposes is to be installed and a duty office is to be converted into an individual therapy room. The costs are considerably high amounting to between 450,000 and 500,000 euros.

For the AOB, it is essential that the staff is involved in the planning of such high investments so that the premises can be used in the best possible way after completion. The AOB also welcomes the wide range of leisure activities on offer. These activities are an important part of resocialisation, especially if they take place on a regular basis.

No relaxed detention in the absence of a residence permit – Federal Ministry of Justice

Lack of insurance cover

At the Vienna-Favoriten forensic therapeutic centre, the AOB was approached about a problem that had recently arisen several times: Detainees without a residence title cannot have relaxed detention, simply because they are not insured. In the event of illness, the costs would have to be borne by the follow-up care facility. For this reason, they are not admitted there.

The problem does not arise during detention in forensic institution, as the federal government is responsible for the health of the inmates. However, its responsibility does not extend to socio-therapeutic after-care facilities. Conditional releases from detention to forensic institutions are therefore not (or no longer) issued without the instruction to take up residence in these facilities - usually for several years.

Unnecessarily long detentions

Because the *Laender* also declare that they are not competent, these people remain in forensic therapeutic centres - and thus deprived of their freedom - although this would no longer be necessary due to the clinical picture. A transfer to their country of origin is also not possible if detention in a forensic institutions is not possible there.

Individual cases could be solved "unbureaucratically" so far. However, if the social welfare acts of the *Laender* continue to exclude these people from their scope of competence, the only option is self-insurance, which in turn is unaffordable for many.

Small suggestions for improvement – Hall Regional Hospital forensic department

The consultation day at Hall Regional Hospital in mid-November 2023 provided an opportunity for a tour of the forensic ward. Alike in previous visits, the premises were in perfect hygienic condition. One particularly positive aspect is that patients are able to access the inner courtyard at any time and get some fresh air.

Training flat abandoned

The only negative development is that the training flat had to be closed due to the high utilisation of the department. The residential unit, which was furnished like a garçonnière and in which a transition to life outside the hospital could be practiced, is currently being used by two patients who still have a longer in-patient stay ahead of them. Two beds were set up in the room. The kitchenette had to be closed off with a roller blind.

Missing camera cover

After inspecting several patient rooms, the AOB suggested that the surveillance cameras installed there should be covered as soon as they do not need to be switched on, so that patients are not exposed to latent surveillance pressure. This suggestion was noted.

It was also agreed to examine whether video telepho3ny or contact via WhatsApp could be considered for selected patients in the future, in addition to the possibility of using the phone. In this case, the telephone or device would (only) be made available to the patient by the care staff at short notice.

Internet telephony quickly implemented

It is indicative of the open-mindedness of the ward management that the suggestion was implemented within a week. Patients can now apply for an appointment with the social workers.

3.8 Climate action, environment, energy, mobility, innovation and technology

Introduction

In 2023, the AOB processed 1,480 complaints falling within the jurisdiction of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Most complaints in the area of transport concerned driving licence matters and the enforcement of the Motor Vehicle Act (*Kraftfahrgesetz*) and the Federal Road Tolls Act (*Bundesstraßen-Mautgesetz*).

3.8.1 Driving licences

Limitation of driving licence – Braunau am Inn District Authority

Specialist against time limit

A woman complained to the AOB because the Braunau am Inn District Authority had limited her driving licence for categories A and B to one year, even though she had a specialist medical opinion in favour of issuing an unlimited driving licence.

The limitation of a driving licence requires that a health impairment exists, the nature of which must be expected to lead to a future deterioration excluding or restricting the suitability to drive motor vehicles. This is according to the case law of the Supreme Administrative Court of Austria (e.g. Supreme Administrative Court ruling of 20 November 2012, Zl. 2012/11/0132) and the "Guidelines for the assessment of the fitness to drive a motor vehicle". The fact that a deterioration in the state of health is possible or cannot be ruled out is not sufficient for the restriction.

Authority must decide on time limit

(Court-appointed) Experts must therefore state whether, in view of the specialist medical findings, a deterioration that excludes or restricts the ability to drive motor vehicles must be expected according to the current state of medical science. The authorities must then assess whether the driving licence holder is medically fit to drive a motor vehicle. If the authority considers the expert opinion to be incomplete or inconclusive, it must ask the public medical officer to supplement the reasons or clarify any contradictions.

The AOB criticised the fact that the Braunau am Inn District Authority only asked the public medical officer to supplement his expert opinion in the course of the AOB's investigation in order to clarify whether the requirements for a time limit were met.

Duration of authenticity verification for foreign driving licence

Licence has to be converted

If the holder of a non-EU or non-EEA driving licence relocates to Austria, they are – as a general rule - only permitted to drive motor vehicles for six months. After this time, the driving licence is no longer valid in Austria and must be converted. The persons concerned therefore have a particular interest in having the driving licence authority deal with the matter quickly.

Verification takes more than four months

In some cases, those affected rightly complained about the length of time it took to convert their licence. In the course of the AOB's investigation, it became apparent that the long duration of the authenticity verification of the foreign driving licence was the main reason for the delays. For example, the authenticity verification of a Turkish driving licence by the State Office of Criminal Investigation of the Police Department of Lower Austria took more than four months.

In another case, the Criminal Investigation Unit of the Styrian Police Department also needed four months. The police department referred to a high workload and understaffing at the Criminal Investigation Unit, which is responsible for all foreign documents in Styria. Around 1,200 document files were logged between January and October 2023. Only one clerk and one employee in training were available for processing.

Sufficient resources required

The AOB suggested that the Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, in coordination with the Ministry of the Interior, ensure that driving licence documents are verified within a reasonable period. The personnel resources for this must also be created.

3.8.2 Motor vehicles

Restriction of the authorisation for practice drives

Authorisation only once for 18 months

An applicant for a driving licence approached the AOB and stated that she had received a permit for practice drives around nine years ago. However, she had not been able to complete her driving licence training at the time due to health and financial problems. A new licence for practice drives was prevented by Section 122 (3) of the Motor Vehicle Act, according to which such a licence may only be issued "once and for no longer than 18 months". An objective reason for this was not apparent.

Flexibility would be welcome

The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology justified the restriction by stating that sufficient driving experience could be gained within the specified framework in order to take the practical driving test. Furthermore, a certain limit was deliberately set in order to prevent "eternal practising". However, as this provision can also result in hardship cases, a possible amendment "in the direction of

creating a possibility for a further licence after an interruption of a certain duration" is noted. The AOB recommends more flexibility.

Bringing forward the periodic inspection of a motor vehicle

Postponement of vehicle inspection possible

According to Section 57a (3) of the Motor Vehicle Act (*Kraftfahrgesetz*), the periodic inspection of a motor vehicle (i.e. an inspection to obtain a so-called "vehicle sticker ") must be carried out one year after the first registration or one year after the date specified by the authorities. In one complaint case, the Upper Austria Police Department issued an administrative notification at the request of a licence holder setting October (starting from 2022) as the date for the periodic inspection instead of December.

Vienna transport authority refuses registration

In the course of moving from the district of Steyr to Vienna, the owner of a vehicle had to register his vehicle in Vienna in September 2023. The Vienna transport authority refused this. Although the vehicle was last inspected in September 2022, in the opinion of the authority, the owner did not have a valid "vehicle sticker" for the registration.

The administrative notification from the Upper Austria Police Department had lost its validity due to deregistration of the vehicle and the inspection date therefore reverted from September to the original date (December). The periodic inspection thus had to be made again (in November 2023 at the earliest) and the vehicle could only be registered after this date.

Approval to bring inspection date forward remains valid

In contrast, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology Affairs took the legal view, which in the opinion of the AOB is correct, that if the registration holder remains the same, the approved postponement of the date for the periodic inspection remains in force after deregistration and re-registration of that vehicle. The AOB recommends that the Ministry shall inform all vehicle registration authorities of this legal interpretation in a suitable form (decree) in the interests of uniform enforcement.

Counting rule when transporting children in school buses

Overcrowded school buses are safety risk

In its Annual Reports to the National Council and the Federal Council, the AOB repeatedly addressed the 3:2 counting rule for school transport in buses on regular motorised services. According to Section 106 (1) of the Motor Vehicle Act, three children under the age of 14 are currently counted as two persons and children under the age of six are not counted at all. If there is a lack of sufficient (seating) space, transport in buses is not only difficult for children, but the AOB also sees this as a potential risk to their safety.

In this matter, the AOB corresponded with the Ministry, the *Laender* and the competent professional association of the Austrian Economic Chamber. The AOB presented the result of this correspondence in its Annual Report 2020

(volume "Monitoring Public Administration", pp. 135 et seq.). The respective Ministers were essentially in favour of changing the counting rule and stated that this would, however, fail due to the lack of consent from the *Laender* to (co-)bear the additional costs.

Concerns of the *Laender*

The *Laender* pointed out that standard buses permitted in regular motor vehicle traffic need not only be equipped with seats but can also have standing room and are often used not only by schoolchildren but by other passengers as well. The introduction of a 1:1 counting rule alone does not mean that a seat is available to every child up to the age of 14. If this group of people were to be guaranteed a seat, this would have to be regulated separately. If children were to be given priority for seats, this would probably lead to a lack of understanding among other passenger groups. Finally yet importantly, the *Laender* also cited the additional costs associated with changing the counting rule.

In a cost estimate carried out in 2018, the Ministry of Transport, Innovation and Technology assumed investment costs of around EUR 180 million for the introduction of a 1:1 counting rule in overland transport while maintaining standing room throughout Austria. The complete abolition of standing room on scheduled bus services would undoubtedly lead to significantly higher additional costs. The AOB does not have an estimate for Austria as a whole.

Change would improve safety

It seems undisputed that even a change to the counting rule, whereby children are counted as adults but are allowed to use the authorised standing room, would in any case lead to fewer passengers per bus and thus to more space in the buses (ultimately also for other passenger groups) and to greater safety. The AOB therefore asked the Federal Ministry of Transport, the *Laender*, the Austrian Association of Municipalities and the Austrian Association of Cities and Towns for a statement of opinion on whether a change to the counting rule and its financing had been included in the negotiations on financial equalisation in 2023.

This was universally denied. The Association of Municipalities and the Association of Cities and Towns stated that this issue should be discussed in the wider context of public transport funding. The *Laender* again referred to (disproportionate) additional costs that would have to be borne by the federal government. Lower Austria at least confirmed that it would not apply the current counting rule in practice. Burgenland announced a similar approach for the future. The Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology still sees no possibility of bearing the additional costs. The change to the counting rule and the distribution of the associated additional costs is ultimately subject to political decision-making.

Problems following the theft of vehicle licence plates

In November 2022, a licence plate owner reported the theft of her licence plates to the police. She got new plates. In February and May 2023, she received a driver survey and anonymous penalty notices from the Linz-Land District Authority and the Upper Austrian Police Department. This made it clear to her that the stolen number plates were being used on another person's vehicle and that traffic offences had been committed.

Affected person must take care of matter themselves

The woman had to actively inform the authorities of the theft report and the re-registration of her vehicle in order to avoid consequences under administrative criminal law. The AOB shared her opinion that this effort should be avoidable. It therefore asked the Federal Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology and the Federal Ministry of the Interior to comment on whether there was an error in the individual case or a "system error".

The Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology initially stated that anonymous penalty notices are mainly sent out automatically and that the data of the last known registration holder is accessed in these cases. In cases of lost or stolen licence plates, the administrative penal authorities are therefore "dependent on the initiative of the (former) licence plate holder". However, the Ministry has initiated a correction in the IT coordination for all authorities.

Failure in individual cases?

The Ministry of the Interior stated that, according to a decree from 2016, the use of the data of last known registration owners in the context of traffic offence proceedings should be avoided. "Misuse" could not be ruled out. The Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology subsequently reported on information from the Ministry of the Interior, according to which the automated process in the programme for administrative penalty proceedings had worked correctly and as intended in the present case. The programme does not access historical data, which is why the former registration data could only have been transferred based on a manual query. The query of the last known licence holder had been an error in the area of the Upper Austrian Police Department and had resulted in training measures. There was no "system error".

The AOB will monitor whether it will receive similar complaints that require further official measures beyond the individual case.

Extending exemptions for emergency vehicles in the Road Traffic Act

An emergency driver criticised that ambulances and emergency doctors' vehicles are not generally exempt from compliance with the stopping and parking bans, as provided for in Section 26a of the Austrian Road Traffic Act

(*Straßenverkehrsordnung*) for public security service vehicles, as well as for postal, parcel, telecommunications or telecommunications service providers or cash-in-transit providers, among others.

Exceptions only for emergency responses

The Ministry of Climate Action, Environment, Energy Mobility, Innovation and Technology referred to comprehensive exceptions for emergency vehiclesin accordance with Section 26 Road Traffic Act, insofar as these their rides are qualify as emergency responses. An emergency response occurs when the vehicle is equipped with blue lights, one of the legally defined reasons for use the blue lights exists, and the blue lights are actually activated. No changes are planned in this regard, especially as there are "no requests for changes from rescue organisations" that would "point to the need to adapt the legal situation".

Equal treatment is demanded

The emergency driver countered that activating the blue light, which legally constitutes an operation, is not always appropriate in practice. This is the case, for example, when transporting people with certain medical conditions or in correspondingly dangerous police situations. It is also incomprehensible from the point of view of equal treatment why, for example, parcel delivery drivers are not bound by stopping or parking bans, but the drivers of an emergency vehicle are threatened with an administrative fine if they do not observe a stopping or parking ban when picking up patients.

In the opinion of the AOB, the Ministry should consider extending the exemptions for ambulances and emergency doctors' vehicles accordingly, involving the rescue organisations concerned.

Outdated definition of the racing bike

Regulation no longer up to date

A man approached the AOB criticising Section 4 (1) (4) of the Bicycle Regulation, which is based on Section 66 (2) of the Road Traffic Act. According to this provision, one of the requirements for qualifying a bicycle as a "racing bicycle" is an "outer rim width of no more than 23 mm". Modern racing bikes, however, often have 25 mm or 28 mm wide tyres to increase rider comfort without sacrificing performance. The Tour de France may even use tyres with a width of up to 31 mm, and these are undoubtedly racing bikes.

The outdated restriction of the rim width to 23 mm forces owners of such modern racing bikes to attach equipment that is not actually necessary (lights, bell, etc.) to the bike. Furthermore, racing bikers may ride side by side during training, for example.

Ministry deals with changes

The Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology explained that the issue of defining a reacing bike by its rim width was well known. Several attempts had already been made, involving experts, to find a different definition for racing bikes. So far, however,

"no satisfactory, and above all, no better solution than the current one" had been found. The Bicycle Regulation was currently being comprehensively revised and the issue of the definition of racing bikes was to be discussed again. At the time of going to press, the regulation remained unchanged.

Lack of flexibility of the digital road toll sticker

Problems with transferral

In 2023, numerous owners of digital annual toll stickers again criticised the limited options to transfer the road toll stickers to new licence plates, as provided for by the Federal Road Tolls Act (*Bundesstraßen-Mautgesetz*) and the toll regulations of ASFINAG, the state-owned company responsible for planning, building, financing and maintaining Austrian motorways.

Section 11 (5) of the Federal Road Tolls Act was amended from 1 December 2023. Since then, licence holders can have the digital annual road toll sticker transferred once during the period of validity for a maximum fee of 20 euros. There is no need for a specific reason.

However, this option is limited to the same registration holder. If the vehicle is passed on during the year and assigned a new licence plate, the new owner cannot continue to use the digital road toll sticker, even though the purchase price has been paid for a whole year.

Transferral after change of residence

If a person changes their place of residence and therefore also their licence plate number, they must actively get in touch with ASFINAG to have the digital road toll sticker transferred. The persons concerned apparently often overlook this in practice. Those affected who contacted the AOB only became aware of this when ASFINAG requested replacement toll payments from them. The AOB could only refer to the current legal situation, according to which the digital road toll sticker is linked to the licence plate and not to the vehicle. The AOB therefore continues to plead for a more customer-friendly regulation.

3.8.3 Aviation law

Years of delay in the investigation of aviation accidents

The AOB has already repeatedly observed cases of maladministration by the Supreme Civil Aviation Authority due to the excessive length of time taken to investigate aircraft accidents (e.g. Annual Report 2020, p. 143; Annual Report 2021, p. 168 and Annual Report 2022, pp. 183 et seq., each in the volume "Monitoring Public Administration").

Investigation still pending after more than 10 years

In April 2023, the AOB again found cases of maladministration: The completion of final reports took more than ten years in 43 cases, in 21 of them even more than 15 years, after the aviation accident under investigation

from the years 2006 to 2012. In addition, from the years 2000 to 2005 the authority lacked to initiate an investigation in 45 cases of aviation accidents.

AOB calls for rapid investigation

The AOB recommended that the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology ensures that the final reports in the aforementioned 43 investigations are completed as quickly as possible, but by 31 December 2024 at the latest. The necessary measures with regard to the aviation accidents in the years 2000 to 2005 should also be taken as quickly as possible, but by 31 December 2024 at the latest.

This determination of maladministration and recommendation was based on the fact that, in the course of its *ex-officio* investigative proceedings the AOB found that six of ten investigations initiated in 2008 had still not been completed by the end of 2022. Of 13 investigations initiated in 2007, nine were still ongoing, and of 15 investigations initiated in 2006, twelve were still ongoing.

75 % of the investigations from 2006-2007 still open after 15 years

This means that out of 28 investigations initiated in the years 2006 to 2007, 21 - i.e. no less than 75% - could not be concluded within 15 years. Although this percentage fell for the following years 2008 to 2012, 22 of the 53 investigations initiated were also not concluded by the end of 2022, i.e. still more than 40%.

The legal system expressly provides for a limit on the duration of the investigation of aviation accidents. Section 15 (3) of the Accident Investigation Act 2005 (*Unfalluntersuchungsgesetz*) stipulates that the Supreme Civil Aviation Authority must publish the final investigation report "as soon as possible and, if possible, no later than twelve months after the incident". As there is no corresponding reference in Section 21 (2) of the Accident Investigation Act 2005, this provision is not applicable to safety investigations in the civil aviation sector. However, Section 21 (1) of the Accident Investigation Act 2005 expressly stipulates that the provisions of (EU) Regulation No. 996/2010 apply. Article 16 (6) of this regulation stipulates that the final report must be published as soon as possible and, if possible, within twelve months of the accident or serious incident. In the event that this is not possible, Article 16 (7) of the Regulation expressly stipulates that an interim report must be published at least on each anniversary of the accident or serious incident and that it must describe the progress of the investigation and any safety problems that have come to light.

Authority bound by legal requirements

In view of these clear normative requirements, the AOB cannot assume that it is up to the Supreme Civil Aviation Authority to conclude safety investigations in the civil aviation sector only after many years or even decades.

The Supreme Civil Aviation Authority has discretionary powers with regard to the fulfilment of its assigned tasks, which also includes setting priorities. However, the scope of discretion cannot be unlimited. In any case, the authority must ensure that the provisions of Article 15 (6) and (7) of (EU) Regulation No. 996/2010 are complied with.

AOB criticises slow work of the authority

This is unquestionable if a safety investigation in the civil aviation sector has still not been completed ten years after the accident and the legal obligation to issue annual interim reports has been completely ignored. As of the end of 2022, this has been the case in 43 investigations since the Accident Investigation Act came into force in 2005, with almost half of these investigations - namely 21 - now taking more than 15 years. Even in the case of the 45 accidents between 2000 and 2005, there is no apparent justification as to why no investigative steps had been taken at all by the end of 2022.

In all these cases, both the excessive duration of the investigations and the failure to publish annual interim reports must be qualified as a violation of the law. Moreover, information from aviation accidents is only useful for improving flight safety if it is provided promptly. However, this is not guaranteed in the cases described.

Ministry promises conclusion of pending cases

The Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology informed the AOB that investigation reports would be prepared by 31 December 2024 in the cases of unresolved cases from the years 2000 to 2005. With regard to the unresolved cases relating to the period 2006 to 2012, final reports were announced by 31 December 2025 in all cases.

In any case, the AOB will continue to keep an eye on the implementation of its recommendation and will insist that outstanding investigations and final reports be prepared quickly.

Investigation completed after 16 years

The final report on an aviation accident on 20 September 2007, the years-long delay of which was described in detail in the Annual Report 2022 (Volume "Monitoring Public Administration", pp. 183 et seq.), was finally completed in September 2023.

Authorisation of UAS operation limited in time without justification – Austro Control Ltd.

According to Section 24j (1) of the Aviation Law (as amended by Federal Law Gazette I No. 151/2021), authorisations granted on the basis of European Union law are to be granted conditionally, for a limited period of time, or subject to certain requirements, in case this is necessary for the safety of aviation, if Union law is not applicable or conflicts with it.

Time limits on operating licences

The AOB has no doubt that a time limit on the operating licence for unmanned aircrafts or unmanned aircraft systems (UAS) may be permissible depending on the individual case. Austro Control, as the legal entity responsible for the implementation of air safety, must in any case justify such a time limit.

The AOB has now received a complaint that the authorisation for UAS operations was limited until 31 December 2024 in a decision issued by Austro Control in December 2022 without any justification.

Lack of justification is unconstitutional

The AOB has already observed several times, for example in investigative proceedings in 2018, that the Austrian Constitutional Court has qualified the omission of any justification as arbitrariness in its court rulings (e.g. collection of findings and most important rulings of the Constitutional Court 18061/2007). Such a decision is therefore contrary to the principle of equality. In the opinion of the AOB, this court ruling is decisive both for the restriction of operating times without justification and for the limitation of the authorisation period without justification. Therefore, a restriction of the authorisation period must be justified in a detailed and comprehensible manner. Failure to provide any justification constitutes maladministration.

AOB issues recommendation

The AOB recommended that, in similar cases, any limitation of the authorisation period should be justified in detail and in a comprehensible manner. The managing director of Austro Control agreed to comply with this recommendation.

3.8.4 Railway law

Austrian Federal Railways present framework plan to ensure accessibility for persons with disabilities

Old trains still in use

Every year, the AOB deals with many complaints about the lack of barrier-free accessibility at the Austrian Federal Railways. For years, it has seen a need for action with regard to the 4020 series railcars still in use in the Vienna metropolitan area, which were designed in the mid-1970s (!) and are not barrier-free. This series will remain in service in large numbers (approx. 30 sets) until at least 2025. It is *de facto* impossible for people with impaired mobility to use them due to the high step access. Furthermore, the AOB criticised the fact that the Austrian Federal Railways' "Implementation Plan 2020 - 2025+ for Vehicles and Infrastructure" is now more than two years old and partially outdated. The AOB therefore recommends updating the framework plan. Austrian Federal Railways announced that they would implement this recommendation.

Austrian Railways publish new framwork plan

In 2023, the Austrian Federal Railways did in fact update the "Implementation Plan 2020 - 2025+ for Vehicles and Infrastructure". This provides for detailed

improvements in accessibility, even though a large number of non-accessible railcars will still be in use at the end of 2025.

AOB assits with additional fare claims in hardship cases

It happens repeatedly that additional fare claims are issued correctly in accordance with the tariff, but their full settlement would result in disproportionate hardship for the passengers in view of the particular situation of the individual case. Fortunately, thanks to the good cooperation between the AOB and Austrian Railways, it is always possible to find a solution acceptable to all sides in such cases.

3.8.5 Energy and environment

Introduction

Over 1,500 complaints about climate bonus

Since autumn 2022, more than 1,500 people have criticised not having received the climate bonus (along with the inflation adjustment) for 2022. Many of those affected also contacted the AOB several times as the answers of the Federal Ministry of Climate action, Environment, Energy Mobility, Innovation and Technology were incorrect or the 2022 climate bonus had still not been paid out in 2024. The AOB continues to receive complaints. Around 90 people complained about problems with the payment of the 2023 climate bonus or criticised the fact that the bonus amount is being regionally staggered since 2023 based on the place of residence. The Climate Bonus Settlement Regulation (*Klimabonus-Abwicklungsverordnung*), which has been amended since June 2023, stipulates that the regional climate bonus is due on 1 June of the year following the year of entitlement, but at the earliest when all the necessary information is available. The 2023 climate bonus is therefore due on 1 June 2024 at the earliest, but can - as in many cases - be paid out earlier.

Photovoltaic and electricity storage subsidies

Over 60 complaints related to the processing of subsidies for photovoltaic systems and electricity storage systems. Many of those affected criticised the fact that applications for subsidies were rejected or subsequently cancelled because they did not meet the eligibility requirements. These requirements are set out in the Renewable Energy Expansion Act (*Erneuerbaren-Ausbau-Gesetz*), which is why the AOB was often unable to find any deficiencies in the implementation of the law. The investigative proceedings with respect to the long processing time, which the AOB was able to conclude by the editorial deadline, did not give rise to any objections.

Electricity price control and smart meter

More than 20 complaints related to the electricity price control, which is regulated in the Electricity Costs Subsidies Act (*Stromkostenzuschussgesetz*). Mainly, the complaints criticized the fact that, in the case of several households in one house, only the person to whom the electricity meter

is registered can receive the subsidy. The AOB also received almost 30 enquiries about smart meters. The AOB has dealt with this topic extensively in recent years (see most recently Annual Report 2020 volume "Monitoring Public Administration", p. 146).

Problems regarding the payment of the 2022 climate bonus

In order to compensate for the additional burdens resulting from the pricing of greenhouse gas emissions and the price increases that occurred in 2022, the Climate Bonus Settlement Regulation provided for the payment of the climate bonus together with inflation adjustment for 2022. Both bonuses totalling EUR 500 were to be paid to people who were registered as having their main residence in Austria for at least 183 days. According to announcements by the competent Ministry, payment by bank transfer or the sending of vouchers should be completed in October 2022.

Over 300 cases of maladministration determined

In addition to the more than 500 people in 2022, around 900 people complained to the AOB by the end of 2023 that they had not received their bonuses in either the first payment tranche (autumn 2022) or the second payment tranche (from February 2023). More than 300 of the complaints received in 2023 were justified, as the delays were not attributable to those affected. In over 300 cases, the Ministry stated that it had already paid out the bonuses.

***Ex-officio* investigative proceedings**

As outlined in the Annual Report 2022 (see "Monitoring Public Administration", pp. 188 et seq.), due to this high number of complaints in 2022, the AOB initiated *ex-officio* investigative proceedings of the organisation for the payment and the handling of complaints by the "Climate Bonus Service Line" and the arbitration body (Austrian Business Service Ltd.) provided for in the Climate Bonus Act.

EU or third country nationals

In 2023, EU citizens or third-country nationals who held a valid residence title in Austria under the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*) or the Asylum Act (*Asylgesetz*) also contacted the AOB. According to information from the Ministry and the "Climate Bonus Service Line", no data was available in the IT system. The Ministry stated that the problems had arisen during the automated entitlement verification by the Ministry of the Interior, which according to the Climate Bonus Act must transmit the personal and registration data to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology.

The Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology initially only reported that it was working hard to find a solution. In March 2023, the Ministry of the Interior informed the AOB that two groups of persons without Austrian citizenship were not recorded in the Central Register for Aliens. These were EEA citizens who were already registered in Austria before 2006 and third-country nationals with a permanent right of

residence whose files had already been archived. Due to a lack of data on these persons in the Central Register for Aliens, an automated verification was not possible. The Ministry of the Interior had suggested to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology to amend Section 5 (1) (1) of the Climate Bonus Act. This would enable the transmission of the nationality of the entitled person to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology in addition to other registration data.

Amendment of the Climate Bonus Act in June 2023

Faced with this, the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology reported on intensive discussions with the Ministry of the Interior and referred to an amendment to the Climate Bonus Act, which the National Council passed in June 2023. According to this, the Ministry of the Interior must now also transmit the nationality of all persons registered with their main residence in Austria to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology. EEA citizens and third-country nationals who are not subject to a measure terminating their residence are deemed to be legally resident. They would therefore be entitled to the climate bonus including inflation adjustment.

Homeless people

With the amendment to the Climate Bonus Act in June 2023, the legislator also improved the situation of homeless persons. As they are not registered in the Central Civil Registry with a main residence (Section 19 Residence Registration Act), the Ministry of the Interior previously did not transmit any registration data on these persons to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology, although the persons concerned were in the federal territory for at least 183 days per year. According to the amended Section 5 (1) (1) of the Climate Bonus Act, the contact point of a homeless person must now also be transmitted to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology if they have a main residence confirmation from a municipality (Section 19a Residence Registration Act). The Ministry announced that it had initiated the payment of bonuses for 2022 in over 900 cases following the amendments to the Climate Bonus Act and the Climate Bonus Settlement Regulation.

Prison inmates

Inmates of correctional institutions who were entitled to payment of bonuses until the Climate Bonus Act's amendment in June 2023 were also affected by registration difficulties. In several cases, the Ministry admitted that those affected had only been registered in the correctional institution with a secondary residence, for example, without having a main residence. The Ministry announced that it would jointly examine all cases in accordance with an agreement with the Federal Ministry of Justice and the correctional institutions and ensure that bonuses are paid out. However, inmates also must be authorised to reside in Austria. In several cases, the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology

announced that they were only "tolerated persons" according to the Aliens' Police Act and therefore could not receive the climate bonus.

Pensioners

In the course of its *ex-officio* investigative proceedings, the AOB also addressed the criticism of one pensioner from the Insurance Institution for Public-Sector Employees, Railways and Mining (*Versicherungsanstalt öffentlich Bediensteter, Eisenbahner und Bergbau*). She had received her bonuses by voucher delivery, while her spouse, who receives his pension from the Austrian Pension Agency, received his by bank transfer. The Ministry initially reported that it had so far only used the account data provided by the Austrian Pension Agency, but announced that it would also consider the account data of other pension and social insurance carriers in the future.

In the AOB's opinion, this required further clarification. According to the version of Section 5 (1) (6) of the Climate Bonus Act that was still in force in autumn 2023, all statutory pension insurance institutions, including the Insurance Institution for Public-Sector Employees, Railways and Mining, had to provide the Ministry with the account data of all persons who receive a recurring cash benefit from them. It turned out that the Ministry did not have the necessary technical interfaces in June 2023 to retrieve the account data known to the Insurance Institution for Public-Sector Employees, Railways and Mining or the Social Insurance Institution for Trade and Industry. Furthermore, the Ministry explained that although the Austrian Pension Agency acts as a service provider for the Insurance Institution for Public-Sector Employees, Railways and Mining and the Social Insurance Institution for Trade and Industry, it does not process the data for pension payments to retired federal civil servants.

Climate Bonus Act amendment in December 2023

Since federal civil servants receive salary payments via the Federal Emoluments Service, the Ministry announced in August 2023 that it wanted to extend the legal requirements in order to receive and process the data available to the Federal Emoluments Service as well. In December 2023, the National Council decided to add point 7 to Section 5 (1) of the Climate Bonus Act. Accordingly, the Federal Chancellery must now also provide the Ministry with the personal details and account data of all persons who receive a recurring cash benefit from the federal government, as well as the name of the account holder if this person differs from the person receiving the cash benefit.

Insufficient information

From numerous complaints, the AOB was able to deduce that not all of those affected knew, which data the bodies listed in Section 5 (1) of the Climate Bonus transmitted to the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology and on which key dates this data was collected. In June 2023, the AOB therefore recommended that the Federal Ministry of Finance launch an information campaign to draw attention to the timeliness of the account data stored in FinanzOnline and the cut-off date for the collection. The Ministry of Climate action, Environment, Energy, Mobility,

Innovation and Technology carried out an information campaign in summer and autumn 2023 by means of direct mail to all households, advertisements in numerous media, etc.

Bonus transfer to wrong bank accounts

A large number of complaints concerned cases in which the persons concerned initially criticised the non-payment of bonuses, but the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology reported to the AOB that the bonuses had been transferred to a specific bank account. In many cases, those affected realised that the bonuses had been transferred to a bank account they did not know. In numerous cases, the incorrect transfers were made based on outdated account data stored in the *FinanzOnline* database or transmitted by the Ministry of Finance.

In many cases, the Ministry asked those affected via the AOB to provide their correct account details to the Ministry itself or via the "Climate Bonus Service Line", as well as further information using the online contact form and announced an investigation by the climate bonus arbitration board. As this resulted in further delays, the AOB considered the complaints to be justified and demanded a swift clarification. Many of those affected informed the AOB that they had sent the information requested by the Ministry several times using the online contact form, but had not received a response for months. Since, the Ministry would only clarify the cases or pay out the bonus upon a renewed intervention from the AOB, the AOB once again criticised the Ministry's approach.

Storage of correct account data not planned

After the AOB had already provided the Ministry with the correct account data in many cases, it recommended that the Ministry create a register with the current account data in order to avoid incorrect transfers in the future. The Ministry rejected this recommendation due to data protection concerns and the efficiency of basic data management by the Ministry of Finance. However, the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology announced that bank accounts where problems arose in the course of the bonus payment for 2022 will no longer be taken into account.

Furthermore, the Ministry took the incorrect transfers as an opportunity to specify the requirements for the climate bonus payment to a bank account, as published in the Climate Bonus Settlement Regulation (Section 8) in June 2023. The new Section 8 (2) of the Climate Bonus Settlement Regulation now provides for the debt-discharging effect of a transfer to a bank account, if the data transmitted in accordance with Section 5 (1) of the Climate Bonus Act contains complete and up-to-date account details. Account holders are responsible for the accuracy of the account data they have deposited for example with *FinanzOnline*. Moreover, a reference to the importance of complete and up-to-date account information, should minimise the risk of incorrect transfers due to typing errors or potentially outdated account data.

Solution for missing account access

Furthermore, the Ministry reported that it had created a solution together with the banking division of the Austrian Economic Chamber (*Wirtschaftskammer Österreich*) for cases where a person is no longer authorised to dispose of an account. This is directed towards separated partners who no longer have access to an originally joint bank account, who can now initiate this process via the service centre.

Investigative proceedings initiated in 2022, showed that in October 2022 the bonuses for a complainant were initially transferred to a bank account, which she had already de-registered from *FinanzOnline* in 2021. In response to her enquiry in November 2022, the "Climate Bonus Service Line" informed the woman that the recipient bank had already reported the return transfer due to incorrect account details and that the voucher was not expected to be delivered until February 2023 at the earliest.

Information on chargeback of bonuses

Because of this case, the AOB recommended to the Ministry in June 2023 that in future, in comparable cases, the Ministry should inform the persons concerned automatically about the bonus chargebacks, if it is aware of them. In this way, the Ministry could process the cases in a service-oriented manner. The Ministry initially rejected this. Those affected would be informed by means of a return receipt letter when the voucher was delivered. In addition, there were no other contact options in these cases other than postal mailings. In November 2023, the Ministry announced that it had partly taken up the AOB's recommendation. If persons had contacted the Ministry to provide information about no longer used bank details or incorrectly stored data, the Ministry now informed these persons by email that they could have their account details checked or updated by the deadline.

Climate bonus hotline criticised

Like in 2022, many people complained to the AOB in 2023 about the way the "Climate Bonus Service Line" staff dealt with enquiries and submissions. For example, they received no response to their sometimes multiple submissions for weeks or the "Climate Bonus Service Line" could not be reached by telephone, or only after a long wait. The Ministry did report in many statements on the interim payment of the respective bonuses. However, it did not address the criticism of the "Climate Bonus Service Line", but only assured that it would follow up on the concerns quickly.

In connection with the Ministry's requests to the AOB that the persons concerned use the online contact form to arrange for the bonus to be paid, often the AOB found that this did not lead to the timely payment of bonuses. For example, in April 2023, the Ministry asked an Upper Austria resident via the AOB to use the form, although he had already used it for the first time in November 2022 and still had not received the bonuses. In December 2023, the Ministry announced the bonus payment in the coming weeks without explaining the reasons for the delay of over a year.

Exceptional possibility of postal submissions

In the case of a Viennese woman, the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology initially drew attention to the need to make contact via an online form in order to receive the bonus payment. The woman then informed the AOB that she did not have Internet access. For this reason, she had unsuccessfully asked the staff of the "Climate Bonus Service Line" for a postal address months before her complaint. The Ministry only provided the relevant postal address after the AOB intervened again in October 2023, which gives reason for criticism.

Several people criticised that the "Climate Bonus Service Line" staff had been unable to provide the specific reason for the failure to pay out the bonus or that there had been no response. In some cases, those affected were also referred to a payment date after February 2023.

Stopping the payment process

In two exemplary cases, the Ministry justified the delays with irregularities in the production of the return receipt letters (with the bonus vouchers for the year 2022), which had caused the letter mailings to be stopped. As the Ministry only explained this fact upon the AOB's intervention, the AOB criticised the failure to inform those affected until then.

As part of its *ex-officio* investigative proceedings, the AOB also addressed the criticism of many people regarding the brief and mostly standardised responses from the Ministry and the "Climate Bonus Service Line" to enquiries and submissions.

Answers with incorrect text modules

This was prompted by the case of an Upper Austrian woman, which was also featured in the TV programme *Bürgeranwalt*. It was only upon the intervention of the AOB that the woman learnt of a transfer of bonuses to a bank account unknown to her in October 2022. Also, the Ministry only learnt of this incorrect transfer through the AOB. It was worrying that the "Climate Bonus Service Line" referred the woman to three possible, but incorrect, reasons for the outstanding payment in November 2022. The Ministry admitted that this letter had not addressed the case. Precise information on the (incorrect) transfer could have resulted in earlier clarification.

Service hotline training courses

The AOB also asked the Ministry to explain the training measures for the staff of the "Climate Bonus Service Line". The Ministry referred to an ongoing evaluation of the knowledge database, which forms the basis for the guidelines developed for the dialogue. Despite the guidelines, in the case of an Upper Austrian woman, the AOB found that incorrect information had been provided. The woman approached the AOB after she had learnt that a family member had received the bonuses intended for her. As the family member then received another bonus payment, he reported this to the"Climate Bonus Service Line". The service line stated that the excess amount received could not be repaid. The Ministry regretted the incorrect information provided to the AOB and pointed out the contrary content of the dialogue guidelines.

Although the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology sometimes submitted very detailed statements to the AOB as part of the official investigation, the statements on many complaints often only contained a few sentences. This caused additional work for the AOB, as it often had to ask the Ministry for further information.

Refusal to provide documents

The Ministry's handling of an enquiry by the AOB gave rise to suspicions of maladministration. In the cours of investigative proceedings that were still pending at the time of going to press, the Ministry informed the AOB that the bonuses for an 86-year-old Carinthian woman living in a nursing home had been transferred to her son's bank account. The son denied this and pointed out that his mother had her own bank account.

The AOB requested the Ministry of Climate action, Environment, Energy, Mobility, Innovation and Technology to forward the official file and, in particular, the documents, which include the decision to pay the bonus to the woman's son. The Ministry did not comply with this request, but stated that the bonus payment had been made via the federal payment hub. At 300,000 data records, the data carriers transmitted to the Ministry were too large to be forwarded to the AOB. After the AOB repeated its request, the Ministry stated that a business case had been created in the electronic filing system ELAK for the bonus payment during the year, as in the complaint case. However, 1.5 million payment instructions were summarised in each case. Thus, in the interests of administrative efficiency, the Ministry again did not want to transmit the complete file including the payment data carrier. The AOB then asked for proof when and to which bank account the transfer had been made and why it had not been made to the account of the person concerned. The Ministry's response was not yet available at the time of going to press.

The AOB will continue its *ex-officio* investigative proceedings into the climate bonus in 2024, as some aspects of the problems that were discussed with the Ministry *ex-officio* or in response to individual complaints still need to be clarified.

(Age)Discrimination in access to funding

Requirement for online application

An elderly man who was not familiar with computers complained that the requirements for funding for folding bikes would exclude him. According to point 1.2.2 of the guidelines for the "climate action programme - active mobility and mobility management (annual programme 2023)" in conjunction with the "climate action funding guidelines 2013 (as of 1 January 2021)", the application must be submitted online. The man was ultimately able to submit his application for funding to *Kommunalkredit Public Consulting* with the support of his son. The AOB therefore confronted the Ministry with this criticism *ex-officio*.

The AOB pointed out that in 2022, the Federal Ministry of Finance and the (former) Federal Ministry of Agriculture, Forestry, Environment and Water Management would also consider applications for funding submitted in paper form, unless the law prohibits this. In this regard, the AOB referred to the responses to a parliamentary enquiry regarding "offers, applications and grants that are only available digitally or online".

Application in paper form rejected

The Ministry announced that it will continue to use online applications in the future. Submitting applications online enables quick and efficient processing. In addition, the parallel establishment and operation of a paper-based submission option would contradict the constitutional principles of economy, efficiency, and expediency in the use of funds. Furthermore, the Ministry assured that it would continue to find solutions with potential funding applicants in what it considered to be "very rare and exceptional cases".

Since the Ministry of Finance and the (former) Federal Ministry of Agriculture, Forestry, Environment and Water Management, handle funding applications that are submitted in paper form, the AOB did not consider the reference to the management principles in the Austrian Federal Constitutional to be a convincing argument. In response to the Ministry's announcement that it would continue to offer solutions for funding applicants, the AOB argued that this was not evident from the guidelines. As a consequence and based on the information provided in the guidelnes, funding applicants, who are unable to apply online, must conclude that they cannot apply for funding at all.

Discrimination

The AOB criticised the fact that the online application violates the principle of equality of the Federal Constitution by excluding persons from funding as described in the guidelines, in particular in point 1.2.2.

Delayed provison of information

A man turned to the AOB because the Federal Ministry of Climate actin, Environment, Energy, Mobility, Innovation and Technology had not answered his enquiry on climate funds submitted in January 2023. The Ministry informed the AOB of the reply to the person concerned in September 2023. According to the deadlines stipulated in the Act on the Duty to Grant Information (*Auskunftspflichtgesetz*) and the Environmental Information Act (*Umweltinformationsgesetz*), information must be provided within a maximum of eight weeks or one month. The response to the enquiry was therefore late, which the AOB criticised.

The AOB was also informed that the Salzburg-Umgebung District Authority had not answered a request for information addressed to it in October 2022 with questions about the Waste Management Act. In its statement, the Salzburg Regional Government submitted its response to the request for information. The letter from the Salzburg-Umgebung District Authority was

dated May 2023. According to Section 3 of the Act on the Duty to Grant Information, such information must be provided without undue delay, but at the latest within eight weeks of receipt of the request for information. Therefore, the response to this request for information was also late.

3.9 Arts, culture, civil service and sport

3.9.1 Pricing of federal museums

Ticket price for persons accompanying persons with disabilities

Admission prices to federal museums often vary, which can lead to a lack of understanding among those affected. One woman had entered an accompanying person in her disability pass due to her severe disability. The person concerned felt disadvantaged, especially as she received reduced admission to the federal museums for herself due to her disability, but had to pay full admission for the person accompanying her. This was so expensive for her that she could no longer visit the museums.

In a gesture of solidarity, the federal museums and the Austrian National Library opened their doors free of charge to refugees as part of the "Hunger for Art and Culture" campaign. In this context, the AOB asked whether this campaign could be extended to registered companions for persons with severe disabilities.

Different pricing

In principle, the pricing policy of the federal museums and the Austrian National Library differs with regard to accompanying persons registered in the disability pass. According to a statement from the Federal Ministry for Arts, Culture, the Civil Service and Sports, the Albertina, the Art History Museum and the Museum of Applied Arts, for example, grant free admission for the accompanying person. The Natural History Museum, on the other hand, grants a 25% discount, while other federal museums further reduce the ticket prices for this group of people (to varying degrees).

Standardisation assured

The Ministry of Art, Culture, Civil Service and Sport assured the AOB that it would work towards standardised pricing within the federal museums and the Austrian National Library.

3.9.2 Pilot project: daily exercise for children

Studies show that the majority of children in Austria do not fulfil the recommended level of physical activity and that participation in sports and exercise is socially unevenly distributed. In order to remedy the lack of physical activity, we therefore need strong co-operation between all those responsible for the health of our children. The number of children and adolescents who are overweight is also continuing to rise, warns the Austrian Obesity Association. Every third child between the ages of nine and ten is already overweight. Obesity already affects 11.8% of boys and 8.5% of girls. According to experts, the number of children with obesity is increasing significantly every year. Consequential health problems continue into adulthood and cause not only individual suffering but also economic damage.

Overall concept against obesity

In the past, the AOB has already called for an overall preventive concept from the competent Ministries to integrate sporting activities into school lessons and prevent obesity in children and adolescents. In addition, it addressed the issue in the TV programme *Bürgeranwalt*. In 2023, the AOB once again asked the Federal Ministry of Art, Culture, Civil Service and Sport and the Federal Ministry of Social Affairs, Health, Care and Consumer Protection to comment on current measures.

The Ministry of Sport referred the AOB to a joint pilot project by the Ministry of Art, Culture, Civil Service and Sport, the Federal Ministry of Education, Science and Research, and Sport Austria. The "daily exercise unit" is being trialled in 260 educational facilities in ten regions. The main implementers are the sports umbrella organisations with 189 physical activity coaches from 43 sports clubs. In the project schools, activities such as "Active Break", "Active Learning" and "Active Way to School" are organised alongside physical education lessons. In the project kindergartens, activities such as "Active Morning Circle, Active Indoor and Outdoor Play" are organised in addition to gymnastics.

The pilot project is to be evaluated on an ongoing basis until its completion in 2024 and will be permanently funded in the pilot regions. Furthermore, the Ministry of Sport talks with the Ministry of Education and the *Laender* to find new pilot regions. In any case, the aim of the Ministry of Art, Culture, Civil Service and Sport is to roll out the project across all of Austria.

The Ministry of Social Affairs, Health, Care and Consumer Protection emphasised the importance of nutritional competence among parents and children. Quality standards have been developed for the practical implementation of healthy catering in kindergartens and schools.

3.10 Defence

Introduction

In the area of national defence, the AOB recorded 28 complaints, roughly the same number as in the 2022 reporting year.

Complaints about services law and salaries

The complaints primarily related to service law and salary payment and insurance matters. The number of complaints about compulsory military service continued to fall. The AOB attributes this on the one hand to the generally decreasing number of servicemen in compulsory military service and on the other hand to the possibility of lodging complaints with the Parliamentary Commission for the Armed Forces.

3.10.1 Bunker from the Second World War

In its Annual Report 2022 (Volume "Monitoring Public Administration", pp. 193 et seq.), the AOB reported on the request of a Tyrolean woman to have a concrete slab from the Second World War removed from her property. The woman told the AOB about a bunker under the concrete slab where she had played as a child. The massive concrete slab restricted the cultivation of her agricultural property. She also felt extremely uncomfortable at the thought that war relics could be located in the supposed bunker under her property.

Bunker facility is a construction on third-party land

The AOB first asked the Federal Ministry of Defence at the end of 2021 for a statement and a proposal on how to proceed with this Second World War construction. If a bunker facility was actually built by the German Reich, the AOB's legal opinion is that this would qualify as a construction on third-party land. This would have become the property of the Republic of Austria in accordance with Art. 22 of the Austrian State Treaty and Section 3 of the First Act on the Implementation of the State Treaty.

Ministry denies responsibility

In the AOB's investigative proceedings, the Ministry of Defence initially rejected any responsibility of the Ministry or the Republic of Austria and disputed the legal opinion represented by the AOB, according to which the alleged Second World War bunjker was a construction on third-party land that had become the property of the Republic of Austria. It emphasised that it saw "no obligation on the part of the Republic of Austria" to remove the concrete foundation. The Republic of Austria was neither the owner nor was the construction a building on third-party land. In addition, neither the Ministry of Defence nor the Austrian Armed Forces were legal successors of the German *Wehrmacht*.

On 11 December 2021, the case was discussed in the *Bürgeranwalt* TV programme for the first time, in which an explosives expert from a

private company in the field of ammunition salvage was consulted. The expert emphasised the likelihood of a bunker under the former anti-aircraft installation in which the ammunition for anti-aircraft guns had been stored. Only by professionally opening the concrete slab could it be determined whether there was actually a bunker underneath and whether it posed a danger. The expert considered it likely that war relics would be found in the bunker. During the course of the programme, the expert offered to look for the entrance to the (suspected) bunker at his company's expense and to determine whether there were any war relics inside the bunker.

Finanzprokuratur considers the existence of a bunker site unlikely

In the course of the investigative proceedings, the Ministry of Defence consulted the *Finanzprokuratur* (the lawyer and legal advisor of the Republic of Austria). The latter recommended that the Ministry conducted further investigations. The *Finanzprokuratur* also referred the matter to the Museum of Military History itself and subsequently wrote a comprehensive statement to the Ministry of Defence. It forwarded the statement to the AOB and requested confidential treatment. In essence, after corresponding with the Museum of Military History, the *Finanzprokuratur* emphasised that it considered the existence of a bunker under the concrete slab to be extremely unlikely. Rather, it could only assume that a concrete slab owned by the Tyrolean woman did not have special legal capacity.

The Ministry of Defence repeatedly emphasised that the mine clearance unit of the Armed Forces only had to take action if ammunition was found. The AOB referred to the Tyrolean woman's childhood memories and to the fact that the private company had offered to open the alleged bunker at its own expense. An opening at the expense of the private company was proposed in the presence of the mine clearance unit of the Armed Forces and the Federal Office for the Care of Monuments (*Bundesdenkmalamt*).

Bunker with four rooms found

In agreement with the Ministry of Labour and Economy and the Federal Office for the Care of Monuments, the inspection of the Second World War construction, which was initiated by the AOB and commissioned by the complainant, finally took place at the end of March 2023. The inspectors found a bunker facility with four rooms. Under the supervision of an archaeologist from the Federal Office for the Care of Monuments, who the *Finanzprokuratur* had commissioned to represent the interests of the federal government, the private company for ammunition salvage uncovered the south-eastern entrance to the bunker complex. The bunker was surveyed using laser scanning.

The mine clearance unit of the Armed Forces determined that there were no explosives or explosive devices in the facility. There was therefore no potential danger to life and limb. Finally, the access to the bunker was backfilled. The exposed, loose, approximately two-tonne concrete element of the corridor cover was then placed directly in the area of the entrance

opening to prevent any unauthorised entrance in the future. According to the Federal Ministry of Defence, this should also enable to "safely drive agricultural machinery in this area". A grass cover will complete the restoration of the original condition.

Ministry shares legal opinion of AOB

In a final statement of April 2023, the Ministry of Defence finally followed the legal opinion already communicated by the AOB in December 2021, according to which the bunker facility was a construction on third-party land owned by the Republic of Austria. The Ministry of Defence pointed out that the Ministry of Labour and Economy manages these matters and that the Ministry's Section VII on "Cultural Heritage was responsible. The construction in question is a listed building, which is why the Republic of Austria will not agree to its subsequent removal. Furthermore, the Ministry of Defence stated that the Republic of Austria was not prepared to bear any costs in this matter. To date, the AOB has not received any information from the Federal Office for the Care of Monuments, but it is likely that the bunker is to be considered a ground monument by virtue of the legal presumption under Section 2 (1) of the Monuments Protection Act (automatically, without administrative notification).

Investigation provides safety and certainty

Even though the Tyrolean woman and her family are still hindered in their fieldwork by the concrete slab, the investigative proceedings have given her certainty about her childhood memories and that there is no dangerous ammunition under her property.

3.10.2 Insurance event for servicemen in compulsory military service

Group pressure to accept insurance offer

A serviceman in compulsory military service complained that three years ago he was obliged to attend an event organised by an insurance company and felt compelled to accept the contract offered. His brother, who was three years younger, had just completed his compulsory military service and was obliged to attend the same information event organised by the same insurance company. In addition, his brother and his colleagues had found the event extremely unpleasant. The compulsory attendance had created a kind of peer pressure. They had felt obliged to accept the offer. The serviceman in compulsory military service and his brother could not remember anyone who had not accepted the insurance offered.

Practice since 1955

The Federal Ministry of Defence confirmed to the AOB that soldiers performing military and training service are covered by social insurance in the event of illness, injury or death in accordance with the Army Fees Act 2001 (*Heeresgebührengesetz*) and the Army Compensation Act (*Heeresentschädigungsgesetz*). Two private insurance companies offer additional insurance cover for this group of people in the form of military

service insurance in addition to the statutory entitlements. Additional military service insurance has been offered in the Austrian Armed Forces since 1955.

As early as 1990, the AOB carried out investigative proceedings into advertising events organised by private insurance companies in which servicemen in compulsory military service had to participate. Even back then, the AOB pointed out that it considered insurance contracts during the period of service probelmatic, and underlined that – especially at the beginning of their training – servicemen in compulsory military service might feel obliged to accept these insurance offers. This was particularly the case if it was seen in the context of the military service and expressly endorsed by the superiors. The investigative proceedings extended over several years and ended in 1996 with a complaint.

Due to the current case, the AOB found that the practice of compulsory insurance had been maintained. The AOB did not deny to the Federal Ministry of Defence that the additional insurance contracts were intended to serve the welfare and protection of compulsory military service personnel and not to promote the sales of private insurance companies. Upon the current complaint, however, the AOB once again recommended that the existing practice - which had undoubtedly proven effective for the insurance companies concerned - should be changed.

Need for changeover to voluntary participation

The AOB noted that, that the Ministry of Defence could easily avoid the suspicion of any pressure being exerted on young servicemen in compulsory military service to accept insurance contracts under private law for a fee. For example, it could cancel the current obligation to attend the advertising event as part of compulsory military service and offer those serving in the armed forces the opportunity to attend such information events on a voluntary basis in the future. Furthermore, it could provide information material on additional insurance cover. If they are interested, the young servicemen could then contact the insurance provider on their own initiative.

Ministry follows AOB recommendation

The Ministry of Defence announced that it would follow the AOB's recommendation. In future, participation in the relevant information events will be on a voluntary basis. Serviceman in compulsory military service shall now be informed of the possibility of additional insurance cover in the course of their social law instruction and with information material. The AOB took positive note of this. It will continue to pursue the announced change.

3.10.3 Repeated appointments for emplacement despite psychological problems

The parents of a young man liable for military service approached the AOB back in 2020 because their son was repeatedly called up for military service despite his severe mental health problems. The AOB informed the parents

about the legal situation under the Military Service Act (*Wehrgesetz*) in the previous investigative proceedings and obtained an informative statement of opinion from the Federal Ministry of Defence. The family was advised to submit a public medical officer's certificate on the current state of health of the conscript as defined by Section 18 (1b) of the Military Service Act within the extended deadline set by the Ministry of Defence. Alternatively, they had to get him to appear at his appointment in November 2021. If he was found to be mentally unfit in the course of the emplacement procedure, he would be exempt from military service.

In 2023, the parents approached the AOB again and argued that the Upper Austrian Military Command was repeatedly asking their son to report for duty. They had already approached the Upper Austrian Military Command several times and had repeatedly pointed out their son's severe psychological problems. Nothing had changed with regard to the findings and the psychological problems. After their son had learnt of the new appointment, his psychological situation had worsened and he had been diagnosed with depression.

Threat of being brought in by the police

Although the parents had forwarded the relevant medical report to the emplacement commission, their son had again received a summons to report for April 2023, including a renewed reference to a police summons in the event of non-appearance. This had again put their son in a state of anxiety. The AOB asked the Ministry of Defence to clarify quickly ask the drafting commission whether the conscript would now be exempt from appearing again based on the most recently submitted report and to verify, whether the emplacement commission would be able to make the decision in accordance with Section 17 (2) of the Military Service Act based on the recently submitted certificate.

Rapid response from the Ministry

The Ministry of Defence reacted quickly and confirmed that an additional up-to-date medical report had been submitted to the Upper Austrian Military Command. Based on this report, the emplacement commission had decided to carry out the emplacement procedure in his absence of the person concerned. The decision was that he was unfit to serve. It would be delivered shortly.

3.10.4 Recalculating salary based on seniority

No information

In July 2021, the salary calculation of an employee of the Federal Ministry of Defence based on seniority was revised. Despite repeated enquiries, she did not receive any further information as to whether or when she could expect an additional payment. At the beginning of July 2023, the Ministry of Defence finally informed the employee's legal representative that it was "working intensively on a solution" and hoped to be able to implement the decision from 2021 soon.

The employee was finally retired at the end of July 2023 and the Ministry handed the matter over to the Pension Service of the Insurance Institution for Public-Sector Employees, Railways and Mining. The Ministry of Defence justified the long duration of proceedings to the AOB with the "complexity of the recalculation and technical difficulties".

Long duration of proceedings

The AOB assumes that the Ministry of Defence was already aware at the time of the above-mentioned letter at the beginning of July 2023 that the person concerned would be retiring at the end of July 2023. The AOB criticised the failure to implement the decision for two years, the lack of information about the status of the proceedings and the calculation difficulties as maladministration on the part of the Federal Ministry of Defence.

3.10.5 Request for recalculation of salary based on seniority

Lack of information on additional payment

A retired employee of the Federal Ministry of Defence told the AOB that he had requested the recalculation of his salary based on seniority (crediting of previous periods of service). In June 2020, he had received a notification in which the length of his service had been re-determined. He had already enquired several times with the Ministry of Defence about a possible additional payment, but had not received any information on the amount or date of any payment. In December 2022, the Department for Disciplinary Matters and Complaints merely informed him that any amount would be transferred "at the appropriate time". As three years had passed since the recalculation of the salary based on seniority, the AOB asked the Ministry of Defence to state whether and, if so, in what amount the retired employee could expect an additional payment.

In a comparable case, the Ministry first pointed out the many challenges and problems it had to deal with in connection with the re-determination of the salary based on seniority. In addition, this employee was also retired, which is why the Pension Service of the Insurance Institution for Public-Sector Employees, Railways and Mining was responsible for him. In August 2023, the Department for General Personnel Affairs forwarded all relevant documents to the respective department. The Ministry of Defence could not answer the question of whether and when the staff member could expect an additional payment.

Late forwarding

The AOB does not fail to recognise the high number of recalculations required or the complexity of the subsequent roll-ups. However, the documents submitted showed that the person concerned had already been retired since 2019. His length of service was re-determined by administrative notification in June 2020. However, the documents were not sent to the Pension Service until August 2023. The AOB was unable to understand why the documents

were not sent to the competent pension service earlier, especially in light of the repeated enquiries made to the Ministry of Defence regarding any additional payments by the person concerned.

In the AOB's opinion, the lack of information for the employee, who had been retired since 2019, and the late forwarding of the notification on the new determination of the salary based on seniority from 2020 to the competent Insurance Institution for Public-Sector Employees, Railways and Mining in 2023 constituted a case of maladministration pursuant to Article 148a (1) of Austrian Constitutional Law.

AOB calls for faster action

In the interests of transparent, good administration, the AOB called on the Federal Ministry of Defence to inform those affected in similar cases in more detail in the future and to forward decisions to the competent authority as soon as possible if the Ministry of Defence itself is not responsible.

3.11 Agriculture, forestry, regions and water management

Introduction

There were 96 complaints in the area of jurisdiction of the Federal Ministry of Agriculture, Forestry, Regions and Water Management in 2023. A large proportion (67) related to water management and the enforcement of the Forest Act (19).

3.11.1 Water law

In addition to suspected procedural delays, the complaints in the area of water law primarily concerned issues relating to party status in water law authorisation proceedings, disputes with water cooperatives and the enforcement of water police orders. One focus of the AOB's activities was to clarify the legal situation.

Response to an inquiry – Korneuburg District Authority

Punishment according to the Water Rights Act

A man complained because the Korneuburg District Authority had imposed an administrative fine on him for violating the Water Rights Act (*Wasserrechtsgesetz*). The District Authority had not responded to an inquiry in which he requested action under civil service law due to an incorrect penal order.

The AOB found that the District Authority had issued a penal order for cleaning an engine with a high-pressure cleaner. The Lower Austrian Administrative Court, which was subsequently appealed to, cancelled the penal order and discontinued the criminal proceedings because the District Authority had used an incorrect provision of the Water Rights Act. However, the Lower Austrian Administrative Court also stated that a penalty for the violation of another provision was possible.

No response to inquiry

The water law authority initiated new administrative penalty proceedings and based them on the legal provision cited by the Lower Austrian Administrative Court. The person concerned then sent a letter to the District Authority requesting that steps shall be taken under administrative law due to the incorrect decision in the discontinued administrative penalty proceeding. The District Authority did not reply to this submission.

In the opinion of the District Authority, there was no legal basis for informing the man about steps taken under services law. In the opinion of the AOB, the man does not actually have party status in the official proceedings, which is why official confidentiality may prevent him from being informed. However, the AOB also thinks that any person can expect a response from

the authority to their inquiry, provided they do not approach the authority wilfully. The AOB criticised the fact that the man had not received an answer.

Removal of driftwood and flotsam in Lake Traunsee

Insufficient legal basis

Massive deposits of driftwood and flotsam affect parts of Lake Traunsee. The AOB already pointed out in its Annual Report 2020 (Volume "Monitoring Public Administration", pp. 155 et seq.) that it is unclear who is responsible for the removal. Neither the Water Rights Act nor the Forest Act or the Waste Management Act provide a basis for such an obligation to remove.

Parliamentary initiatives

In its Annual Report 2021 (Volume "Monitoring public administration", pp. 192 et seq.), the AOB reported on a petition (No. 69/PET) submitted to the National Council in September 2021. On 28 September 2022, the petition was on the agenda of the meeting of the National Council's committee for petitions and citizens' initiatives. A committee report on the "Creation of a legal basis under federal law for the removal of pollution caused by flotsam and driftwood" was adopted.

Solution pending

In response to a parliamentary enquiry (15754/AB) in November 2023, the Minister of Agriculture, Forestry, Regions and Water Management pointed out that the problem was known and that the provision of federal funds under the Disaster Fund Act (*Katastrophenfondsgesetz*) was within the area of responsibility of the Federal Ministry of Finance. At the time of going to press, the legislators had still not taken any measures to create a legal basis for the mandatory removal of flotsam and driftwood or its financing. The problem is still awaiting a solution, which in the opinion of the AOB should not fail due to disputes over competences between federal ministries or the regional authorities.

3.11.2 Forest law

Clearing permit for creating building land – Murau District Authority

Murau District Authority issued a permit to clear forestland of approximately 0.7 ha for the purpose of "creating building land and an access road". The neighbours criticised this permit stating that the applicant for the authorisation had a purely private (economic) rather than a public interest.

Overriding public interest required

The AOB initiated investigative proceedings and determined that there was a special public interest in the preservation of the cleared area as a forest in terms of its protective function. In such a case – pursuant to Section 17 (3) of the Forest Act – the forestry authority must first determine whether there is a public interest in the non-forest use of the cleared area, i.e. an interest in the clearing purpose to "create building land and an access

road", in accordance with. If this condition is met, it must be assessed and documented whether and why this public interest in non-forest use outweighs the public interest in forest conservation.

Improvement of settlement development and tourism promotion

The Murau District Authority found that there was a public interest in clearing the area, basing its finding essentially on the fact that the clearing area is designated as a "recreational development area" in the municipality's zoning plan. The planned project represents the public interest of tourism development. The municipality also referred to the sustainability of the local tourist centre. A public interest in settlement development and the promotion of tourism were therefore put forward.

If private settlement purposes lie in an uncertain future, the Supreme Administrative Court of Austria has consistently held that the private settlement interest is not in line with the public interest. The Supreme Administrative Court stated that there is no settlement interest if the file of the proceedings does not indicate any intention to build on an undeveloped plot of land that is designated in the zoning plan as a "development area purely for residential use" in the near future.

Concrete project required

According to court rulings, there is only a public interest in clearing under the title of promoting tourism if there would otherwise be significant disadvantages for tourism, or if the clearing could significantly improve the interests of tourism. However, balancing interests cannot be in favour of clearing an area, if no specific project has been identified that would be in the public interest and make such a clearing necessary.

Examination of public interest not possible

The AOB found that the proceedings file of the Murau District Authority did not contain any concrete (construction) project in connection with the purpose of the clearing, i.e. to "create building land and an access road". The District Authority was therefore unable to correctly assess the existence of a public interest and weigh it against the public interest in forest conservation before issuing the clearing permit. The fact that the District Authority nevertheless assumed that the purpose of the clearing was in the public interest and granted the clearing permit was judged by the AOB to be a case of maladministration. There was no possibility for the District Authority to revoke the permit notification, which is why the AOB was unable to issue a recommendation in this regard.

Information about hazard zone designation in the hazard zone plan

Knoweldge of hazard zone designation by chance

The owner of a property in Upper Austria, which is bordered by a small brook and the location of a residential house that was built around 60 years ago, contacted the AOB. During a meeting at the municipal office a few years ago, the couple had "casually learnt" that since 2013 around a third of their property and/or a small part of the house had been located in the red hazard

zone and another third of the property and/or house in the yellow hazard zone of the municipality's hazard zone plan (*Gefahrenzonenplan*).

Designation is reflected in the zoning plan

In its April 2013 newsletter, the municipality had referred to an event in May 2013 at which the public could find out more about the "revision of the hazard plan". The couple had not felt addressed, since the communication had specifically mentioned areas at risk from torrents. There was no such risk to their property and flooding had never occurred. The stipulations in the hazard zone plan had led to the residential building being designated as a so-called "*Sternchenbau*" (i.e. an existing residential building in grassland) in the municipality's zoning plan. This designation restricted the ability to build on the property and resulted in a corresponding loss of value.

Limited opportunities for participation

The hazard zone plan (Section 11 of the Forster Act, Section 42a of the Water Rights Act) is an expert opinion with forecasting character. It must show areas at risk from torrents or avalanches for which a special type of cultivation is required or for which provision must be made to keep them clear. The Federal Ministry of Agriculture, Forestry, Regions and Water Management is responsible for drawing up these plans and adapting them to the current state of development. The Ministry uses the services of the Forest Engineering Service for Torrent and Avalanche Control. The draft of the hazard zone plan must be sent to the municipalities and made available for inspection there for four weeks after public announcement. Anyone who can credibly demonstrate a legitimate interest is entitled to comment on the draft within the public consultation period. Comments submitted in good time are only "to be taken into consideration" (Section 11 (5) of the Forest Act).

When asked about the specific case, the Ministry of Agriculture, Forestry, Regions and Water Management pointed out that a hazard zone plan is an area-based forecast of the safety of the settlement area and the critical infrastructure. Even if the hazard zone plan is based on the property cadastre with regard to the accuracy of representation and is therefore "parcel-specific", it cannot be deduced from this that a hazard and risk assessment specifically focussing on the interests of use is carried out for each individual property in the course of hazard zone planning. However, in proceedings under regional planning or building law, the municipality can request an expert opinion from the competent department of the Forest Engineering Service for Torrent and Avalanche Control in order to specify the hazard assessment on a property-specific basis.

The Ministry of Agriculture, Forestry, Region and Water Management also provided detailed information on the risk assessment in the area of the property in question. These are supplementary documents to the specific enquiry of the AOB, which are not subject to hazard zone planning pursuant to Section 11 of the Forest Act to this extent.

Duty of notification recommended

The AOB informed the couple and clarified that the technical comments of the Forest Engineering Service for Torrent and Avalanche Control could only be effectively countered at the same technical level - e.g. in the course of combating measures under regional planning or building law. The fact that the couple had not been informed of this requirement is in line with the legal situation. Therefore, there was no error on the part of the authority. In its Annual Report 2011, the AOB already recommended introducing a notification obligation, similar as the one that already exists in connection with zoning plans. The AOB therefore also approached the Federal Ministry of Agriculture, Forestry, Region and Water Management on this issue.

Additional burden for municipalities

The Ministry stated that it did not wish to create a notification obligation. The municipality's obligation to publicise the hazard zone plan with a publication period of at least four weeks is sufficient to ensure that property owners have the right to comment. In addition, many municipalities use media (municipal newspaper, municipal TV, social media) or direct mail to publicise such announcements. An active obligation to notify the affected property owners would "presumably mean an unreasonable and unmanageable additional burden for the municipalities".

No possibility of appeal

In the opinion of the AOB, the hazard zone plan as an expert opinion has no binding external effect. However, the regional planning regulations of the *Laender* stipulate that land cannot be designated as building land if it is exposed to the risk of avalanches, floods, torrents, etc. For liability reasons alone, a hazard zone plan therefore plays a decisive role in determining the construction feasibility of properties. However, even without expressly restricting the construction feasibility of properties in regional planning, the definition of hazard zones in a hazard zone plan alone will generally reduce the market value of a property. Affected parties cannot appeal against this. Personal notification of landowners would therefore be justified.

3.11.3 Public employment law

Incorrect or insufficient information in rejection letters – Federal Ministry of Agriculture, Forestry, Regions and Water Management

Wrong e-mail address

An applicant for several positions rightly criticised the fact that a "rejection letter" from the Federal Ministry of Agriculture, Forestry, Regions and Water management did not specify which position was concerned. Furthermore, this letter stated an e-mail address that was not (or no longer) active. In response to e-mails sent to this address, a "delivery error message" was sent. The applicant had sent a corresponding notice to another e-mail address of the Ministry and suggested that the non-functioning e-mail address be removed from the form. However, he subsequently received

another letter from the department in which the out-of-date e-mail address was again stated.

Changes initiated

The Ministry explained that the Federal Ministry of Art, Culture, Civil service and Sport was responsible for the platform "Federal Job Exchange". The Ministry of Agriculture, Forestry, Regions and Water management had contacted the Ministry of Art, Culture, Civil service and Sport in order to adapt the automatically generated rejection letter, both with regard to the correction of the e-mail address and the indication of the specific position or application. The latter stated that the Austrian Federal Computing Centre (Bundesrechenzentrum) was responsible for the technical implementation and would carry out "preparatory work for an update". The changes would be made immediately after its completion. In the opinion of the AOB, no further action was therefore necessary in this matter.

3.12 Social affairs, health, care and consumer protection

3.12.1 Health

Complaints decreased

The number of complaints in social health insurance matters (2022: 426, 2023: 358) and in health matters (2022: 700, 2023: 392) has decreased. As the preventive measures were cancelled, fewer complaints were received regarding the management of the COVID-19 pandemic.

Care needs after post-viral diseases

Affected persons without adequate care

In 2023, the AOB received many complaints from people suffering from a post-viral disease, in particular myalgic encephalomyelitis or chronic fatigue syndrome (ME/CFS), who described not receiving adequate medical care or other support. As ME/CFS is a serious illness with chronic fatigue and incorrect treatment can usually lead to a massive worsening of symptoms (a so-called "crash"). A rapid diagnosis and adequate medical treatment are thus very important. Even people who only develop ME/CFS after their SARS-CoV-2 infection often remain seriously ill for a long time.

It is not yet possible to provide reliable information on the proportion of people who suffer serious long-term health consequences because of an infection. However, there are indications that the risk increases after multiple infections. Instead of expanding medical expertise and care services in view of the increasing demand, the few contact centres are hopelessly overloaded or have even been closed, as those affected have credibly described.

Investigative proceedings prove differences and deficits

The AOB therefore initiated *ex-officio* investigative proceedings and contacted the *Laender*, the Austrian Public Health Insurance Office, and the Federal Ministry of Social Affairs, Health, Care and Consumer Protection. The feedback showed the massive regional differences in medical care for post-viral diseases. In Burgenland, Lower Austria and Carinthia, there were and are neither specific outpatient clinics nor contact centres for those affected. In other *Laender*, there are at least "coordination centres" that are intended to facilitate adequate care for those affected by post/long COVID. From the outset, the coordination centres in Tyrol and Vorarlberg were not designed to provide medical treatment. However, they serve as contact points for those afflicted, as they provide a network of doctors, as well as information, which in turn help those concerned to access support services. In Tyrol, the number of staff at the coordination centre was increased at the end of 2023 due to an increase in enquiries. It is also positive to note that specialised outpatient clinics in Salzburg and Styria will continue to operate. In Vienna, on the other hand, one such centre was closed.

The Ministry of Social Affairs, Health, Care and Consumer Protection initially pointed out to the AOB that the responsibility for care in the hospital sector lies with the respective *Laender*, while in the private sector of office-based doctors this is the responsibility of the public social insurance carriers within the framework of self-administration.

Ministry plans "reference centre" in 2024

The Ministry announced that it would create a "National Reference Centre for Post-viral Syndromes" in 2024. This centre will serve as a "knowledge hub" and, among other things, conduct research and advise doctors. In addition, a national action plan on post-viral syndromes is planned, which will involve all stakeholders concerned, including representatives of the *Laender* and the social insurance organisations.

The social security institutions also informed about its endeavours to ensure the best possible care for those affected. An important factor here is the comprehensive education and further training of medical staff and doctors, particularly in primary care. This is because they are usually responsible for the initial diagnosis and are the most important interface to specialised medical care.

AOB demands adequate care structures

The AOB used the first edition of the television programme *Bürgeranwalt* in 2024 to draw attention to the issue and urge for rapid solutions and an expansion of the care structure. She welcomed the move by the Ministry of Health to set up a reference centre. Nevertheless, a nationwide expansion of the medical care structure is urgently needed. To this end, decentralised contact points that are easily accessible for those affected must be created in the *Laender*. This is the only way to ensure adequate care and advance medical research. However, the AOB criticises the fact that existing specialised outpatient clinics have been dismantled without a functioning replacement structure being created.

No costs subsidy for vaccination against herpes zoster

Expensive vaccine

In response to many complaints, the AOB had already suggested in 2022 that a cost subsidy be granted for people in the relevant age group (50 years and older) for whom the Ministry of Social Affairs, Health, Care and Consumer Protection recommends vaccination. The same shall apply for people at increased risk of contracting herpes zoster (see Annual Report 2022, volume "Monitoring Public Administration", pp. 209 et seq.). In 2023, many people also complained that the recommended inactivated vaccine was almost unaffordable. Full immunisation against herpes zoster costs around 500 euros.

Subsidy only for medical indication

The core task of statutory health insurance is the treatment of illnesses. Vaccinations are not health treatment within the meaning of the General Social Insurance Act, but preventive health care measures. The Austrian Public Health Insurance Office will therefore only cover the costs of the

vaccine if the vaccination can be categorised as early medical treatment in individual cases. This is the case, for example, if there is a significant immunodeficiency.

In the course of a report in the television programme *Bürgeranwalt*, the Ministry confirmed that it would be desirable from a medical and professional perspective to develop a financing model for this. So far, however, no agreement has been reached among the relevant stakeholders.

Delay in appointments for flu vaccinations

No free appointment for weeks

In October 2023, a Viennese woman contacted the AOB and described problems making an appointment for a flu vaccination. She had tried for several weeks to make an appointment at the Austrian Public Health Insurance Office's health care centre in Floridsdorf. She had attempted several times - both by telephone and via the website's online tool - but unfortunately without success. She was always told that all appointments had already been booked. They were also unable to help her over the phone. The picture was the same at the other health care centres of the Austrian Public Health Insurance Office in Vienna.

Austrian Public Health Insurance Office referred to private practice sector

In its statement, the Austrian Public Health Insurance Office explained that the appointments were actually booked up relatively quickly due to the high demand - especially in Vienna - and referred to the possibility of contacting doctors in private practice. A list of doctors participating in the flu vaccination programme was available on the website of the Austrian Medical Chamber. The "Public Influenza Vaccination Programme" also offered a landing page with a hotline and FAQs on the vaccination campaign.

In the opinion of the AOB, it must be ensured in future that people who are ready to be vaccinated receive appointments promptly and at a low threshold, and that sufficient vaccine is available.

Sex-assigning and sex-aligning surgery in children

According to estimates, up to 30 children are born each year in Austria with ambiguous features determining their sex. In the case of intersexuality, certain physical characteristics of those affected cannot be clearly assigned to the binary gender categories. The deviating characteristics can be of hormonal, chromosomal, gonadal or anatomical origin. In infants, for example, the chromosome set XX may be present, but the vagina may be missing. Some have gender-typical characteristics of both sexes, e.g. external female sexual characteristics and male gonads or vice versa. Some newborns appear to be clearly male or female due to their sexual organs, but then have the opposite set of chromosomes. The variants of sexual disposition are diverse and by no means always associated with organic

dysfunctions. The international estimates cited in the relevant literature assume that between 0.018 and 1.7 % of all newborns are intersex.

Gender identity is a question of self-determination

Those affected criticise the fact that medicine is still geared towards the early surgical removal of "disturbing" sexual characteristics. However, there are relatively few cases, in which the life of the intersex child is at risk and immediate treatment is necessary. Others usually determine surgical assignment to one of two sexes, as the parents, who – for fear of stigmatisation and prejudice – believe that they are acting in the child's best interests, usually give consent for these surgeries on children. However, a lack of psychosocial counselling options for parents of intersex children can be extremely harmful and even fatal. The life stories and stories of suffering of those affected show that such surgeries are often perceived as a violation of their physical integrity, or as mutilation. This, especially as they have been deprived of the chance to develop their gender identity in a self-determined and unhindered way. This results in psychological stress and a multitude of problems in connection with physical well-being and sex life. People with variations in sex characteristics are therefore recognised internationally as victims of harmful medical practices and other human rights violations.

Early adaptations to binary gender norms are generally neither medically necessary nor urgent. Sex-assigning surgery refers to medical, usually surgical, interventions that establish an assignment to one sex or the other in cases of ambiguous features, for example in children who have both male and female physical characteristics internally and externally. Sex-aligning surgery is used to harmonise the external appearance with the genetic sex determined by the internal sexual organs (e.g. clitoral resection).

Prohibition of human rights violations

From 2009 to the present day, the UN treaty bodies have repeatedly called on member states to stop human rights violations against intersex people. In addition, European bodies such as the Parliamentary Assembly of the Council of Europe and the European Parliament adopted resolutions (2017 and 2019 respectively) calling for, among other things, the prohibition of "normalising" surgical interventions and other treatments on intersex children without their informed consent in the national law of their respective member states.

In 2020, the UN Committee on the Rights of the Child called on Austria to prohibit unnecessary and non-consensual interventions on children's sexual characteristics. In 2021, the Committee for Equal Treatment of the Austrian Parliament unanimously spoke out in favour of increasing protection for intersex children from interventions that are medically unnecessary. Although a working group was subsequently set up with the participation of those affected, a concrete draft law was not finalised. In a statement, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection explained that the draft law is being coordinated with the coalition partner since autumn 2022. Austria still does not have a clear ban on externally performed

surgeries that are not medically necessary. More than 70 organisations therefore wrote an open letter to the Federal Government in May 2023 calling for a ban to protect intersex children and adolescents.

The protection of intersex people and their families through an appropriate law that recognises diversity and works towards the inclusion of all parts of the population is long overdue. The provision of independent, non-medicalised psychosocial counselling is an additional key factor in the prevention of invasive and irreversible surgical interventions and other medical treatments for intersex infants and children.

Shadow jumper receives necessary medicine

A man suffers from erythropoietic protoporphyria, also known as "shadow jumper" disease. Those affected react to light with severe pain (burning pain) in this very rare genetic metabolic disorder. Many patients protect themselves with long-sleeved shirts and trousers, socks, gloves, scarves, etc. Despite this cover-up, prolonged exposure to the sun causes pain.

According to the manufacturer of the drug Scenesse®, which provides relief for many afflicted with this disease, there are around 25 to 30 patients in Austria. Treatment with the drug costs between 60,000 and 80,000 euros per year. The AOB has already addressed the issue several times and discussed it in the *Bürgeranwalt* television programme. At the time of the AOB's investigation, the drug was only administered in the hospitals in Innsbruck and Graz. In Styria, the Styrian Hospital Cooperation apparently authorised the medication for some patients, but not initially for the man who had complained to the AOB.

At present, each hospital operator decides autonomously whether and how to use new and innovative, usually very expensive medicines and therapies. They also independently assess when such a medication should be used. The basis for making such a decision is not transparent. It is therefore not possible to say whether all patients have access under the same conditions.

Styrian Hospital Cooperation assumes costs after AOB intervention

After the AOB intervened, the Styrian Hospital Cooperation agreed to cover the costs of the treatment following a further investigation. According to the person concerned, the medication worked very well for him. He could now go outside without restrictions and plan holiday trips to the south.

The Ministry of Social Affairs explained that the Minister was aware of the lack of standardised access to such rare therapies and treatments throughout Austria. According to the Ministry, the medication is to be administered in hospitals, which are the responsibility of the *Laender*. Therefore, the Ministry has no possibility of exerting any influence within the framework of public health insurance.

AOB for standardised care

As part of the healthcare reform, so-called evaluation boards are to assess and make recommendations on newly developed, high-priced medications before they are used in hospitals according to international Health Technology Assessment standards, i.e. according to the scientific evidence, data and facts available on such medications. This is not about their price, but purely about their use. In any case, the AOB will continue to campaign for standardised care and cost coverage throughout Austria.

Long proceedings following suspected COVID-19 vaccine damage

The number of people who have received COVID-19 vaccines is shown on the vaccination dashboard of the Ministry of Social Affairs, Health, Care and Consumer Protection. At the end of reporting year, 21,041,327 COVID-19 vaccinations were entered in e-vaccination certificates. As with any vaccination, vaccination complications can occur. However, not every vaccination complication is a vaccine injury. In order to claim benefits under the Vaccination Damage Act (*Impfschadengesetz*), a grievous bodily harm that is at least probably attributable to the vaccination (damage to health lasting more than 24 days or occupational disability) or a permanent consequence is required. Furthermore, the vaccination must have taken place in Austria; persons who are not Austrian citizens are also entitled to compensation. Claims under the Vaccination Damage Act are of a public legal nature, as vaccination damage is caused by the administration of state-recommended vaccines, which in turn came onto the market through public legal admission proceedings.

Many people complained to the AOB about the long duration of proceedings after applying for compensation. Some of those affected waited well over a year for a decision from the Ministry of Social Affairs Service.

Proceedings lasted longer than a year

Due to the long duration of proceedings, the AOB initiated investigative proceedings and requested a statement from the Ministry of Social Affairs. The Ministry referred to a sharp increase in proceedings under the Vaccination Damage Act as a result of the COVID-19 pandemic. While only eight applications were recorded in 2019, there were 1,349 applications in 2022, which was a major challenge and led to a longer duration of proceedings. Particularly in the beginning, not enough experts had been available. However, process optimisations have now shortened the duration of proceedings.

The complexity of such proceedings is undisputed. According to the current legal situation, it is not yet possible to conclude that a vaccination has caused damage simply from the lack of other causes and the fact of a temporal connection. Since the 2005 amendment to the Vaccination Damage Act, the damage to health must at least be probably attributable to the vaccination.

The mere possibility of a causal connection is not sufficient. As the Supreme Administrative Court of Austria emphasises, the probability of causation is given "if, according to current medical scientific opinion, there is more evidence for than against a causal link between the vaccination and the health damage identified". The symptoms of the damage should therefore essentially already be known as an undesirable side effect following a vaccination. The selection of suitably experienced and qualified experts is essential, if only because the study situation on serious health consequences after COVID-19 vaccinations is constantly evolving.

By the beginning of 2024, 2,251 applications for COVID-19 vaccinations had been submitted. Vaccine damage had been recognised in 340 cases by then. 281 of those affected received one-off payments totalling around 1,300 to 8,700 euros. The rest mostly concern pension benefits, with 26 pensions being paid out permanently. Over 1,000 proceedings were still pending at the end of 2023.

Outdated set of rules for assessing reduced earning capacity

The guideline rates for assessing the reduction in earning capacity in accordance with the War Victims Compensation Act (*Kriegsopferversorgungsgesetz*) and the Law on the Protection of the Armed Forces (reference rate ordinance) are still used to calculate pensions. The regulations date back to 1965 and are therefore outdated; they do not include more complex clinical pictures. After the AOB intervened, the Ministry of Social Affairs confirmed this view and reported that it was considering establishing modern assessment criteria. However, it also explained that this process would take some time.

Labelling of honey

Food Codex does not provide for the term "bee honey"

A beekeeper complained to the AOB that the term "bee honey" would soon no longer be permitted on his products because new rules on product designations were being emphasised. The Austrian Food Codex (Chapter B3/ Honey) does not contain the term "bee honey" in accordance with the Honey Regulation; the latter only refers to "honey". The transitional period during which beekeepers may still use their labels with the designation "bee honey" is due to end at the end of June 2025.

Honey always comes from bees

The "Codex Alimentarius Austriacus", the Austrian Food Codex, dates back to 1891 and regulates the production, quality and labelling of food in Austria - including honey. Although it is not a legal provision, it is an expert opinion that serves as a working basis for enforcement. This codex was updated in July 2022. It contains the changes described. Since 2006, the honey regulation, which is based on this description, defines "honey" as a naturally sweet substance produced by bees of the species Apis mellifera. These bees take nectar from plants, secretions from living parts of plants, or secretions from plant-sucking insects on the living plant parts, mix them with species-

specific substances, convert them, store them and let them mature in the honeycombs of beehives.

Honey can be labelled according to its origin, production method or form of supply. For example, honey with a predominance of nectar can be labelled as "blossom honey" or "nectar honey". If "honeydew honey" is chosen as the designation, this honey comes mainly from secretions of plant-sucking insects on living plant parts. In the case of "forest honey", the honeydew content comes entirely from plants in forests.

According to the Honey Regulation, nothing other than honey may be added to honey if it is to be placed on the market as such or used as an ingredient in a product. As soon as honey is mixed with a non-honey food product, it is no longer honey, but a new, processed foodstuff. As honey by definition always originates from bees, the product name "bee honey" is considered misleading, as is the term "beekeeper's honey".

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection explained that using the clarifying designation "honey" for products that come exclusively from bees distinguishes them more clearly from vegan substitute products. The addition of the term "bee" has made it easier for producers of sweetening substitute products, such as agave, apple or pear syrup, maple, rice, date or sugar beet syrup to present their products as "vegan honey". Advertising with self-evident or deceptive claims about the properties of a product must not be included on the product's label. If the term "honey" takes hold for animal-produced honey exclusively, this will also ensure that vegan sweetening alternatives may not contain the suffix "honey" or phonetically similar names or images associated with honey as a product name. This was also the actual intention behind the 2022 update of the Food Codex.

Designation is customary in the market

However, the beekeeper concerned criticised the fact that the term "bee honey" has not only been common in Austria for decades, but is also customary on the market and is even listed in the dictionary. Furthermore, the planned transition period is too short. For economic reasons, many beekeepers had bought large quantities of labels as well as matching containers in stock. These old stocks would have to be destroyed at the end of the transitional period, which would represent an economic loss.

Competent commission will seek solution

The Ministry of Social Affairs informed the AOB in a statement that the issue would be discussed again at the next meeting of the "Codex Sub-Commission on Honey". The beekeeper who had complained to the AOB would be invited to the meeting and an attempt would be made to find a solution.

Limited employment opportunities for veterinarians

Animal shelter may not employ veterinarians

A veterinarian has been working with a large non-profit animal welfare organisation in Lower Austria since 2012. In November 2022, however, she was informed that employment was no longer possible, as an operating company is not permitted to employ veterinarians. According to Section 14 (5) of the Veterinarians Act (*Tierärztegesetz*), veterinarians in an employment relationship may only carry out treatments within narrow limits, for example as an employee of a local authority or as part of a surgery operated by the employer. The vet in question could not understand this, as ongoing veterinary care was essential due to the large number of animals housed in the animal shelter.

The AOB requested a statement from the Ministry of Social Affairs, Health, Care and Consumer Protection. The Ministry stated that the restriction of the employment of veterinarians to the legal entities named in Section 14 (5) of the Veterinarians Act was in line with the wishes of the professional organisation and had also been chosen for objective reasons. This is intended to ensure that the treatment of animals, the reporting of animal diseases and the use of (veterinary) medication is only carried out in accordance with professional and veterinary criteria. This was not guaranteed in the context of employment with a non-profit animal welfare organisation, even if it is highly regarded in the specific case, due to the employee's economic dependence and the organisation's objectives.

AOB suggested legal change

However, regardless of whether the veterinary activity is carried out on a freelance, self-employed or employment basis, it must be carried out professionally and at the vet's own authority (Section 27 (1) of the Veterinarians Act). This appears to ensure that veterinarians always operate free from professional instructions. They are also obliged to pay particular attention to the welfare of the animals when carrying out their professional activities. Furthermore, it can be assumed that the legal requirement for adequate veterinary care can only be met in larger animal shelters if veterinary expertise and treatment options are available on a permanent basis. This could be guaranteed above all if veterinarians are employed. The AOB was able to understand the explanations and therefore recommended a corresponding legal amendment.

3.12.2 Public health insurance

Making the work of SHI-accredited doctors more attractive

In 2023, there were frequent complaints that the long waiting times forstatutory health insurance (SHI) accredited doctors meant that more and more elective doctors had to be utilised. As a result, the Austrian Public Health Insurance Office often needs several months to process applications for reimbursement. The measures announced by the Austrian Public Health Insurance Office in the area of electronic communication and harmonisation

of services did not lead to any serious improvement for the insured persons. In the opinion of the AOB, the programmes to make the work of statutory health insurance doctors more attractive and to refill statutory health insurance positions should therefore be intensified and implemented.

Waiting times for CT and MRI examinations

There have been an increasing number of complaints about long waiting times for CT and MRI examinations. Some of those affected were forced to go to private X-ray centres for urgently needed examinations, for which the health insurance carriers do not have to reimburse any costs. In the opinion of the AOB, the supply situation with CT and MRI equipment should therefore be evaluated. If necessary, the number of devices that can be used at the expense of the health insurance carriers must be increased in certain regions.

Private payments for prescription fee cap not taken into account

The AOB continues to receive many complaints criticising the regulation according to which private payments for medicines are not taken into account when calculating the prescription fee cap. Based on the overall contract governing pharmacies and health insurance carriers, a medicine prescribed on account of the health insurance carrier is not to be charged to the health insurance carrier if the so-called cash price is lower than the prescription fee. In such cases, the patient must always pay the private retail price.

However, if the private sales price is higher than the prescription fee, the pharmacy can only charge an amount corresponding to the prescription fee based on the overall pharmacy contract. This means that pharmacies may charge an amount equal to the prescription fee for a particular medicine, but still assume a private payment, which cannot be taken into account for reaching the prescription fee cap.

Low-income earners in particular face additional burdens if, as chronically ill patients, they require mostly "cheap" medication for which they have to largely pay themselves.

The AOB highlighted the problem in the television programme *Bürgeranwalt* and strongly advocates that the expenses should be taken into account in the prescription fee cap system.

Assessment of incapacity to work by public health insurance

Legal requirement of insured persons to cooperate

Incapacity for work is deemed to exist if a sick person is unable to carry out their previous occupation or is only able to do so at the risk of worsening their condition. However, the Austrian Public Health Insurance Office is not bound by the confirmation of incapacity to work (sick note) issued by SHI-accredited doctors. Rather, the Austrian Public Health Insurance Office can investigate sick notes, carry out sickness checks if necessary, or invite insured persons to medical examinations and, for medical reasons, determine a time

for the start and end of their incapacity to work that differs from the medical sick note.

During sick leave, the instructions of the doctors and the Medical Service of the Austrian Public Health Insurance Office must be followed. The Austrian Public Health Insurance Office is authorised to check compliance with these instructions, compliance with the provisions of the sickness regulations and the state of health of the sick person. Insured persons must provide all information relevant or necessary for the recognition of sick leave and co-operate in any inspections.

Problems with the presentation of medical documents

Due to this legal framework, the Austrian Public Health Insurance Office can request the submission of medical documents and specialist medical reports in order to be able to understand and investigate the incapacity to work and the planned treatment steps. However, the AOB observed that the Office had asked those affected to submit proof of treatment at short notice, which is often not possible due to the long waiting times in private practice and inpatient care. Furthermore, this results in difficulties, especially for insured persons with mental health problems who are already overburdened in their everyday lives.

Leniency in justified individual cases

In the opinion of the AOB, the Medical Service should therefore take these difficulties into account in individual cases when obtaining medical documents. In cases that are particularly worthy of consideration, the Medical Service should exceptionally assess incapacity to work if it is not possible or problematic for the person concerned to submit proof of treatment in good time.

Discrimination in authorisations for electric wheelchairs

Necessary for a self-determined life

The AOB regularly deals with cases in which the Austrian Public Health Insurance Office does not authorise electric wheelchairs. For those affected, however, the use of a customised electric wheelchair is essential for maintaining their mobility and leading a self-determined life, which also includes the opportunity to participate in social life in their familiar surroundings.

No wheelchair for residents of a hospice

A man from Lower Austria turned to the AOB because the Austrian Public Health Insurance Office had told him over the phone that he would not need an electric wheelchair anyway because he was already living in a hospice. He found this justification extremely cynical in view of his serious illness and reported that he could only leave his room independently and be mobile outside the hospice with an electric wheelchair.

In the AOB's investigation, the Austrian Public Health Insurance Office recognised that different regional regulations apply to the provision of electric wheelchairs. In Lower Austria, the costs of electric wheelchairs for residents of care facilities are generally not covered. However, as the costs

are covered in full in other *Laender*, the Austrian Public Health Insurance Office ultimately agreed to cover the costs of the electric wheelchair. They also assured that a harmonisation of benefits was planned. In the opinion of the AOB, this should be implemented as quickly as possible.

No authorisation despite medical indication

An insured person turned to the AOB because the Austrian Public Health Insurance Office refused to cover the costs of an electric wheelchair despite a doctor's recommendation and submission of corresponding medical documents, which showed that the continued use of a manual wheelchair was no longer suitable for her to cope with everyday life. The use of a rented electric wheelchair had already shown that it could significantly increase her mobility. Furthermore, hyperglycaemic derailments, which can lead to life-threatening situations, could be avoided thanks to the reduced physical exertion.

After re-examining the facts of the case, the Austrian Public Health Insurance Office informed the AOB that the insured person had been provided with an electric wheelchair for a trial period. This was to enable her to familiarise herself with the operation of device. At the end of the trial period, the Public Health Insurance Office informed them that the insured person had familiarised herself well with the operation of the electric wheelchair, which is why the assumption of costs was approved.

Central contact point necessary

In addition to the Austrian Public Health Insurance Office, the Austrian Pension Agency and the Lower Austrian Social Ministry Service are also eligible to cover the costs of an electric wheelchair. Due to a lack of prior coordination, clarifying the responsibility for benefits led to a considerable waiting time, which was unacceptable for the insured person. In the end, the Austrian Public Health Insurance Office and the Social Ministry Service shared the costs. This case shows that a central contact point should be created for such cases to clarify entitlement to benefits.

The Austrian Public Health Insurance Office must take greater account of the fact that these concerens are relevant in terms of fundamental rights. In addition to respect for human dignity, the UN CRPD also requires respect for individual autonomy and independence. The ECtHR fundamentally derives a comprehensive right to participation for persons with disabilities from the protection of privacy and family life. Thus, the ECtHR also concludes from Article 8 ECHR that state authorities and courts are obliged to carry out comprehensive needs assessments in contentious proceedings in line with the needs of those affected and to provide assistance that enables individuals to maintain relationships with other people. Refusing to cover the costs of electric wheelchairs jeopardises the right to private and family life if mobility impairments reach a level of severity that significantly restricts or completely prevents a self-determined lifestyle and opportunities for participation. Specifically, in its judgement of 8 February 2022, RS. Jivan v. Romania (complaint no. 62250/19) in its reasons for judgement:

"However, if a restriction of fundamental rights affects a particularly vulnerable group in society that has been significantly discriminated against in the past (such as persons with disabilities or older dependent people), then the State's margin of discretion is much narrower and it must have very important reasons for the restrictions in question (...)."

Unclear communication after requesting therapy for dementia

It is difficult for insured persons to find their way through the jungle of official channels and jurisdictions. Often, the public social insurance carriers send them round in circles. They only receive pre-prepared sample letters, which do not explain why their application was rejected and what steps are necessary to perhaps still receive the benefit they applied for.

Sample letter instead of clarification of competence

For example, the spouse of a pensioner with dementia had been trying in vain for several months to obtain neuropsychological outpatient therapy for his wife with dementia from the Austrian Public Health Insurance Office and the Austrian Pension Agency. The doctors treating her had prescribed this therapy to maintain her cognitive abilities and improve her visual perceptual function. The Austrian Public Health Insurance Office referred to the the Austrian Pension Agency as the competent entity, which in turn rejected the application twice with a sample letter. The sample letter merely stated that the requirements for rehabilitation were not met and that a new application could be submitted if the condition deteriorated. It took several more enquiries by the spouse and the initiation of investigative proceedings by the AOB before the Austrian Public Health Insurance Office finally informed the applicant in writing that it could only grant outpatient therapy after an inpatient rehabilitation stay, for which the Austrian Pension Agency was responsible. However, the Pension Agency then ruled out such a stay in the context of a written statement of opinion, as no rehabilitation measures are generally approved for dementia because an improvement in the condition is not possible.

Dementia patients also need therapies

Both, the health and pension insurance funds provide medical rehabilitation measures. These measures include, among other things, hospitalisation in medical facilities that are primarily used for rehabilitation and outpatient therapies. The aim is to improve or restore the patient's state of health as far as possible. However, there are also illnesses, such as dementia, for which a cure or improvement of the condition is not possible. These people also need support through therapy so that their condition does not deteriorate further, or existing abilities are maintained. In addition to medical rehabilitation measures, both health insurance and pension insurance therefore provide for measures to consolidate health and preventive healthcare. This is a voluntary benefit that the health and pension insurance providers can grant, taking into account the progress of medical science and the financial resources available.

Applications must also be examined on a case-by-case basis before voluntary benefits are refused. In this specific case, the Austrian Public Health Insurance Office approved the outpatient therapies for the pensioner with dementia in the ORF programme *Bürgeranwalt* after all.

Communication needs to be improved

The AOB calls for an improvement in communication between the public social insurance carriers and the insured persons. Under no circumstances can it be citizen-friendly to use prefabricated sample letters to refuse a benefit that do not refer to the application. Insured persons must be informed in understandable language about the conditions under which the requested benefit is granted, who is responsible for granting it and what alternatives are available in the event of a rejection.

Lack of support for people requiring ventilation

Like in previous years, people requiring ventilation and their relatives turned to the AOB in 2023 as well. They were worried about the continued funding of their intensive care at home or had been trying in vain to obtain such funding from social insurance and the state for some time. The fact that the health and social system does not recognise one, but several responsibilities for the subsidisation of intensive care at home makes it difficult for families to establish a secure, socially and medically adequate care structure around the clock in cooperation with specialists and then to pay for it.

Still no agreement in sight

Although the Federal Commission for the Implementation of Health Targets and a separate working group in the Ministry of Social Affairs have been dealing with this issue for some time, there is still no agreement between the *Laender* and the public social insurance carriers on the funding of this intensive care that replaces institutionalisation.

As in its Annual Report 2022, the AOB is urgently calling for a standardised nationwide regulation to finally put an end to this legal uncertainty. It is extremely unsatisfactory that those affected do not receive prompt support, although it would be possible to ensure access to benefits and to keep the billing modalities away from the patients and their relatives and regulate them internally.

Subsequent determination of health insurance coverage

Delayed health insurance coverage

A man turned to the AOB because the Austrian Public Health Insurance Office rejected his application for self-insurance in the health insurance scheme in March 2021, citing the lack of a valid residence permit. As a result, this application was only re-examined and approved in June 2021 after a residence permit was submitted. Due to the six-month waiting period to be observed, the Austrian Public Health Insurance Office only recognised an entitlement to benefits in kind from December 2021. However, due to an accident, the man had to be treated as an inpatient at the trauma centre

in Vienna from mid-November to December 2021, for which the Austrian Public Health Insurance Office refused to reimburse costs because the "self-insurance waiting period" had not been met.

AOB achieves subsequent coverage of costs

However, during the investigation, supplementary documents were submitted. Based on these, the Austrian Public Health Insurance Office was able to establish that an extension of proceedings regarding the residence card or residence permit was already pending at the municipal department MA 35 at the time of the application for self-insurance in March 2021 and that he was legally resident in Austria at that time. The start date of his self-insurance in the health insurance scheme could therefore be corrected to March 2021, which is why the waiting period for benefits in kind from the health insurance scheme was already fulfilled in September 2021. Due to this correction of the start of self-insurance under the health insurance scheme, the conditions for the cost coverage for the inpatient stay at the trauma centre were also met.

However, this case shows by way of example that the existing waiting periods for the completion of residence proceedings must be taken into account when determining health insurance coverage, and that the examination of eligibility requirements must be carried out carefully.

No cost coverage for high-calorie supplementary food

An Upper Austria man had lost a lot of weight (30 kg in eight months) as a result of cancer. At a height of 182 cm, he weighed only 56 kg, which corresponds to a BMI of 16.9. The oncological outpatient clinic at Kepler University Clinic prescribed him a high-calorie nutritional drink (Fortimel Complete) to help him gain weight. However, in August 2023, the Medical Service of the Austrian Public Health Insurance Office in Linz refused to authorise the (continued) use of the medication because long-term cost coverage for supplementary nutrition was not possible.

The case of a Styrian woman suffering from Huntington's disease was similar. This brain disease cones with severe weight loss. The woman's enormously increased energy requirements due to the disease could not be covered solely by her regular diet. From a medical point of view, she was therefore recommended a high-calorie supplementary food (Fresubin). This was not least in order to avoid a PEG tube for as long as possible.

No obligation to pay benefits for regular nutrition

In the AOB's investigative proceedings, the Austrian Public Health Insurance Office stated, that one needs to distinguish between the replacement of normal nutrition in the course of medical treatment and so-called regular nutrition within the meaning of Section 133 (2) of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*). The obligation to provide benefits under the health insurance scheme does not cover regular (dietary) nutrition. The legally relevant question is therefore whether it is

possible and reasonable for the patients concerned to obtain the necessary nutrients through regular nutrition.

The Austrian Public Health Insurance Office can only cover the costs of nutritional supplements if oral nutrition is not or not sufficiently possible. For this reason, authorisation is granted for a limited period. After the AOB intervened, in both cases, the nutritional supplements continued to be authorised and assurances were given that the nutritional supplements could continue to be authorised in the future upon submission of appropriate evidence of further necessity (reports or doctor's letters stating a current BMI).

Non-authorisation of an operation abroad

Impairment of a child's ability to walk

People regularly turn to the AOB because their health insurance does not authorise surgical proceedings abroad. For example, a mother turned to the AOB on behalf of her underage daughter. The girl was seriously ill and had developed periventricular leucomalacia (PVL). She was no longer able to walk due to severe muscle shortening.

In Austria, the specialists suggested that the child undergo a lengthy leg operation with bone shortening and hip fusion. This would have been associated with high risks and would have promised little chance of success. Following this operation, the girl would not have regained her ability to walk and would have been permanently dependent on a wheelchair.

New surgical method in Barcelona

As an alternative, the parents were recommended a so-called percutaneous myofasciotomy. In this minimally invasive surgical method (with a very low surgical risk), only shortened fasciae are corrected without touching the healthy muscle tissue all around or other important structures (such as the musculoskeletal system) or making anatomical changes (bone shortening or similar). The couple were told that this could lead to a restoration of their daughter's ability to walk.

Austria does not offer the aforementioned surgical method, which is why the parents - on presentation of all the relevant medical reports and documents - applied for authorisation to carry out and cover the costs of two necessary operations at a specialist clinic in Barcelona.

The Austrian Public Health Insurance Office refused to authorise the operation. As there was no chance of a life without the permanent use of a wheelchair without this operation, the family decided to pay for the first operation in Spain privately. After this operation, the minor was already able to move around independently (with crutches).

If an insured person intends to travel abroad for an operation, the Austrian health insurance carrier must give its prior consent for full cost coverage in accordance with the relevant provisions of European law. This consent can

only be granted if the treatment cannot generally be carried out in Austria or is associated with an unreasonable waiting period.

It is not sufficient that a certain foreign clinic or a certain doctor abroad is preferred to an Austrian institution because the patient has no right of choice with regard to a certain therapy or surgical method.

AOB obtains full coverage of costs

Due to the AOB's intervention, the Austrian Public Health Insurance Office re-examined the facts of the case. As the first intervention had already led to a significant improvement in the girl's condition, the Austrian Public Health Insurance Office ultimately decided to cover the costs of both interventions.

No European Health Insurance Card

A Viennese man asked the AOB for assistance because the Social Insurance Institution for the Self-Employed had repeatedly refused to issue him and his two children, who were also insured with him, with a European Health Insurance Card (EHIC).

Pre-insurance periods from Italy

The Italian-born man worked exclusively in Italy until 2023. However, he had been living in Vienna with his Austrian wife and two children since 2019. In February 2023, he took up a business activity in Austria and had been insured with the Social Insurance Institution for the Self-Employed since.

The EHIC is located on the back of the e-card and is issued by the competent health insurance carrier. With the EHIC, cardholders receive medically necessary benefits in the event of illness in all member states of the European Union and in EEA states - at the same conditions and costs as those insured in the respective state.

Provisional replacement certificate instead of EHIC

The Social Insurance Institution for the Self-Employed issued the man with a certificate valid for a few months as a provisional replacement for the EHIC. However, it refused to issue an EHIC and justified this with the short period of insurance in Austria.

Consideration of insurance periods from the EU

The AOB approached the Social Insurance Institution for the Self-Employed and pointed out that (previous) insurance periods acquired in other EU or EEA states are to be taken into account in the same way as insurance periods in Austria when issuing the EHIC.

The model health insurance regulation of the umbrella organisation of Austrian social insurance carriers (*Dachverband der Österreichischen Sozialversicherungsträger*) contain a binding regulation on the period of validity of the EHIC. Whether and for how long the EHIC is issued depends on a certain pre-insurance period. However, equivalent health insurance periods from an EU or EEA country are also explicitly recognised as a pre-insurance period. If the required insurance period, including any periods of health insurance in a member state, has been completed, a (new) e-card

including a valid EHIC must be issued instead of a provisional replacement certificate.

The Social Insurance Institution for the Self-Employed did not deny this fact to the AOB. However, it pointed out that in the non-self-employed sector, there are repeated cases of fake registrations by persons who ultimately have an EHIC, sometimes valid for many years, without any previous insurance periods in Austria and can use it in Europe. As the foreign service providers (e.g. doctors, medical facilities) would reclaim the costs from the Social Insurance Institution for the Self-Employed - even if health insurance coverage no longer existed in the meantime - there was a risk of high financial losses. For this reason, the man and his two children will not be issued with an EHIC for the time being.

Issuance wrongly refused

In the AOB's opinion, this was not a valid explanation. Firstly, the Social Insurance Institution for the Self-Employed could not explain why they assumed that the EHIC had been misused or that a fake registration had been made. The man had been living in Austria with his family for several years and had paid all contributions to the Social Insurance Institution for the Self-Employed to date. In addition, the model health insurance regulation provides for a binding issuance and validity regulation for the EHIC and leave no room for manoeuvre for a deviating regulation and non-issuance. Specifically for children, the umbrella organisation's model health insurance regulation stipulates that children up to the age of 14 must be issued with an EHIC that is valid for at least five years. The AOB concluded that the Social Insurance Institution for the Self-Employed had wrongly refused to issue the EHIC to the man and his children and argued in favour of issuing it.

Insurance agrees to issue the EHIC

The Social Insurance Institution for the Self-Employed then relented and announced that it would recognise the periods of prior insurance acquired in Italy with appropriate proof and issue the man and his two children with a (new) e-card including EHIC.

Costs for surgery abroad after death of the insured person

Insurance office rejects cost coverage

A Styrian man turned to the AOB because the Austrian Public Health Insurance Office rejected his application for reimbursement of costs for medical treatment abroad. His son had died during an emergency operation while on holiday in Thailand. He had paid for the costs of the emergency operation and the inpatient hospital stay totalling EUR 16,500 and applied to the Austrian Public Health Insurance Office for reimbursement in August 2023. The Austrian Public Health Insurance Office refused and informed the man that this claim should be dealt with within the probate proceedings and that he was not entitled to claim.

Reimbursement according to AOB investigative proceedings

The AOB pointed at the provision of Section 107a (2) of the General Social Insurance Act, which the Austrian Public Health Insurance Office may have overlooked when the reimbursement of costs was rejected. According to this provision, the law stipulates that in the event of the death of an insured person, the persons who have borne the costs are entitled to reimbursement and not the insured person. After re-examining the case, the Austrian Public Health Insurance Office concluded that the father should be reimbursed for costs totalling around 5,500 euros.

No sick pay despite no conviction

Court conviction as a prerequisite

A man from Lower Austria was seriously injured in the leg during a dispute at work. The man therefore had to go on extended sick leave, but did not receive any sick pay from the Austrian Public Health Insurance Office, because it suspected that the man had sustained the injury while culpably participating in a scuffle (Section 91 Austrian Criminal Code). In this case, the Austrian Public Health Insurance Office could refuse to pay the sick pay to the man pursuant to Section 142 (1) (1) of the General Social Insurance Act. However, a legal requirement for this would be a court conviction. In the present case, a police investigation was conducted, but no charges were brought forward, let alone a conviction.

The AOB then approached the Austrian Public Health Insurance Office and pointed out that the legislator wanted to base the denial of sick pay on the criminal conviction. It is neither in the spirit of the law nor reasonable to expect the person concerned to wait until the legal proceedings have been concluded before payment is made, especially as preliminary proceedings and the subsequent legal proceedings can take several months to years. The Austrian Public Health Insurance Office finally relented and the man received the sick pay. He was informed about a possible reclaim in the event of a court conviction.

Right to electronic communication with social insurance carriers

Delivery of medical documents often not electronically

The E-Government Act provides for the right to electronic communication with the courts and administrative authorities in federal legislative matters. The only exceptions are matters that are not suitable to be dealt with electronically.

In 2023, however, the AOB received complaints that social insurance carriers were not enabling electronic communication even in matters that were in principle suitable for electronic processing. In particular, it was often not possible to receive documents from the medical sector electronically.

The AOB approached all social insurance carriers in the course of ex-officio investigative proceedings and enquired about the status of the implementation of the aforementioned obligations.

Social insurance providers are working on implementation

The Austrian Public Health Insurance Office announced that dual delivery has been implemented in the areas of "benefits for insured persons" and "employer services" since the beginning of 2020. For individual letters, a manual check of the possibility of electronic delivery is currently still necessary, especially as this requires the prior registration of the addressee.

In 2020, around 150,000 documents were transmitted electronically. By 2022, this figure had increased to around 620,000 documents. A further increase is expected as more and more private individuals register for electronic delivery.

The switch to electronic forms of communication is also a major concern for the Social Insurance Institution for the Self-Employed. Beginning with high-volume mailings (e.g. contribution notifications, reminders, authorisations), the insurance institution has gradually adapted its correspondence systems to digital delivery. Currently, all technical and organisational requirements have been met to enable that the majority of correspondence is delivered digitally.

The Insurance Institution for Public-Sector Employees, Railways and Mining fully complies with the legal requirements for nationwide dual delivery in the official sector. Secure data exchange is guaranteed for the delivery of medical documents via the "S-Box", if the identity of the insured person has been properly established in advance. Both insured persons and contractual partners of the Insurance Institution for Public-Sector Employees, Railways and Mining regularly use this transmission channel, which complies with the strict requirements of the Health Telematics Act (Gesundheitstelematikgesetz).

The Austrian Pension Agency explained that - if a customer has registered for electronic delivery - electronic delivery is carried out with a few exceptions. They currently implement electronic delivery of documents from the medical field (e.g. authorisation of rehabilitation stays). The integration of such documents into electronic service is also planned for 2024.

The AOB welcomes the steps taken by the individual public social insurance carriers to guarantee the right to electronic communication.

3.12.3 Accident insurance

Recognizing a COVID-19 infection as an occupational disease

Significant long-term consequences after COVID-19 infection

A social worker and maternity counsellor at Vöcklabruck District Authority got infected with SARS-CoV-2 in mid-November 2020 and fell seriously ill. The consequences of the infection were so severe that the 39-year-old Upper Austrian woman is not yet able to return to work. She suffers from a particularly pronounced form of Long COVID, massively increased fatigue,

sleep disorders, circulatory dysregulation and sensory overload. Due to her inability to cope with everyday life without outside help, she has now been recognised as having a degree of disability of 50%.

No recognition as occupational disease

The Upper Austrian woman was unable to name a specific index person for the COVID-19 infection, but was certain that she had contracted it in the course of her work. For this reason, she reported the COVID-19 infection to her competent health insurance carrier, the Health and Accident Insurance for Upper Austrian Federal State Employees as an occupational disease. After the insurance provider refused to recognise the infection as an occupational disease, the woman sought support from the AOB. This, especially as the Health and Accident Insurance for Upper Austrian Federal State Employees had justified its refusal by stating that the employer had taken extensive hygiene and protective measures and denied the possibility of a work-related infection. The insurance provider also took the view that the social worker had not proven the correlation between infection and professional activity and that infection in the private sphere during a pandemic was at least as likely as infection in a professional context.

Exposure due to professional activity

In contrast, the woman said that it would not have been possible to comply with protective and hygiene measures and social distancing rules as part of her job. When counselling mothers, she had to visit young families at home and supported them when breastfeeding, changing nappies and other activities, which inevitably led to a lot of physical contact. As a school social worker, she also had frequent and intensive contact with numerous children and other people. Moreover, she carried out her work regularly at the peak of the infection, although all other District Authorities in Upper Austria had at least stopped maternity counselling due to the high risk of infection.

During lockdown, hardly any private contacts before the infection

She was aware of the increased risk of infection due to her job and consistently avoided private contact, especially during the peak phase of the pandemic. Using excerpts from her private and professional diary, she was able to demonstrate that she had only attended two medical appointments in the relevant period before the infection and was able to rule out the possibility of infection there, whereas her professional diary showed various field services throughout the district. In the period before the infection, she worked as a social worker in schools (mostly in the mornings) and then in maternity counselling (mostly in the afternoons). In addition, due to the COVID-19 lockdown in force at the time, it was impossible or prohibited to visit catering establishments and events or to visit people from outside the house. The woman lived in her parents' house, where she still lives alone on the first floor. Her parents were able to confirm their daughter's limited private contacts and responsible behaviour towards potential sources of infection.

However, even after the AOB initiated investigative proceedings, the Health and Accident Insurance for Upper Austrian Federal State Employees maintained that the infection could not be recognised as an occupational disease and pointed out again that the employer had denied the possibility of infection in the context of the occupational activity. In addition, work in the administrative area of the District Authority does not fall within the relevant scope of protection for recognising an infectious disease as an occupational disease. As no specific index person could be named, the necessary correlation between the illness and the (protected) occupational activity could not be proven.

Section 22 of the Act on Health and Accident Insurance for Upper Austrian Federal State Employees explains occupational illnesses as illnesses that are causally related to the employment relationship in accordance with the state of medical science. The statutes must specify in detail, which illnesses shall be regarded as occupational illnesses within the meaning of the aforementioned act, taking into account comparable social insurance regulations. With regard to the definition, type and scope of occupational illnesses, Section 109 of the Statutes of the Health and Accident Insurance for Upper Austrian Federal State Employees refers to Section 92 of the Austrian Civil Servants' Health and Accident Insurance Act (*Beamten-Kranken- und Unfallversicherungsgesetz*), which in turn refers to Annex 1 to the General Social Insurance Act.

Accordingly, infectious diseases such as COVID-19 can be recognised as an occupational disease if they were caused while working in a specific company listed in section 38, column 3 of Annex 1 to the General Social Insurance Act. In addition to schools, kindergartens, crèches, public and private welfare institutions and facilities, etc., these "companies" also include "companies in which there is a comparable risk". In any case, the actual activity and not the (formal) employment in one of these companies is decisive.

Insured persons must also prove the correlation between the occupational activity and the occurred illness. The rules of "modified *prima facie* evidence" apply here. This evidence is based on the fact that certain courses of events are typical and that it is probable that such a normal course of events and not an atypical course of events is also given in the specific case. This means that the insured person only has to prove certain facts (e.g. very frequent professional customer contact and the resulting risk of infection despite compliance with protective measures) from which other facts can be inferred with considerable probability according to life experience. Naming a specific COVID-19 index person is not mandatory and would usually be impossible in the case of (anonymous) customer contact, for example in retail or catering. If, for example, the fact of numerous customer contacts can be proven and, on the other hand, circumstances can be presented that indicate a low probability of infection in the private environment, *prima facie* evidence that

infection occurred during professional activity can be established. The *prima facie* evidence can only be rebutted if the atypical sequence of events is at least equally likely. An abstract reference to possible alternative causes is not sufficient to rebut the *prima facie* evidence (Austrian Supreme Court, 28 January 1993, 10 ObS 5/93). An infected person who has maintained professional contacts during the period in question and at the same time can prove that they have not met any other persons or only COVID-19 negative persons in their private environment, generally cannot be proven an equally probable alternative cause.

Reasoning of insurance provider not comprehensible

Against this legal background, the AOB was unable to understand the reasons for the negative decision of the Health and Accident Insurance for Upper Austrian Federal State Employees. It recommended that the insurance provider reassess the notification of the COVID-19 infection as an occupational disease. This is because work in schools is covered by the relevant scope of protection for infectious diseases, and work in the maternity counselling sector can also be assumed to pose a comparable risk to work in (explicitly listed) crèches or nurseries. In addition, the woman's professional schedule in the working days prior to the suspected report or positive COVID-19 test showed daily fieldwork with corresponding exposure. At the same time, infection in the private environment could be *de facto* ruled out due to the very limited contact with (COVID-19 negative) people.

Insurance provider insists on negative decision

However, despite the repeated presentation of all the circumstances and reasons for consideration, the Health and Accident Insurance for Upper Austrian Federal State Employees stuck to its original decision and refused to amend it. Despite intensive efforts by the AOB, it was ultimately not possible to bring about a favourable decision for the person concerned. An overly narrow interpretation of the general clause must not lead to insured persons being left alone with the risk of infection and illness to which they are exposed due to the daily fulfilment of their duties, especially as the required proof of illness due to the professional activity is a major hurdle for many insured persons.

3.12.4 Pensions insurance

In 2023, the number of complaints in the area of statutory pension insurance increased slightly (2022: 445, 2023: 493). Cooperation with the pension insurance institutions was very good.

First pension adjustment subject to aliquot staggering

The later the retirement date, the lower the increase

The AOB received numerous complaints in connection with the staggered first pension adjustment: new pensioners expressed concern that the amount of their first pension adjustment depended on the month in which

they started their pension. Only people who retire in January receive the full increase. If they retire later, the adjustment is reduced by 10% per month. With the current very high level of inflation, this leads to considerable losses that will have a lifelong impact. Many pensioners are afraid that they will not be able to get by on their pension due to the enormous inflation.

The pension adjustment is a measure to maintain the purchasing power of pensions. The annual pension adjustment is regulated in Section 108h (1) of the General Social Insurance Act. Accordingly, all pensions shall be multiplied by the adjustment factor from 1 January of each year.

Permanent right

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection determines the adjustment factor for each calendar year anew, in accordance with Section 108f of the General Social Insurance Act. It is based on the reference value, which is set by the Commission for Long-Term Pension Security. The adjustment factor must be determined in such a way that the increase in pensions corresponds to the increase in consumer prices. In accordance with Section 108 f (3) of the General Social Insurance Act, the average increase in consumer prices over the twelve calendar months up to July of the year preceding the adjustment year is taken into account.

Interventions through special regulations

Since 2004, this pension adjustment system (with the exception of the pension adjustments in 2015 and 2017) has been interfered with annually by special regulations under simple law. Therefore, the pension adjustment automatism regulated in Section 108h of the General Social Insurance Act is not actually applied.

Since 1 January 2022, the first pension adjustment has been subject to an aliquot system, depending on the month in which the reference date falls. In accordance with Section 108h (1a) of the General Social Insurance Act (Federal Law Gazette I No. 28/2021), only those pension recipients who started their pension on 1 January receive the full amount of the pension adjustment in the first year after starting their pension. In the case of later retirement, the first increase is 10 percentage points lower for each month, and persons who retire on 1 November or 1 December receive an adjustment from 1 January of the year after next.

The aliquot regulation was amended as part of the Pension Adjustment Act 2023 (*Pensionsanpassungsgesetz 2023*, Federal Law Gazette I No. 175/2022). In deviation from the previous adjustment delay, new pensioners will receive at least half the pension increase (2.9%). Accordingly, the staggered percentage of the increase amounts to 100% if the reference date is in January; 90% if the reference date is in February; 80% if the reference date is in March; 70% if the reference date is in April; 60% if the reference date is in May; 50% if the reference date is from June to December of the calendar year preceding the adjustment.

High pension losses

Although the legislators at least partially mitigated disadvantages through this change, the high inflation has resulted in financial disadvantages, depending on the reference date and date of birth. Pension adjustments in subsequent years are based on the adjusted pensions. Financial losses are thus carried over into subsequent years. However, the aliquot rule is also problematic because it can indirectly incentivise earlier retirement, which is associated with higher follow-up costs for the pension system.

AOB demanded abolition

The AOB argued in favour of abolishing the aliquot regulation and asked the Minister of Social Affairs to consider a retroactive change. The Ministry defended the regulation on the grounds that the first pension adjustment aliquot system is based on statistical considerations and has its factual basis in the consideration of the lifetime pension sum (i.e. the entire benefit entitlement from the start of the pension until death).

Suspension of aliquot system for 2024 and 2025

However, by resolution of 30 March 2023, the National Council suspended the pro rata pension adjustment for the years 2024 and 2025 (Federal Law Gazette I No. 36/2023). Anyone who starts their pension in 2023 or 2024 will therefore receive the full pension adjustment in the following year, regardless of the month in which they start their pension. The AOB's recommendation to repeal the aliquot rule with retroactive effect from 1 January 2022 was not taken up. All persons who retired in 2022 are therefore still covered by the pro rata pension adjustment.

Constitutional Court: Legislators' room for manoeuvre

69 members of the National Council, 110 labour and social courts and 470 affected persons submitted an application to the Constitutional Court of Austria to annul the provisions on the first annual adjustment of pension benefits as unconstitutional. In its ruling of 4 December 2023 (G 197/2023), the Constitutional Court ruled that the aliquotation of the first pension adjustment is not contrary to equality and is therefore constitutional: It is within the legislators' discretion to decide on a model of aliquotation for the first adjustment. The annual increase in pensions aims to maintain their purchasing power. The fact that all pensions - regardless of the cut-off date - are revalued annually on 1 January already results in unequal treatment, but according to the Constitutional Court, there are no objections to this. The Constitutional Court credits the legislators with mitigating the contested aliquotation in 2023 and suspending it for the years 2024 and 2025 in order to limit the undesirable effects of this model.

Delayed revaluation in the pension account

A man wanted to retire in 2024. He feared that his retirement and that of many other new pensioners in 2024 would result in a massive and lifelong pension loss due to the delayed revaluation of his pension account.

Systemic delay in revaluation

The revaluation of the total credits in the pension account is based on the revaluation figure. The revaluation figure for a calendar year is calculated by

dividing the average contribution base of the second preceding calendar year by the average contribution base of the third preceding calendar year. The income statements of the pension insurance institutions for these past years shall be used to determine the average contribution base for a calendar year.

The annual revaluation of the pension account is therefore delayed and is particularly significant in times of high inflation rates. This delay is currently leading to enormous losses for pensioners entering retirement in 2024 and 2025.

The AOB argued in favour of introducing a protective clause that would guarantee a revaluation of the account credit at least to the extent of the inflation rate. The Ministry of Social Affairs took a critical view of a general protection clause from a social insurance law perspective. However, they stated that separate interventions for individual age groups were still being discussed.

Protection clause for new pensioners in 2024

Finally, the legislators made a protective provision for the 2024 pension entitlement year in order to compensate for the unfavourable constellation of the adjustment factor and revaluation figure due to inflation. This protection clause aims to compensate for the delayed revaluation in the pension account and permanently increase the pension.

Increase of 6.2 %

The pension account credit of 3.5% will be increased by 6.2% (corresponding to the pension adjustment factor for 2024 of 9.7%) for people who start their pension in 2024. They receive an increase to their pension of 6.2% of the total 2022 credit, divided by 14. Like the pension, the increase contribution is increased by supplements if the pension is taken after the standard retirement age or reduced by deductions if the pension is taken early.

However, the special regulation does not cover all new pensioners in 2024, with the exception of people who voluntarily take a corridor pension in 2024 without having previously been affected by unemployment or whose entitlement to a corridor pension was already fulfilled on 31 December 2023. This shall create an incentive to retire in the following year.

Shortage of medical specialists in the Austrian Pension Agency

Six months no medical assessment

In April 2023, a 27-year-old man applied to the Austrian Pension Agency for a disability pension due to his mental illness. In October, he complained to the AOB because he had not yet been invited to a medical assessment after six months. Pursuant to Section 368 (1) of the General Social Insurance Act, the Austrian Pension Agency must issue decisions on applications for the award of pension insurance benefits within six months of receipt of the application by the claimant.

Shortage of (specialist) doctors

The Austrian Pension Agency was aware of the long waiting times and pointed out the shortage of doctors. The problem is particularly acute in the field of psychiatry, which also affects the Austrian Pension Agency in the context of assessments. The precarious staffing situation, particularly in the field of psychiatry, creates massive difficulties in filling vacancies for medical experts.

The AOB believes that a professional and timely medical - in particular psychiatric - assessment is jeopardised. It is also unclear what the pension insurance carrier is doing to address the problem in the long term. Due to the efforts of the AOB, the Austrian Pension Agency offered the man concerned an assessment appointment at short notice despite the difficult circumstances.

High repayment for low pension increase

In May 2023, a mother of four submitted an application for a pension forecast to the Austrian Pension Agency. As a result, the Agency calculated a monthly old-age pension of around EUR 1,000 gross (approx. EUR 100 below the equalisation supplement reference rate) as of 1 October 2023. At the same time, the woman was informed of the possibility of repaying the transfer amount received upon taking up employment without pension insurance. Specifically, the information stated that the gross pension would amount to approx. EUR 1,400 if around EUR 12,550 were repaid. The woman considered this an interesting option and assumed that the calculated pension amount would not change significantly and that a repayment would therefore be amortised in the near future through a higher pension benefit. She therefore borrowed the money for the Austrian Pension Agency from her daughter and made a commitment to her child to repay it in monthly instalments. As a result, she was initially awarded a provisional benefit of around EUR 1,250 without recognising any legal entitlement, subject to revocation at any time. Finally, she received an administrative notification according to which she was granted an old-age pension of EUR 1,260.

Pension only just above the equalisation supplement in 2024

She was unable to explain the differences to the original information and doubted the correctness of the pension calculation made. The person concerned is now faced with the problem that the repayment of the debts caused by the Austrian Pension Agency's notice to the contrary will extend over many years, but she will receive a pension that is only slightly above the equalisation supplement reference rate for the rest of her life.

The AOB requested clarification from the Austrian Pension Agency regarding the proceedings for pension prepayment and amortisation calculations as well as possible repayments of transfer amounts. The investigative proceedings could not be concluded by the time the report was finalised.

Equalisation supplement for EU citizens

A Slovakian citizen was granted an old-age pension from February 2022. She submitted a certificate of registration issued by the municipal department MA 35 in May 2017 in accordance with the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*) to the Austrian Pension Agency. At the beginning of November 2023 - almost two years after applying for an equalisation supplement – the Agency requested submission of the certificate of permanent residence, which was issued at the end of November 2023. Before this deadline expired, the Austrian Pension Agency issued an administrative notification refusing to award the equalisation supplement on the grounds that the woman did not have the necessary means of subsistence and was therefore not legally resident in Austria.

Equalisation supplement should guarantee minimum income

The equalisation supplement is a non-contributory ancillary benefit to the pension and aims to provide pension recipients with a certain minimum income. If the total sum of the pension, other net income and amounts to be offset is below a certain amount (reference rate), an equalisation supplement is due for difference.

Section 292 (1) of the General Social Insurance Act makes the entitlement to an equalisation supplement dependent on the pensioner "having his/her lawful, habitual residence in Austria". The 2011 Budget Accompanying Act (Federal Law Gazette No. I 2010/111) introduced the requirement of legality and has since been the subject of many decisions by the ECJ and the Austrian Supreme Court.

The ECJ qualified the Austrian equalisation supplement as a "special non-contributory benefit" within the meaning of Article 70 of Regulation (EC) 883/2004 (C-160/02, Skalka). However, this does not exclude the possibility that this benefit may also fall under the concept of welfare benefits within the meaning of Directive 2004/38/EC of the European Parliament and Council of 29 April 2004 (Directive on the right of citizens of the Union), so that Article 24 applies (C-140/12, Brey; C-333/13, Dano; C-67/14, Alimanovic; C-299/14, García-Nieto and others).

Equal treatment with nationals

If the requirements of Article 7 (1) (b) of the EU Citizens Directive are met, the EU citizen is entitled to equal treatment with nationals with regard to access to the equalisation supplement in accordance with Article 24 (1) of the EU Citizens Directive.

According to Article 7 (1) (b) of the EU Citizens Directive, every economically inactive EU citizen has the right to reside in the territory of another Member State for more than three months if they have sufficient resources for themselves and their family members. This is, so that they do not have to claim social assistance benefits from the host Member State during their stay and all family members have health insurance protection.

Inappropriateness check

According to the ECJ's ruling, the host Member State has the option to examine whether the conditions of the EU Citizens Directive are fulfilled when examining the entitlement to social benefits. Based on this, it has the option to refuse the entitlement to social benefits without the need for prior termination of residence. With reference to Recital 10 of the EU Citizens Directive, the ECJ requires the migrant EU citizen not to place an unreasonable burden on the social assistance systems of the host Member State, whereby the economic situation of the individual concerned must be specifically examined (C-333/13, Dano).

In another decision (C-67/14, Alimanovic), the ECJ considered that an individual examination was not necessary because the graduated system provided for in the EU Citizens Directive itself takes into account various factors, which in turn reflect the personal circumstances of the applicant (also in Case C-299/14, García-Nieto and others).

Registration certificate has declaratory effect

The Austrian Supreme Court has consistently ruled that the registration certificate is a purely declaratory confirmation of existing rights of residence and establishment under EU law. The pension insurance institutions are not bound by the decisions of the residence authorities.

Six months decision period

The Austrian Pension Agency must therefore independently check the legality of residence in Austria within the meaning of Section 292 of the General Social Insurance Act when assessing a entitlement to a compensatory allowance for a citizen of the Union. Pursuant to Section 368 (1) of the General Social Insurance Act, the Austrian Pension Agency must issue a decision on the application for the award of the equalisation supplement to the applicant within six months of receipt of the application.

Approach that extends the proceedings

The AOB has repeatedly observed that the Austrian Pension Agency, regardless of the legal situation and the court ruling of the Supreme Court, demands the submission of the purely declaratory registration certificate and usually does not issue a decision until then. This approach, which delays or prolongs the investigative proceedings, constitutes maladministration. In the present case, despite the submission of all the requested documents including the registration certificate, a decision on the application for equalisation supplement was only made after almost two years, thus considerably exceeding the statutory deadline for issuing the decision.

In the opinion of the AOB, it is imperative that applications for the equalisation supplement are processed as quickly as possible. The aim of the equalisation supplement is to secure a certain minimum income for pension recipients. It is unreasonable to have to wait months or even years for a decision on the processing of applications. Rather, swift action is required in the implementation of the equalisation supplement and its function of securing livelihoods.

Furthermore, the AOB does not comprehend the Agency's approach, because although it regularly insists on submitting the registration certificate, the insurance institution then assesses (and may assess) the requirement of legality itself regardless of the confirmation of the residence authorities.

Lack of substantiating value

This makes the Agency's substantive decisions all the more objectionable. The reasons for the decision regularly contain statements that lack any substantiating value. For example, the entitlement to an equalisation supplement is regularly rejected primarily because the applicant does not have sufficient means of subsistence, without explaining the reasons for this finding. The Austrian Pension Agency does not examine the legality of the residence in more detail.

During the AOB's investigative proceedings, the Austrian Pension Agency recognised the entitlement to equalisation supplement in the present case from November 2023 after submission of the certificate of permanent residence in a decision dated January 2024. This is correct, as the person concerned (in any case) acquired the right to permanent residence in Austria. This does not change the above-mentioned objections of the AOB, which formed the basis of the original decision.

Orphans' pensions unlawfully rejected

A young Viennese woman and a young Viennese man contacted the AOB independently of each other because they had difficulties with the continuation of their orphans' pensions beyond the age of 18.

The now 19-year-old woman passed her higher school graduation exam with honours and began studying in March 2023. Between her gratuation and the start of her studies, she completed vocational training as a ski instructor and as an insurance agent and worked for a short time. Due to her vocational training and subsequent studies, the young woman applied to the Austrian Pension Agency for the continuation of her orphans' pension, enclosing all supporting documents. The Pension Agency rejected this application in its decision of March 2023, stating that there was neither schooling nor vocational training.

Further granting refused

The 20-year-old man, who contacted the AOB in August 2023, attended a federal sports academy until June 2023 and wanted to continue his school education in the 2023/24 school year at an educational institution in Vienna and take the school-leaving examination there. In February 2023, he applied to the Austrian Pension Agency for the continuation of his orphans' pension and submitted a school education plan as well as a school attendance certificate (25 hours of lessons excluding preparation and follow-up work for lessons and study units for examinations). Despite numerous enquiries, he did not receive a written decision until mid-August 2023. In a telephone call, the Austrian Pension Agency merely informed his mother informally

and without a comprehensible explanation that the application could not be processed positively. This telephone call was not seen as very respectful, as the Austrian Pension Agency pointed out that the person concerned "should have passed the school-leaving examination long ago" and that the orphans' pension would no longer be granted. Shortly after the AOB made contact, the Pension Agency issued a negative notification.

School education, vocational training or studies

The status of a child, which is required for the granting of an orphans' pension pursuant to Section 260 of the General Social Insurance Act, continues to exist beyond the age of majority if the child is in school or vocational training that predominantly requires his/her labour (Section 252 (2) (1) first case of the General Social Insurance Act). The same applies, if the child is studying, for example at an Austrian university or university of applied sciences, and is also either receiving family allowance or is seriously and purposefully pursuing his/her studies (Section 252 (2) (1) second case of the General Social Insurance Act). For the first year of study, admission as a regular student is considered proof of serious and determined study (Section 2 (1b) of the Family Compensation Act 1967). School education, on the other hand, includes attendance at a public or private general or secondary school as well as attendance at evening schools and schools that are intended to prepare students to take the high school graduation exam. A "predominant demand on the labour force" is given if the school or vocational training takes up so much time that any gainful employment carried out alongside it takes a back seat.

Official amendment and granting of orphans' pension

In both the case of the 19-year-old Viennese woman and the case of the 20-year-old Viennese man, the AOB concluded that the legal requirements for the continued granting of the orphans' pension were met and initiated investigative proceedings. In both cases, the AOB was able to bring about a positive outcome to the proceedings. The Austrian Pension Agency took the AOB’s investigative proceedings as an opportunity to re-examine the factual and legal situation and ultimately arranged for the administrative notifications to be amended and the orphans' pension to be paid in arrears.

The insurance carrier regretted the incorrect assessment of the two applications and the erroneous rejection. Furthermore, the Austrian Pension Agency apologised in the case of the Viennese man for the telephone call, which the he experienced as less than respectful, and held a sensitising discussion with the competent employee.

No pension for chronic fatigue syndrom (ME/CFS)

In Austria, it is estimated that up to 80,000 people suffer from myalgic encephalomyelitis, also known as chronic fatigue syndrome (ME/CFS). This severe multi-system disease is often attributed to an infectious disease. Many long-COVID patients can also develop this syndrome.

There is still no effective treatment for this disease and the symptoms are manifold: limited performance, rapid physical and mental exhaustion, chronic pain, circulatory disorders, sensitivity to stimuli, clouding of consciousness, sleep disorders. For many sufferers, these symptoms are so severe that they are no longer able to leave the house or carry out simple everyday tasks. Nevertheless, the pension insurance carriers often reject their applications for occupational disability or disability pensions or rehabilitation benefits.

The reason for this is that experts refuse to recognise the illness and its consequences because, in their opinion, they cannot be objectified. The experts sometimes ignore the diagnoses of the treating specialists and often reinterpret physical complaints as psychological impairments, such as anxiety, adjustment, or somatisation disorders. As a result, those affected feel that the social insurance carriers do not take them seriously and disparage them indirectly for malingering.

More sensitivity required

The AOB calls upon social insurance carriers to treat those affected more sensitively and to address the disease and its consequences. The main symptom of ME/CFS is post-exertional malaise (PEM), also known as a "crash". This means that even slightly exceeding the stress limit, for example because of an assessment appointment, can lead to a significant deterioration in the condition. However, too little consideration is given to this in the assessment practice of the pension insurance institutions; which is rather prepared to accept a deterioration in the condition.

No home visit for the seriously ill

A man for inctance, who is seriously ill with ME/CFS and has thus been unable to pursue gainful employment for two years, turned to the AOB. According to confirmation from the doctors treating him, his stress intolerance is so severe that even an assessment appointment outside the home would exceed his stress limit and lead to a significant deterioration in his condition. Despite this detailed medical justification, the Austrian Pension Agency refused a home visit. After the assessment appointment at the regional office in St. Pölten, the man’s condition deteriorated considerably. Nevertheless, the Pension Agency insisted on a three-hour stress test. However, the person concerned did not take this test for the medical reasons described above.

The rejection of the occupational disability pension was not due to a lack of co-operation or failure to appear for the stress test, but was based on the fact that the man "only" showed an adjustment disorder with anxiety and depressive reactions. The Pension Agency’s expert opinion did not address the diagnosis of ME/CFS made by the doctors treating the man.

Gentle assessment required

Assessments should be carried out with the greatest possible protection of health. The AOB therefore demands that the needs of those affected and previous medical findings shall be taken into account during the assessments. Furthermore, a home visit or at least an assessment close to home shall be made possible in the event of a lack of transportability or pronounced stress

intolerance in order to prevent a deterioration in the condition. It would therefore be important to raise awareness of the existence of syndromes such as ME/CFS in the assessment process.

3.12.5 Care

Care bonus provision leads to hardship cases

The AOB was contacted by several nursing staff who, when the care bonus was paid out for the year 2022 in accordance with the Salary Increase Purpose Grants Act (*Entgelterhöhungs-Zweckzuschussgesetz*), found that they received no bonus or only a very low proportion of this bonus, calculated on a pro rata basis.

Countries set deadline

The Salary Increase Purpose Grants Act left it up to the *Laender* to regulate the modalities of the care bonus payment. This should give the *Laender* the opportunity to ensure better pay with a view to attract more people to the nursing profession. In 2022, the amount of the care bonus was 2,000 euros; in 2023, it is 2,460 euros including employer contributions per person. The *Laender* provisions mainly introduced a cut-off date. The prerequisite for care bonus payment was a valid employment relationship at a fixed point in time. In Lower Austria, for example, this was 1 November 2022, in Carinthia, Vienna and Salzburg 1 December 2022. These cut-off date resulted in hardship for affected caregivers, which the AOB also presented in the *Bürgeranwalt* television programme.

No bonus in case of job changes

A woman from Lower Austria had been working in geriatric care since 2006 and had been employed as a nursing assistant in a retirement and nursing home for several years, namely until 30 September 2022. She then changed jobs and took up a new position on 21 November 2022. As she was not employed as of 1 November 2022, she was informed that she would not be paid the care bonus. Another nurse, who worked as a qualified healthcare and nursing assistant in a hospital from September 2020 to 31 August 2022, did not receive the nursing bonus for this six-month period due to the subsequent change of employer. She had also been working in nursing care for 15 years prior to this.

No bonus on retirement

This also effected caregivers who started their pension at the end of 2022, shortly before the respective cut-off date. As they were no longer employed on the cut-off date, they lost the care bonus for the entire year 2022, even though they had worked for eleven out of twelve months.

No valid justification from the countries

Those affected cannot understand these regulations. The AOB first turned to the *Laender*. These confirmed the cut-off date regulations and justified them with the time pressure: A cut-off date would have been necessary in order to be able to transfer the money for 2022 in time. The AOB can only understand this justification to a limited extent. Tyrol, for example, does

not have a cut-off date, but instead stipulated employment in 2022 for "at least one calendar month continuously" as a prerequisite. This shows that there are other ways of defining or recording those entitled to benefits. The *Laender* rejected a roll-up and subsequent payment of care bonuses for 2022, mainly for administrative reasons.

AOB suggests nationwide regulation

However, the AOB criticised not only the *Laender*, but also the Ministry of Social Affairs. In the opinion of the AOB, the federal legislator could have learnt from the enormous problems with the similarly regulated COVID-19 bonus and prevented the differentiations in the care bonus payment in the individual *Laender* by means of a standardised regulation. The AOB therefore contacted the competent Minister for Social Affairs, Health, Care and Consumer Protection and requested information as to whether and how the unsatisfactory results, which became known through the complaints, could be avoided through a standardised regulation in the amendment to the Salary Increase Purpose Grants Act planned for February 2023. A new regulation was finally introduced, but only for the care bonuses for 2023: The bonus was now paid monthly pro rata with the salary.

In his statement to the AOB, the Federal Minister referred to the Nursing Care Reform Package II of May 2023, which would have introduced further measures, such as an expansion of the competences of the nursing professions. In addition, these were only the first steps to address the shortage of nursing and care staff in the area of long-term care.

Hurdles for payment of bonus for nursing care education

600 Euro training contribution per month

As part of the 2022 care reform package, the Nursing Education Purpose Grants Act (*Pflegeausbildungs-Zweckzuschussgesetz*) created and regulated a monthly training contribution of 600 euros. It should create structural and financial incentives to make nursing care education more attractive. The Laender issued funding guidelines for more detailed organisation.

This was also the case for the *Land* of Carinthia, which, however, additionally stipulated a declaration of commitment in its guidelines: Recipients of the bonus had to commit themselves to work in Carinthia within five years of completing their education, in line with the period for which they received the bonus. If they fail to do so, they have to pay back the premium in full.

Work in Carinthia or pay back of the bonus

A young woman approached the AOB, who since September 2022, has been training to become a specialist social care worker for the disabled in Carinthia, while working at a facility for the disabled in Styria. She was informed by the *Land* of Carinthia that she could apply for and receive the nursing care education bonus - which depends on the place of training - in Carinthia, but that it would have to be refunded in full if she did not pursue a corresponding job in Carinthia after completing her training. However, as she lives in Styria and has been working there for almost three years, this was

not an option for her. However, not receiving or repaying the bonus would be a major financial burden for her.

The AOB contacted the *Land* of Carinthia, which stated that the purpose of the bonus was to counter staff shortages in Carinthia. However, an evaluation was planned.

Standardised solution through federal law

With an amendment to the Funding of Care Act (*Pflegefondsgesetz*) at the end of 2023 (Federal Law Gazette I/170), the federal legislator ultimately created standardised provisions: According to Section 3 (2) (2), linking a payment of the eduation bonus to "obligations to practice the profession in the respective federal are not permitted". The AOB welcomes this standardised solution in view of the nationwide shortage of skilled workers. Every qualified training programme is of great benefit to the people in need of care and it makes no sense to withhold the bonuses intended as an incentive from motivated staff.The Carinthian directive applicable from 1 January 2024 no longer provides for such an obligation of commitment.

Increasing hardship supplement for care allowance

The guideline and minimum values in the Classification Ordinance under the Federal Care Allowance Act (*Bundespflegegeldgesetz*) are primarily based on the need for assistance and care in the event of physical impairment. The hardship supplement is therefore essential for the assessment of entitlement to care and nursing allowances for people with severe mental or psychological impairments, especially those with dementia. In addition to the general need for care, it is intended to take into account factors that make care more difficult (e.g. defensive behaviour, lack of insight into the illness, limited understanding of language, etc.) on a flat-rate basis. As of 1 January 2023, this hardship supplement was increased from 25 to 45 hours per month. This means that the legislators have complied with a long-standing request from the AOB.

In accordance with the transitional provisions (Section 48g (1) and (2) of the Federal Care Allowance Act), the Austrian Pension Agency has to check whether the increase in the hardship supplement from 1 January 2023 results in a higher care level. The Pension Agency has to do the check *ex- officio* for all assessments of entitlement to care and nursing allowances in which the hardship supplement has already been taken into account. A new assessment only needs to be carried out if the 180-hour limit is exceeded as a result of the increase in the hardship supplement and the additional qualitative criteria for care levels 5 to 7 cannot be assessed from the existing care assessment.

No higher care allowance despite higher hardship supplement

The AOB reported on the case of an 80-year-old man with severe dementia, behavioural disorders and mental particularities, who was previously receiving level 4 care and nursing allowances, in the television programme

Bürgeranwalt. At the last assessment, he was found to require 170.5 hours of care per month. Although the 180-hour limit was exceeded due to the increase in the hardship supplement and the qualitative additional criteria (even) for care level 6 could be derived from the existing expert opinion dated January 2022, the Austrian Pension Agency refused to increase the allowance. However, the Austrian Pension Agency did not consider a new expert opinion to assess the additional criteria for care levels 5 to 7 to be necessary during its *ex-officio* investigation. Due to the intervention of the AOB, the Austrian Pension Agency ultimately awarded a level 6 nursing allowance with retroactive effect from 1 January 2023.

No reference to request for increase

Apart from the omission of necessary assessments, the AOB also criticised the sample letter the Austrian Pension Agency used to inform care allowance recipients about the increase in the hardship supplement and its ineffectiveness in their specific case. These letters did not include any information that an application for an increase in the care and nursing allowances can be submitted if the insured person does not agree with the result of the Agency's official investigation.

There was no legal recourse against the information that the increase in the hardship supplement would not be followed by an increase in the nursing allowance. However, the legislators wanted to use a transitional provision to ensure that applications for increase would also lead to a retroactive increase in care allowances from 1 January 2023. The care allowance would rise if the increase in the care level was due to the increase in the hardship supplement and the application was submitted by 31 December 2023 at the latest (Section 48g (2) of the Federal Care Allowance Act). In the opinion of the AOB, information should have been provided to those affected in the social implementation of the law, as it cannot be expected that those in need of care will be aware of the transitional rule that is favourable to them.

Care and nursing allowances after long-COVID or post-COVID

The WHO currently classifies 63 different long-COVID symptoms. These are very wide-ranging. Science is still in its infancy when it comes to the question of what the actual causes are. However, viral respiratory infections are an important cause of fatigue. Depending on their severity, they can lead to substantial restrictions in professional, academic, social or personal abilities and activities for more than six months, compared to the time before the infection, without rest, recuperation and sleep bringing about any improvement.

Only low care allowance level despite severe impairment

SARS-CoV-2 infections or reinfections can also lead to severe neuro-immunological diseases. Chronic fatigue syndrome (ME/CFS) is one of the leading symptoms in severe post-COVID cases. Those affected can be limited in their ability to perform even simple daily activities. Post-COVID also

leads to persistent inflammation in the brain and blood vessels, which heals very poorly and leads to circulatory disorders. This is why many of those affected are unable to leave their homes. If dizziness, light-headedness and visual disturbances occur in an upright position when standing or sitting and cognitive impairments in attention and stimulus processing worsen under physical or cognitive stress, bedriddenness can occur. In addition to help with housework (cleaning the home, etc.), preparing meals and travelling outside the home (shopping, etc.), depending on the severity of the illness, help may also be required with thorough personal hygiene and sometimes with dressing and undressing. Despite the considerable need for care and the severity of the impairment, only care allowance level 1 (currently 192 euros per month) is awarded in the cases known to the AOB in application of the Classification Ordinance. However, even this low level of care is often denied to applicants.

Those affected feel victimised and humiliated

Despite the findings of treating specialists and the reports of caregivers, applicants are not believed and the assessing doctors dismiss their need for help and care as not objectifiable. In the applicants' perception, contact with experts repeats the familiar offence that their exhaustion and all the stressful symptoms are not regarded as "legitimate". In view of the diagnoses, references to purely psychological factors are not only wrong, but are also perceived as stigmatising.

The AOB is therefore calling for a more sensitive approach when dealing with those affected, a detailed examination of the effects of long-COVID and ME/CFS in the expert opinions, and special training for experts on these clinical pictures, which have not yet been fully researched. The bottom line is that there are currently still more questions than answers. This is gruelling enough for those affected and their families and must not be interpreted to their detriment when assessing their entitlement to care and nursing allowances.

For some patients, the symptoms occur intermittently or in phases. In accordance with the statutory provisions, this does not exclude an entitlement to care and nursing allowances. In such cases, the time values for the care services specified in the Classification Ordinance are to be prorated accordingly. Unfortunately, this legal situation is not always taken into account in the expert opinions and an entitlement to nursing allowances is rejected due to an alleged lack of regularity in the need for care. ME/CFS is characterised by a deterioration that often only occurs the day after a stressful situation, so-called post-exertional fatigue or malaise, which can last for days or even weeks. There is currently no cure. The AOB is in favour of adding neuro-immunological diseases to the Classification Ordinance.

EU-Turkey Association Agreement not taken into account in care and nursing allowances

Girl in need of care with Turkish citizenship

A nine-year-old girl has a severe disability and depends on a wheelchair. Due to her intensive care needs, her mother is unable to work regularly. The girl, who lives in Vienna, was therefore co-insured with her father. The entire family had Turkish citizenship and the residence permit "Red-White-Red Card Plus" (Section 41a of the Settlement and Residence Act) in Austria.

Rejection of the application for care allowance

In view of the need for care, the parents applied for care and nursing allowances in April 2022. After a processing period of almost eight months, the Austrian Pension Agency rejected the application in December 2022 because the family or the girl herself did not fulfil the requirements for equal treatment with Austrian nationals and therefore did not belong to the group of people entitled to claim.

The AOB found that the Austrian Pension Agency had overlooked the fact that foreign persons are treated equally to Austrian nationals when receiving care allowance, if such equality results from international treaties or Union law (Section 3a (2) (1) of the Federal Care Allowance Act) or the person concerned has a specific residence title (Section 3a (2)(2-4) of the Federal Care Allowance Act).

Equality results from EU-Turkey Association Agreement

Although there is no provision for holders of the "Red-White-Red Card Plus" residence permit to be treated equally with regard to care and nursing allowances, this is the case for Turkish citizens under EU law. Turkish nationals living and working in Austria and their family members are treated equally to Austrian nationals in terms of entitlement to care and nursing allowances based on the EU Association Agreement with Turkey (64/733) and the principle of equal treatment in the area of social security enshrined in Article 3 (1) Decision 3/80 of the Association Council. The equal treatment of Turkish nationals was confirmed by the Supreme Court (e.g. Supreme Court, 11 January 2005, 10 ObS 241/03v) and explicitly emphasised in the explanatory notes to the Care Allowance Reform Act (Federal Law Gazette I 2011/58, Explanatory Report 1208 BlgNR 24. GP 9).

Following this notification by the AOB, the Austrian Pension Agency confirmed that Turkish citizens, who are registered as employees in Austria, and their family members are entitled to care and nursing allowances in Austria under the Association Agreement with Turkey.

Ex-officio amendment and granting of nursing allowances

After determining the girl's need for care, the Austrian Pension Agency amended the original negative notification *ex-officio*, granted level 2 care allowance and ordered an additional payment of around EUR 2,600.

Unnecessary hurdles to support for a caring spouse

A man has been receiving level 3 care and nursing allowances since February 2023 following a stroke. His 80-year-old wife looks after and cares for him at home. When she had to undergo surgery herself, her husband was in substitute care in a state care centre for the duration of her inpatient hospital and remobilisation stay. He died shortly after being discharged from the nursing home.

Subsidy for substitute care

If family caregivers are temporarily unable to provide care due to illness, convalescence, holiday or other reasons, a subsidy can be granted. This contribution serves to cover the costs incurred for the use of professional or private substitute care if the main caregiver is unable to provide it. In accordance with Section 21a of the Federal Care Allowance Act (*Bundespflegegeldgesetz*), the prerequisite is that the person in need of care receives a level 3 nursing allowances and has been cared for for at least one year. For people with a demonstrable dementia-related impairment and for minors, level 1 care allowances are sufficient.

Evidence of dementia

The woman submitted an application for a subsidy for family caregivers. The Social Ministry Service rejected the application because the deceased had not yet received care level 3 for a year and no proof of dementia could be provided. From the point of view of the Social Ministry Service, support could only be granted if the person in need of care with dementia was receiving care and nursing allowances of at least level 1 or 2. Furthermore, a diagnosis of dementia from a neurological or psychiatric department of a hospital or a gerontological psychiatric day clinic, or outpatient clinic, or a specialist in psychiatry and/or neurology was available.

In addition to the emotional and psychological damage caused by the loss of her husband, the widow was also in financial difficulties with the costs for the funeral and the notary and therefore turned to the AOB.

The nursing home's care documentation clearly showed that the man was disorientated in terms of location, time and personality and that he was unable to take care of himself. The findings of the family doctor treating him also described a condition with increasing dementia and marasmus. A year before his death, a specialist in psychiatry and neurology diagnosed him with "mild cognitive impairment".

Maximum subsidy granted

When processing applications for subsidies from family caregivers, it is particularly important to ensure that these applications are not rejected prematurely based on formal criteria without taking the time to assess all the documents available in the individual case. After the AOB intervened, the Social Ministry Service approved the requested subsidy with the maximum amount of 1,500 euros.

3.12.6 Social affairs

Lack of support for children seeking asylum or displaced from Ukraine

Asylum seekers not targeted by disability laws

A volunteer from an aid organisation for asylum seekers and refugees contacted the AOB. She reported that asylum seekers and displaced persons from Ukraine were not receiving any benefits under the Styrian Act on Persons with Disabilities, although their needs were not adequately covered by the basic reception conditions system to which refugees are entitled. A residence permit for displaced persons pursuant to Section 62 Asylum Act, which is issued to refugees from Ukraine, also does not entitle them to receive benefits from the support systems for persons with disabilities of the *Laender*.

Necessary support not received

This leads to devastating consequences. The cost rates under the basic reception conditions system throughout Austria do not provide for the corresponding coverage of services, which is why children with disabilities do not always receive even the services and therapies they absolutely need. One child in Styria was denied a school place because the necessary school assistance was not approved.

Another child needed a place in a special needs kindergarten or in a regular kindergarten with 1:1 support from a kindergarten assistant. An allocation was not possible due to the lack of eligibility.

Therapies cannot be carried out

Furthermore, families reported on therapies, which their children regularly received in Ukraine, but to which they did not have access in Austria within the basic reception system.

Federal and *Laender* governments must find a solution

The *Land* of Styria emphasised in a statement that the situation of persons with disabilities and other vulnerable groups within the basic reception system is very challenging. Due to a lack of budgetary resources, they cannot provide various services. The federal government together with the *Laender* finances basic services within the basic reception system, which is why the federal government is called upon to provide funding.

Disability and flight are human rights issues

Both asylum seekers and persons displaced from Ukraine with disabilities whose right of residence is limited in time enjoy special protective rights in the EU. The list of persons with special needs in Article 13 (4) of the Mass Influx Directive is demonstrative ("for example"). It assumes that the groups of persons listed therein - unaccompanied minors and persons who have experienced particular forms of violence - have an increased need for assistance in a standardised manner. However, a special need for assistance also exists - regardless of the reasons underlying this need - for persons who have a permanent need for care and assistance due to a physical, mental or psychological disability or a sensory impairment.

From the AOB's perspective, however, it is once again evident in practice that adults and especially children with disabilities are not sufficiently involved in the planning of such assistance and the assessment of needs. They remain "invisible" because their special needs are not or not fully recorded when they are first registered. Neither the Federal Ministry of the Interior nor the *Laender* or NGOs responsible for services under the basic reception conditions have statistical data on their special needs due to disability, even though special services due to disability (e.g. early intervention, assistance services, aids, therapies, medical translations, etc.) should be provided within the framework of the basic reception system at Federal and *Laender* level.

In justified cases, such as in cases of social hardship or if it serves the purpose of integration, the *Laender* laws on basic reception conditions - including that of Styria - allow for benefits or maximum cost rates that go beyond the basic welfare support. In practice, however, financing these "real costs" fails, which undoubtedly adversely affects the development opportunities and chances of minors seeking protection with disabilities. This leads to a worsening of impairments and, in some cases, irreversible consequential damage.

Against this background, it is important to send a clear signal in favour of the obligation to comply with human rights norms and minimum humanitarian standards. In view of the structural weaknesses of current reception practices, special efforts are needed to systematically consider the issue of disability in refugee policy ("disability main streaming"). The Committee of Experts of the United Nations Convention on the Rights of Persons with Disabilities calls for this in Austria and demands that disability and flight be anchored in the legal system as a cross-sectional and human rights issue in such a way that those affected can also invoke their rights under the UNCRPD.

Additional entry for breast prosthesis in disability pass

A Tyrolean woman had to undergo a mastectomy because of breast cancer. Since then, she has been using a breast prosthesis to restore her upper body symmetry and prevent poor posture and tension in her neck, shoulder and back muscles as well as the resulting postural problems.

Due to a degree of disability of 60%, she has a disability pass. However, she was denied the additional entry "is a wearer of a prosthesis" in her disability pass. The Tyrolian regional office of the Ministry of Social Affairs Service justified this by stating that the entry could only be made in the case of missing limbs or joint replacements.

For the Tyrolean woman, for whom a breast implant or breast reconstruction was not an option due to an unfavourable healing process (necrosis of the surrounding tissue), this decision was incomprehensible. She argued that, as

a wearer of a breast prosthesis, she felt disadvantaged compared to other prosthesis wearers and could not recognise any objective justification for the unequal treatment. Due to her medical history and the associated physical limitations, she was considerably burdened in her everyday life. Appropriately reflecting the fact that she is also a prosthesis user in her disability pass would give due regard to her burden.

Additional entry initially only for missing limbs

Initially the Federal Ministry of Social Affairs, Health, Care and Consumer Protection confirmed the decision of the Ministry of Social Affairs Service. The decree stipulates that the additional entry "is a wearer of a prosthesis" can only be used for people with prostheses used to replace missing limbs and people with artificial joints. In the present case, however, the additional entry "is a wearer of an orthosis" is possible.

In the case of breast cancer, the altered body image after a (unilateral) mastectomy can be a considerable psychological burden. The weight distribution in the upper body is uneven due to the removal of the breast. The breast prosthesis - unlike an epithesis used purely for aesthetic reasons - fulfils an essential functional task, especially as its weight prevents incorrect posture and muscle tension after a unilateral mastectomy and harmoniously balances the body silhouette.

Scientific studies have also shown that breast prostheses help women to reduce stress and improve their self-confidence after a mastectomy. A breast prosthesis therefore not only replaces a limb, as is the case with a leg prosthesis, for example, but can also have a positive influence on the self-perception and body image of affected women after a mastectomy. This contributes to the prevention of psychological complications (e.g. depression).

AOB obtained amendment of the decree

The AOB therefore recommended amending the decree accordingly to enable the entry "is a wearer of a prosthesis" also for a breast prosthesis. After further investigation, the Federal Ministry agreed to amend the decree. An artificial mammary gland replacement could also be subsumed under the concept of a prosthesis. Thus, in the future the entry "is a wearer of a prosthesis" should be added to the disability pass in accordance with Section 1 (4) (l) of the Regulation on Issuing Disability Passes and of Parking Permits (Federal Law Gazette II No. 495/2013, last amended by Federal Law Gazette II No. 263/2016).

Pocket money is not enough for accommodation in a partially assisted facility

In 2018, one young woman was conditionally released from the placement in a forensic institution. She was instructed to live in a suitable follow-up care facility. This facility initially provided the woman with full care (including food, toiletries, household items, etc.).

Moving to a partially assisted facility

At the beginning of May 2019, there was a change from intensive to standard care due to the resident's good stabilisation. In the new facility or residential group, the residents were required to be more independent. Among other things, this includes the girls and young women having to provide for themselves. Food, clothing, medication, hygiene and household items etc. must be purchased from their own income.

80 % of the rehab allowance withheld

The woman turned to the AOB because the Austrian Public Health Insurance Office was still dividing her rehabilitation allowance 80:20 in favour of the federal government. The person concerned was therefore only left with pocket money amounting to 20% of her income (rehabilitation allowance).

Pocket money does not enable self-sufficiency

According to a Supreme Court ruling from 2021 (see Supreme Court of 25 November 2021, 3 Ob 113/21w), the provision of the General Social Insurance Act, which provides for a deduction of 80% of income, only applies if the person is fully cared for (and fed) in one of the aforementioned facilities. However, according to the Austrian Supreme Court, a legal assignment pursuant to Section 324 (4) of the General Social Insurance Act requires that the person entitled to a pension is accommodated in the sense of "24-hour all-round care", i.e. in particular is also fully provided with food, medication, etc. This was not (or no longer) the case for the woman, since she moved to a partially assisted facility in May 2019. With pocket money, amounting to only 20% of the rehabilitation allowance, self-sufficiency or a sufficient income is by no means possible.

After the AOB intervened, the Austrian Public Health Insurance Office re-examined the facts of the case. At the time the rehabilitation allowance was divided in 2019, the Austrian Supreme Court decision (Ob 113/21w) was not yet available. The decision has now clarified the requirements for a legal assignment in relation to the extent of care.

AOB achieves payback

The Public Health Insurance Office therefore refrained from dividing the rehabilitation allowance and arranged for the payment of the amount that the person concerned had not received due to the alleged legal assignment pursuant to Section 324 (4) in conjunction with (3). The Austrian Public Health Insurance Office paid out the rehabilitation allowance for the period from 1 May 2019 to 30 June 2020 (i.e. 427 days at a daily rate of EUR 24.25), in the amount of around EUR 10,350 retrospectively in April 2023.

3.12.7 Animal protection

Minimum requirements for keeping mice and rats as food animals

Current regulation unlawful

Following a complaint, the AOB initiated *ex-officio* investigative proceedings to clarify whether Annex 1, point 5 of the Second Animal Husbandry

Regulation (*Tierhaltungsverordnung*) on keeping mice and rats as food animals complies with the law. In the course of these proceedings, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection expressly admitted in spring 2023 that the regulation in question does not comply with the law.

AOB demands legal situation that complies with law

Since the existing unlawful provision is in conflict with the principles of the rule of law, a legally compliant regulation should be created as soon as possible. The AOB asks for a draft opinion on an amendment to the Second Animal Husbandry Regulation as soon as possible, which deals with minimum requirements for keeping of mice and rats as food animalsthat comply with the law. A corresponding draft was still not available at the time this report went to press.

4 Legislative recommendations

4.1 New recommendations

Federal Ministry of Education, Science and Research

Legislative recommendation	Reaction of department	Details
A right to inclusive schooling in a mainstream class for children with special educational needs should be explicitly enshrined in Sections 8 et seq. of the Austrian Compulsory Schooling Act, while preserving pedagogically justified exceptions and proven special educational institutions.	The Federal Ministry of Education, Science and Research rejected the proposal.	Annual Report 2023, Monitoring Public Administration, pp. 58 et seq.
The right to a voluntary 11th and 12th school year in compulsory schools should be established in the Austrian School Education Act and the Austrian Compulsory Schooling Act for children with special educational needs where there is a pedagogical indication. The current complicated and casuistic regulations for additional voluntary school years should be simplified.	The Federal Ministry of Education, Science and Research saw no need for change.	Annual Report 2023, Monitoring Public Administration, pp. 61 et seq.
The AOB suggests that Austrian university entrance qualification certificates be treated equally to school-leaving certificates when it comes to the "Austrian quota" in the selection process for studying human medicine.	The Federal Ministry of Education, Science and Research stated that it was "not averse" to this.	Annual Report 2023, Monitoring Public Administration, pp. 64 et seq.
The Universities Act should clarify that academic degrees awarded in the United Kingdom before Brexit can continue to be registered in public documents in Austria.	The Federal Ministry of Education, Science and Research is examining a corresponding regulation in coordination with the Federal Ministry of the Interior.	Annual Report 2023, Monitoring Public Administration, pp. 65 et seq.

Legislative recommendation	Reaction of department	Details
If the legislature wishes to share the costs of assessing foreign educational qualifications pursuant to the Recognition and Assessment Act, the AOB recommends creating an explicit legal basis for this.	The Federal Ministry of Education, Science and Research did not consider such an explicit legal basis to be necessary.	Annual Report 2023, Monitoring Public Administration, p. 67

Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology

Legislative recommendation	Reaction of department	Details
The AOB suggests that licences for practice drives pursuant to Section 122 (3) of the Motor Vehicle Act be made more flexible.	The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology noted a corresponding provision.	Annual Report 2023, Monitoring Public Administration, p. 157
Exemptions under the Austrian Traffic Road Act should be extended for emergency vehicles.	The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology saw no need for change.	Annual Report 2023, Monitoring Public Administration, pp. 160 et seq.

Federal Ministry for Agriculture, Forestry, Regions and Water Management

Legislative recommendation	Reaction of department	Details
The AOB suggests a mandatory notification of property owners who are affected by an intended designation of hazard zones in a hazard zone plan.	According to the Federal Ministry of Agriculture, Forestry, Regions and Water Management, this was not necessary, or rather would involve disproportionate costs.	Annual Report 2023, Monitoring Public Administration, pp. 187 et seq.

4.2 Open recommendations

Federal Ministry of Finance

Legislative recommendation	Reaction of department	Details
Section 19 of the Federal Fiscal Code should provide that authorisations pursuant to Section 153 of the Non-Contentious Proceedings Act also entitle the holder to represent the dormant estate.	The Federal Ministry of Finance is waiting for a reasoned proposal from the Federal Ministry of Justice.	Annual Report 2023, Monitoring Public Administration, pp. 97 et seq.

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