

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

2015

International Version

Preface

The year under review has once again shown how much people trust the Austrian Ombudsman Board (AOB) to provide help, to explain unclear issues and to bring their matters to a positive end. A study which was commissioned in 2015 has impressively substantiated the high level of awareness of the AOB as such and the confidence in its work. Nevertheless, continuous efforts are being undertaken to make access to the AOB even simpler and to report about its activities more comprehensively.

Complaints to the AOB comprised federal administration throughout all of Austria as well as regional and municipal administration in seven of the nine *Laender*. People from all over Austria approach the AOB and while achieving solutions is among our most important responsibilities, we also provide explanations about laws and administrative procedures that are connected to them. Knowing why authorities have acted in a certain way can result in better understanding and reduce the feeling of annoyance.

Authorities are bound by the laws and the AOB can make the legislative bodies, to which it reports on a regular basis, aware of a lack of understanding of these laws.

Since July 2012 the AOB fulfills the mandate to protect and promote human rights, granted to it under Austrian constitutional law. This mandate includes a mandate according to OPCAT, a mandate as independent monitoring authority according to Article 16.3 of the CRPD and a mandate to monitor and concomitantly examine the behavior of organs authorized to issue direct orders or carry out coercive measures. In the past three and a half years, the NPM commissions conducted 1,575 visits, of which 501 took place in 2015.

We would like to thank Federal Ministries and other federal, regional and municipal bodies for their excellent cooperation in 2015. We also thank the NPM commissions for their ongoing commitment and the Human Rights Advisory Council for its continuous support. A special thank you is owed to our employees without whom the work of the AOB, which is highly appreciated by the entire population, would not be possible.



Günther Kräuter



Gertrude Brinek



Peter Fichtenbauer

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I. THE AUSTRIAN OMBUDSMAN BOARD

1. Introduction

The AOB has the responsibility of helping citizens obtain justice if they feel they have not been treated fairly by the Austrian public administration. Complaints and their investigation not only point out deficiencies in individual cases, but also provide indications where there are weak points or adverse developments in public administration. The AOB's outside view gives public administration the opportunity to take the necessary organisational measures, which can range from an improvement of workflows to more intensive employee training.

Ex-post control

Within the scope of its preventive activities, the AOB endeavours to prevent or reduce violations of human rights when and wherever possible, but especially in institutions and facilities where persons are being detained and/or their freedom is restricted. Within this mandate, the individual case is not so much in the AOB's focus, but rather the system as such, should it be classified as needing improvement. The commissions of the AOB play an important part in this preventive work, as it is their responsibility to examine the circumstances directly on-site.

Preventive activities

Since 2009, the AOB is hosting the General Secretariat of the International Ombudsman Institute (IOI). The IOI supports and promotes the exchange of experience with other Ombudsman institutions worldwide in order to ensure the quality of the activities undertaken and to develop comparable methodologies. Both classic ombudsman institutions and National Preventive Mechanisms profit from reciprocal, cross-border sharing of ideas and information, where the IOI has an important coordinating function. It also provides training on relevant topics.

International Ombudsman
Institute

1.1 Structure of the AOB

Since 1 July 2013, the members of the AOB are: Günther Kräuter, Gertrude Brinek and Peter Fichtenbauer. The term of office is six years; the members can be re-elected for one additional six-year term. Günther Kräuter and Peter Fichtenbauer are in their first term of office; Gertrude Brinek is in her second term of office.

The members of the AOB

Ombudsman Günther Kräuter is responsible for social, nursing and health matters. At the federal level, his investigative authority comprises health, pension and accident insurance, matters concerning labour market administration as well as youth and family. At the *Laender* level, his area of competence comprises social and health administration, youth welfare, issues concerning persons with disabilities, animal rights and the veterinary sector. Günther Kräuter also holds the position of Secretary General of the International Ombudsman Institute (IOI).

The area of competence of Ombudswoman Gertrude Brinek at the federal level comprises the administration of the judiciary, the duration of court proceedings and the public prosecutors' offices, the penal system, financial administration including but not limited to taxes, fees and duties, as well as preservation of cultural heritage sites. At the *Laender* level, her area of competence comprises local governments, including but not limited to building and regional planning and housing, regional and municipal roads, cemetery administrations as well as communal and municipal transport services.

At the federal level, the area of responsibility of Ombudsman Peter Fichtenbauer comprises all matters pertaining to the Federal Ministry of the Interior, including but not limited to police law, law relating to aliens and asylum law, national defence, agriculture, forestry and water management, nature conservation and environmental protection, trade and operational facilities, federal roads, matters concerning driving licences and motor vehicles as well as schools and universities. At the *Laender* level, Peter Fichtenbauer monitors matters concerning traffic police, agriculture, citizenship, nursery schools as well as questions regarding municipal taxes and fees.

In 2015, the AOB had an average of 90 employees who were organisationally assigned to the three areas of responsibility of the members of the AOB, the administration and the International Unit.

2. The members of the AOB take stock

2.1 Ombudsman Peter Fichtenbauer

The AOB has great importance amongst institutions providing judicial protection. In my decades-long activity as a lawyer, I experienced the magnitude of the hurdles in the judiciary process and in public administration that those affected must overcome when they are seeking protection under the law and justice. Justice is a very subjective perception, which courts and authorities often cannot fulfil. It is not a rare occurrence – particularly in the judiciary process – for rulings to result in a feeling of incompleteness or even of powerlessness. The sometimes incalculable costs that prevent people from pursuing legal redress play a major role here or, on the other hand, induce them to take a great risk, because they are subjectively fully convinced of the validity of their claim.

The AOB cannot ensure the claim to justice in the individual case; however, the Austrian Federal Constitution authorises the AOB to examine cases of maladministration and to remedy them if possible. A violation of the law must certainly be seen as the worst form of maladministration. But also the exercise of discretion or the manner in which people are treated can result in the AOB finding concerns to be justified and calling on authorities to remedy them within the scope of applicable legal means. The AOB

provides people with a simple and low-threshold opportunity to have their concerns examined without legal counsel and without incurring any costs in order to determine whether public administration did its job correctly (and efficiently).

It is true that the AOB cannot intervene in the work of the judiciary as far as its content is concerned, because the judicial system is independent and autonomous. An important area, however, is the investigation of the duration of court proceedings. It is apparent in administrative adjudication – regional administrative courts and the Federal Administrative Court – that the duration of proceedings is very lengthy, which means that people must be very patient when they are waiting for decisions. The reform of administrative adjudication in the form of a transition from appellate authorities to administrative courts, which came into force on 1 January 2014, did not result in any apparent improvements for people who are seeking efficient protection under the law – at least not as far as the duration of the proceeding is concerned until decisions are rendered.

Legislation at the European level shows how important “good administration” is. On 10 December 2015, the Human Rights Day, I spoke at the Austrian Human Rights Institute in Salzburg about “The right to good administration”, which is enshrined in the Charter of Fundamental Rights of the European Union. In Austrian administrative procedural law, it was the task of the Imperial Royal Administrative Court, which was established in 1876, to define the principles of administrative proceedings by way of its rendered decisions. A statutory codification of administrative procedural law did not occur until 1926. The Charter of Fundamental Rights created important groundwork at the European level so that the right to good public administration is not just a “solemn proclamation” in the Charter, but also has major significance with regard to its substantive meaning. In accordance with the wording, the standard refers directly only to the bodies and institutions of the European Union. The European Court of Justice, however, emphasises the applicability of the Charter for the member states in the implementation and/or application of the law of the European Union. In accordance with the case law of the European Court of Justice, this area applies to large parts of national legal systems. Therefore, the importance of this provision for Austrian public administration is derived primarily from the case law handed down by the European Court of Justice.

There are many areas where the authorities are active in the private sector. This means they do not have to take official decisions, but are free as to the form in which their decisions are taken. People often perceive this branch of activity by public administration to be a not particularly transparent “grey area”. Is the municipality acting as an authority or as a holder of private rights? Are the municipalities or the persons who have decision-making authority only pursuing interests that are visible to the outside world or personal interests as well? The AOB faces such questions again and again.

The Austrian Federal Constitution grants the AOB the possibility of investigating authorities even when they are operating in the private sector. In this case, however, it is sometimes more difficult than in public administration to trace the reasons why decisions are taken in one direction or another. Furthermore, there is no protection

under the law, because no legal remedies or appeals can be filed. For example, a mother cannot have an administrative court investigate why – of several nursery schools that operate in the municipality – she cannot place her children in the nursery school of her choice. Outsourcing of public services, e.g. water supply, to private companies – even if they are majority-owned by the public sector – reduces protection under the law. Charges are billed not by way of an official decision but by way of an invoice; complaints against such invoices can only be brought before ordinary courts.

In this area, I am all the more certain of the very important function of the AOB – to support people and to provide information. I am always delighted to see that people often thank the AOB for its work, not just when they have achieved their goal with the AOB's help, but even when the AOB has provided an explanation and has made the reasons for a decision by the authorities clearer to them. Naturally, I also accept criticism of the AOB's work, because I am quite aware that the AOB cannot always provide help in achieving a breakthrough with what people desire and expect. Everyone who contacts the AOB can, however, rest assured that their concern will be examined diligently.

My area of competence is very broad. However, some topics emerge, which require particular attention. Last year I emphasised how important I consider improvements in the school system for chronically ill children. The many open questions have motivated me to organise a symposium in Parliament jointly with the Third President of the National Council, Norbert Hofer. The event, which took place in May 2015, generated a great deal of interest that I ascribe to the fact that outstanding specialists in paediatrics and adolescent medicine, mobile nursing care and the law shed light on all major aspects of the related problems. To a large extent, solutions must be prepared and implemented at the legislative level by creating legal certainty for teachers. The AOB will contribute to this process by way of recommendations. However, a shift in mind-set and attitude regarding how to deal with the children and their illnesses will be unavoidable (see p. 56 et seq.).

2.2 Ombudsman Günther Kräuter

I would like to extend my sincere thanks to our employees, the commissions, the Human Rights Advisory Council, the representatives of civil society, the representatives of the Federal Ministries and the authorities, ORF, Parliament and the Diets for the excellent collaboration, as well as for the wide-ranging recommendations, numerous suggestions for improvement and constructive criticism that we have received. The effectiveness of the AOB in its actions in the interest of all citizens essentially depends on the trust in our institution and the best possible cooperation with various actors.

In order to be able to provide efficient and successful extra-judicial protection under the law to individuals or groups, the AOB needs to interact with the general public. Its mandate to protect and promote human rights increasingly obligates the AOB to call public attention to critical social developments.

During the year under review, I have spoken out numerous times and demanded a uniform nation-wide standardisation of the needs-based minimum benefit system, more resources for the care of persons with dementia and more drug safety for the elderly. In pointing out deficits in the implementation of the UN CRPD, my references to the absence of equal opportunities for children and adolescents threatened by poverty, who are often also chronically ill, as well as the precarious housing situation of unaccompanied minor refugees and/or refugees with disabilities were made because public attention is necessary in order to shine a light on certain realities of life that people prefer to ignore. The voice of the AOB is not always heard; however, there has been progress in some socio-political problem areas.

It is obvious that the consequences of the economic, financial and sovereign debt crisis, stagnating economic growth, increasing inequality in income and wealth, insecure or unstable employment and living conditions as well as the current record unemployment create fear of the future and of social decline. As a result of rescue loans amounting to billions of euros, the EU was able to avert the existential threat to the common currency, without, however, achieving a sustainable improvement of the social framework conditions in the EU donor and recipient countries.

The unexpectedly massive flow of refugees in 2015 came in the midst of a wave of Euro-scepticism and attendant loss of confidence in European institutions and national governments. In addition to all the unsolved problems, we are facing the greatest humanitarian crisis since the end of the Second World War. Only a few European countries, including Austria, have risen to this challenge. A pan-European act of will and show of strength that could increase growth and employment and guarantee joint solutions by member states in asylum and refugee policies has not yet materialised. Countries that believe they will benefit by showing harshness towards refugees and implementing a policy of exclusion are on a path that has abandoned the humanitarian foundations of the European idea. Added to that are heated debates about caps and cutbacks of basic social benefits, because the number of those who cannot or can no longer maintain their livelihood on their own is increasing. If one looks at the results of research on poverty, it is very clear that these people are not unemployed voluntarily; on the contrary, they need more support and especially more opportunities on the labour market. The needs-based minimum benefit system is a life preserver, not a hammock. Those who are entitled to benefits are not supplicants, but are asserting a legal claim. Asserting a claim to a benefit to which one is entitled is not abusing the system.

Furthermore, human dignity is sacrosanct and may not be weighted according to economic criteria in a state based on the rule of law and social principles.

The international responsibility of ombudsman institutions and national human rights institutions has also significantly increased during the past year, due to the enormous increase in refugee and migration movements. Millions of displaced people need help. It is often about the most basic needs such as water, food, protection against cold and rain, the most urgent medical care.

At an international conference in autumn 2015, many colleagues from ombudsman institutions, especially along the so-called “Western Balkan route”, intensively discussed how the humanitarian challenges can best be overcome. The focus of the meeting was especially on protection of particularly vulnerable groups, such as unaccompanied minor refugees or persons with special needs. By signing the “Belgrade Declaration”, the participating institutions signalled their explicit acceptance of responsibility and the willingness to utilise the reputation of the respective institution and all its competences and instruments for the protection of the fundamental and human rights of refugees and migrants.

It is gratifying that in the exchanges I have with colleagues from around the world in my function as Secretary General of the IOI, I see a clear tendency towards a stronger awareness of human rights in classic complaint procedures. This has resulted in additional positive effects on all those who feel they have been unjustly treated by the actions of public administration and who contact an ombudsman institution in this regard.

In order to maintain the closely linked ombudsman principles of independence and credibility, clear legal mandates, separate budgets and unrestricted control of personnel are essential. In Austria, the independence of the AOB is not only enshrined in the Austrian Federal Constitution, but it is also reflected in the high degree of trust that the population has for this institution.

Generally speaking, the actions of the AOB are viewed by the critical public as non-partisan, objective and independent. Merely the attempt by government authorities to influence the AOB would be regarded as a major public scandal – and rightly so.

2.3 Ombudswoman Gertrude Brinek

For many people, the AOB is a place of safety and security, or more precisely, a place that provides legal certainty. Traditionally, citizens expect the AOB to investigate complaints about (suspected) maladministration. Another reason to contact the AOB is the intention – after gathering information in legal matters from various sources – of obtaining a definitive assessment and opinion. The AOB is perceived as independent, competent and reliable and as an institution that obviously does not pursue any economic purpose with the information it provides. A current study from 2015 gives the AOB a differentiated response in this regard. The IMAS survey on the recognition factor, competence and attribution of responsibilities confirms the positive assessment that prevails amongst the population. The comparison with similar organisations gives us a certain sense of assurance, but fundamentally, we always remain self-critical.

We are glad to contribute to the legal certainty and the stability of democracy within the population. Drawing a direct conclusion about the quality of public administration from the development of the number of complaints, would be dubious or would in any case require separate examination.

This assessment applies to federal administration and regional and municipal administration equally. Just as there is differing legislation in the individual *Laender*, differing administrative and citizen service cultures have been established. Upon entering an official building, these cultures become immediately visible. The respective architectural, aesthetic and structural design conveys signals of welcome or of unapproachability and demonstrates the attitude of the people who are employed there towards their work. They have a negative or positive effect on confidence-building, and enable the observer to draw conclusions about the leadership competence of the respective executives.

In my area of competence, complaints about regional and municipal administration in the sector of regional planning and building law, laws regarding transport and traffic on regional and municipal roads and all ancillary laws have been at the top of the list for years.

In 2015, which has been declared the International Year of Soils, there was interdisciplinary attention and public discussion with regard to what it means that every single day disturbingly large areas of land are overbuilt or sealed – an aspect that not only creates a problem for agricultural supply, but also has significant secondary consequences for the remaining areas of land. Construction sites, gardens, parks, meadows and fields are flooded during heavy rainfall; sewer and supply systems are pushed to their limits. Tight budgets in the municipalities often result in “creative” financing models that lead to specific burdens for citizens, who then often contact the AOB.

Growing quality and land requirements in connection with living space – especially in communities that are not core urban areas – and the continuing promotion of traditional single-family homes and other factors result in often dramatic situations for many residents of villages and settled areas. A systemic issue thus becomes obvious and will especially challenge future generations. Additionally, in the past various structural measures were often taken based on oral agreements (sometimes even to the respective predecessor/prior owner) – in some cases without knowing the applicable laws and regulations – so that the problem often takes on insoluble proportions.

In these matters, I am often confronted with allegations of partisanship in local administration, nepotism or even corruption and I then dependent on the means that are (still) available in my ex-post investigations. This strengthens people’s confidence in the AOB, but results in massive disappointment with regard to public administration. Exemplary cases are provided in the reports to the Diets.

On its course to open up the AOB even more widely as both a point of contact for complaints about public administration and as the Human Rights House of the Republic of Austria, the AOB has successfully continued its positive practice of inviting adult as well as youth groups to participate in discussions and to get to know this institution. The VA.TRIUM is an ideal place for dialogue, and international visitors view this as an example of best practice. In addition to the information provided in the publication “Young people and their rights”, visitors are introduced to the work methodology of the AOB and get to know questions from the area of human rights that are derived from

real life. On an international level the AOB is in the first row as it shares experience and undertakes various collaborations with other countries.

As Head of the EU twinning project to promote and strengthen monitoring and control of public administration and preventive human rights review in Macedonia, an EU accession candidate country, I was able to observe and support the work of AOB experts – in cooperation with the Ludwig Boltzmann Institute for Human Rights. The objective was to provide the ombudsman office in Skopje and the ombudspersons in their regional offices with assurance and to support their work. As part of the review of human rights-related conditions, I visited the refugee camp in Gevgelija and held discussions with both representatives of the government and NGOs. I also inspected the refugee camp itself, and credit for the conditions, which at first glance appear relatively acceptable, goes primarily to the commitment of the NGOs (UNHCR, Red Cross, etc.). The equipment of the border police, however, is absolutely unsatisfactory and leads at best to random results, or otherwise to mistakes.

Successful lectures at external venues further improved international and national contacts. For example, at the Forum for Public Prosecutors, I outlined those dimensions of the pursuit of truth that affect my work as an Ombudswoman. I spoke about questions relating to human rights and children's rights at the pedagogical university and presented the work methodology of the AOB at Rotary Clubs. I discussed questions regarding legal guardianship and the necessity of the legislative further development thereof, which had been initiated to a significant degree by the AOB, at judges' conferences and in meetings with judges and with the Austrian Commission of Jurists.

In this regard, I focused specifically on female citizens as a group. During several encounters and events, I introduced the possibilities available to the AOB and explained its competences. Even though there are logical arguments for many aspects, the question still remains unanswered, why more men contact the AOB than women. A review of the work done to achieve the outcome of "gender-equitable access to the AOB" leads to the conclusion that initial improvements have been made. Should additional information and communication be required, it will continue to be a concern and a responsibility of the AOB to work on this issue.

In both areas of action – traditional control of public administration and preventive monitoring of human rights – the AOB can point to successes. On one hand, it was often possible to achieve solutions in cases of maladministration that liberate citizens from the feeling that they are powerless and helpless. Media work, especially the regularly broadcast TV programme *BürgerAnwalt* ("Advocate for the People"), provides an essential and sustainable source of support, because it can show that mistakes made by the authorities cannot be suppressed, that stubbornness comes to light and that compliance with the law is not politically negotiable. Its success is obvious from the large number of viewers, but also from direct reactions and references to similar cases that are made by phone. The personal consultation days also provide a good opportunity for direct discussions and individual illustrations of problems; this is important because

an abstract violation of the law or an act of maladministration is often underpinned by details that are private.

The AOB has been active as the NPM for more than three years now and the outcomes it has achieved are quite noteworthy. In an international comparison, it is obvious that the Austrian course of action of preventive human rights monitoring and control has led to significant results. Shocking and worrisome incidents in correctional institutions have resulted in a rethinking process in many areas. A working group, which includes legal experts from the AOB, has submitted recommendations to improve detention of mentally ill offenders, and their implementation is being tackled. Initial organisational measures have already been undertaken. In the area of incarceration of juvenile offenders as well: based on new legal provisions, the attempt is to be made to avoid incarceration if possible and to accelerate their reintegration by way of social network conferences and other measures.

Visible successes are expected in one area in 2016, which I have called attention to for several years: the reform of the law regarding legal guardianship. Through many discussions jointly with relevant organisations, such as legal guardianship associations and organisations for persons with disabilities and seniors, we have been able to create a (public) awareness for more autonomy and independence even when people need assistance. Hopefully, the many hundreds of complaints during the past years and how they have been reflected in the perception of the AOB will result in improvements for many thousands of people in the future.

3. Public relations

The AOB is very interested in informing representatives of the media about its work and it regularly addresses the interested public by way of press releases and a newsletter. The members of the AOB are also available for direct interviews with journalists. The AOB informs the media about its investigative proceedings and their results and provides statements regarding draft legislation, events, international contacts and visits. In 2015, the AOB presented its reports to the National Council and the Diets of Vienna, Burgenland, Upper Austria and Salzburg to the public within the scope of press conferences.

Comprehensive information

As a result of its broad public relations work, the media presence of the AOB has continued to rise. In 2015, there were 2,900 reports about the work of the Austrian Ombudsman Board in Austrian print media and on the public TV and radio broadcaster ORF.

The television programme *BürgerAnwalt* (“Advocate for the People”), which is broadcast by the Austrian public television channel ORF, is the most important advertising medium for the AOB. This programme has been shown since January 2002. Each week an average of up to 313,000 viewers follows the discussions in the studio. In the year under review, the viewer record was 441,000. This programme has a national market share of as much

ORF TV programme
BürgerAnwalt („Advocate
for the People“)

as 34%. Excellent collaboration with the ORF editorial team is particularly important for the AOB; it has been satisfactory for both sides for 13 years. The members of the AOB discuss cases with representatives of various authorities. Naturally, the persons affected also speak on their own behalf. *BürgerAnwalt* presents both the problem and a possible solution. After the broadcast, every episode is available for online viewing for a week on the TVthek website of the ORF.

3.1 IMAS Study 2015)

In autumn 2015, a study on the topic of “The Austrian Ombudsman Board in the eyes of the Austrian public: representative survey” was carried out for the fifth time by the IMAS Institute. The objective of this survey was to assess the public’s opinion of the AOB. The focus was on the following five core topics: recognition factor of the AOB, state of knowledge about its areas of responsibility, image of the AOB, making contact with the AOB and its authority. A total of 1,004 persons over the age of 16 were questioned in interviews.

The result was gratifying for the AOB: seven out of ten people were familiar with the AOB; that is around 70%. People acquire their knowledge about the AOB largely through the media, in particular television. The television programme *BürgerAnwalt* has a commensurate high level of importance. Regarding the AOB’s image, it can be stated that it is very positive. Its “citizen-friendliness” and its “commitment to citizens” are perceived as particularly positive. There was a significant increase in satisfaction with regard to the AOB’s proximity to the people. Three fifths of the respondents were additionally convinced of the high importance of the AOB, a gain of 7% in comparison with the last study done in 2007.

It is also remarkable that around three quarters of the respondents would consider contacting the AOB in the event of problems. It is particularly gratifying that detailed knowledge about the AOB and its areas of responsibility is greater than ever. The population attributes two areas in particular to the AOB: “protection of citizens against arbitrary action on the part of authorities” (69%) and “informing citizens about their rights vis-à-vis the state” (66%). With regard to the area of protection and promotion of human rights, the signal was also clear: the respondents see this as an undisputed responsibility of the AOB. Finally, it was apparent that the respondents wish to see an expansion of the AOB’s areas of competence. The areas particularly favoured by respondents were the authority to monitor and control divested legal entities that are now private companies providing public services (59%) and monitoring and control of the conduct and duration of court proceedings (63%).

This study showed how contact between the population and the AOB can be improved and how the possibilities for filing a complaint can be optimised. The study will continue to be used as the basis for improvements in the interest of complainants.

4. International activities

4.1 International Ombudsman Institute (IOI)

The IOI, whose headquarters have been at the AOB since 2009, links around 170 independent ombudsman institutions from more than 100 countries in Africa, Asia, Australasia & Pacific, Caribbean & Latin America, Europe as well as North America. It sees its main responsibility in the global promotion and development of the ombudsman concept as well as in supporting and connecting ombudsman institutions worldwide.

A priority for the IOI is developing and providing training. March 2015 saw a continuation of the cooperation with the Asian Ombudsman Association (AOA), which was begun in 2013. A seminar on the topic of “Managing unreasonable complainants” was organised jointly with the ombudsman institution in Thailand for the Asian members of the IOI. The anti-corruption training, which the IOI had offered for the first time in Vienna in 2013 in collaboration with the International Anti-Corruption Academy (IACA), was held in Curacao in May 2015. Jointly with the Association for the Prevention of Torture (APT), the IOI has developed a training seminar that is focused on NPM/OPCAT. This seminar was held for the first time in June 2015 at the ombudsman institution in Latvia, and will be continued in June 2016 in Lithuania.

Training offerings for IOI members

The website of the IOI was updated, as it is an important communication component. The new website enables use of all web contents on mobile devices, a particularly important feature for interested parties in Asia and Africa. The link to Google Translate makes it possible to translate content simply and quickly into another language. A new offering is the “IOI Case Database”, which provides the members of the IOI with a direct platform, where they can share information and experience worldwide.

New Internet presence

The annual meeting of the IOI Board of Directors took place in late September 2015 in Windhoek, Namibia. It provided the opportunity to welcome ten ombudsman institutions from Africa, Asia and Caribbean & Latin America as new members of the IOI. Furthermore, a decision was taken with regard to financial subsidies for projects in individual IOI regions. The Board of Directors also confirmed that the ombudsman institution in Thailand will host the World Conference of the IOI, which takes place every four years, in November 2016 in Bangkok. A major focus of the Board of Directors meeting was the question of how the IOI can best provide support for its members to enable them to exercise their role comprehensively in view of current challenges, such as transnational movements of refugees or the privatisation of public services. A workshop on these topics is planned for 2016.

IOI Board of Directors meeting in Namibia

In an effort to deepen the cooperation with like-minded regional and international organisations, IOI President John Walters signed a cooperation agreement in Geneva with the International Coordinating Committee of National Human Rights Institutions (ICC). IOI Secretary General Günther Kräuter participated in a workshop on the ICC accreditation process as an observer. He also participated in a roundtable discussion on

Cooperation agreement with ICC

the topic “A human rights-based approach to the work of the Ombudsman”, which took place during the annual meeting of national human rights institutions in Geneva.

Cooperation with the World Bank

The cooperation with the World Bank was also intensified in 2015. In March, a webinar was held on the topic of “Ombudsman Innovations for Advancing Open Government”. Furthermore, a second round table discussion took place at the headquarters of the World Bank in Washington D.C., where World Bank employees were informed about the activities and importance of ombudsman institutions. The IOI was represented by Peter Tyndall (Ombudsman of Ireland and IOI 2nd Vice-President) and Ulrike Grieshofer (Head of the IOI General Secretariat). Both presented best practice examples for how ombudsman institutions ensure an effective and citizen-friendly performance of public services.

4.2 International cooperation

4.2.1 United Nations / UN conventions

Coordinating Committee of NHRIs (ICC)

As a National Human Rights Institution (NHRI), the AOB is represented in the International Coordinating Committee of National Human Rights Institutions (ICC of NHRIs). In March 2015, Ombudsman Günther Kräuter took part in the ICC annual meeting in Geneva both as Chairperson of the AOB and in his function as IOI Secretary General.

Human rights-based approach to Ombudsman activities

The ombudsman institution of Northern Ireland presented the “Human Rights Manual” for ombudsman institutions, which was developed in close cooperation with the Northern Irish Human Rights Commission and with financial support from the IOI. This manual is intended to sensitise employees of ombudsman institutions to human rights-relevant topics. Ombudsman Günther Kräuter was a speaker at this event and explained the work of ombudsman institutions and their investigative activities.

Universal Periodic Review (UPR)

Within the scope of the Universal Periodic Review (UPR), this control mechanism of the United Nations Human Rights Council (UNHRC) reviews the human rights situation in UN member states on a regular basis. The second UPR by the UNHRC for Austria took place in Geneva in November 2015. One month earlier, national human rights institutions and NGOs had the opportunity to voice their concerns in pre-sessions. The objective of this exchange of the viewpoints in the presence of numerous permanent missions to the United Nations is to define questions and recommendations more closely, which are submitted to political decision-makers within the scope of the UPR.

In his presentation, Ombudsman Günther Kräuter supported the concerns of civil society in Austria. Amongst his criticism was the fact that in Austria persons with disabilities still cannot lead a life that is sufficiently self-determined. In view of recent developments, human rights-relevant questions in connection with refugees fleeing war, terror and persecution were also discussed. Ombudsman Kräuter addressed the precarious

situation of unaccompanied minor refugees in Austria and demanded compliance with the standards mandated by law. The status of the development of the first National Action Plan for Human Rights was also a topic of his presentation.

Austria must submit country reports on a regular basis regarding the fulfilment of its duties under the ratified UNHRC Declarations. Within the scope of the country review concerning the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), in 2015, the UN Committee Against Torture addressed the human rights situation in Austria.

CAT country review

Within this CAT country review, the AOB provided an independent statement regarding the implementation of the UN Convention against Torture in Austria to the Office of the High Commissioner for Human Rights (OHCHR). In this statement, it set out the current development of human rights protection in Austria and the findings and concerns of the Austrian NPM.

Statement by AOB

As NHRI, the AOB had an opportunity in November 2015 to explain the human rights situation in Austria within the scope of a discussion with international experts of the UN Committee Against Torture. In his remarks, Ombudsman Kräuter reported on the progress that has been made (elimination of net beds in psychiatric wards, clarification of the term “torture” under the law, etc.). He also illustrated, however, the deficits in the protection of human rights, such as the lack of occupational opportunities in correctional institutions and prescribing sedating medication to the elderly in nursing homes.

Ombudsman presents situation before the Committee in Geneva

During her stay in Austria, Rosa Kornfeld-Matte, the UN’s first Independent Expert on the enjoyment of all human rights by older persons, visited the AOB to gather information on the situation of the elderly in Austria. The mandate of the Independent Expert on the enjoyment of all human rights by older persons was newly created by the UN Human Rights Council in 2013. Ms Kornfeld-Matte is charged with driving forward the understanding for the rights of older persons and implementing appropriate measures.

UN Independent Expert on the enjoyment of all human rights by older persons

Ombudsman Kräuter emphasised the importance of a positive attitude towards ageing without glossing over its challenges. Self-determination and autonomy in old age can quickly become threatened. A more supportive social environment, barrier-free infrastructure and a promotion of health that is free of discrimination are needed. Gerontological and geriatric knowledge should be increasingly emphasised in the training of both nurses and physicians, drug safety and the avoidance of polypharmacy should be given greater attention and access to hospice and palliative care should be expanded. Other topics of interest for the UN Independent Expert were the prevention of violence and legal guardianship, especially as the latter does not comply with the UN Convention on the Rights of Persons with Disabilities.

In cooperation with the Finnish ombudsman institution, a 40-member human rights delegation of the Finnish Human Rights Centre constitutes Finland’s National Human Rights Institution (NHRI). Since the conclusion of the ratification process of the UN Convention on the Rights of Persons with Disabilities, the institution has also acted as the independent national mechanism for this matter. The Human Rights Centre organised an

AOB expert at workshop in Finland

orientation meeting in Helsinki for its human rights delegation, to which it also invited experts from other institutions. An expert from the AOB attended this meeting.

European Network of NHRIs The General Assembly of the European Network of NHRIs (ENNHRI) took place in December 2015 in Utrecht, Holland. An expert represented the AOB on this occasion. During this meeting, the members of the European Coordinating Committee, which is ENNHRI's board, were elected for the next three-year period.

4.2.2 OSCE

Supplementary Human Dimension Meeting The AOB is actively participating in the OSCE dialogue about challenges and opportunities for further development of NHRIs. Serbia, in its function as OSCE chair in 2015, organised the annual Supplementary Human Dimension Meeting. The meeting, which took place in Vienna and which the AOB attended, was dedicated to the topic of the "Right of free assembly".

4.2.3 Council of Europe

CPT commemorates its 25th anniversary The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) commemorated its 25th anniversary in 2015. To mark this anniversary, a conference took place in Strasbourg, attended by representatives from almost all 47 member states, including representatives of the AOB. A speech titled "The CPT at 25: taking stock and moving forward" reflected upon the CPT's investigative activities up to now and discussed future developments and strategies. As the NPM, the AOB also bases the fulfilment of its responsibilities with regard to the protection and promotion of human rights on the standards developed by the UN Subcommittee on Prevention of Torture (SPT) and the CPT. Topics such as abuse in police institutions and prisons, health care in correctional institutions, detention of juveniles, single and solitary confinement and standard-setting in psychiatry were discussed in individual working groups.

4.2.4 European Union and European Network of Ombudsmen

10th National Seminar Ombudswoman Brinek and Ombudsman Kräuter attended the 10th National Seminar of the European Network of Ombudsmen, which was dedicated to the topic of "Ombudsmen against discrimination". The international meeting was organised jointly by the Ombudswoman of Poland and the European Ombudsman, bringing together national ombudspersons from 30 European countries.

Press conference with European Ombudsman In November 2015, the European Ombudsman, Emily O'Reilly, visited the AOB during her stay in Austria. In a joint press conference, Ms O'Reilly and Ombudsman Kräuter demanded more transparency in the negotiations of the free trade agreement between the EU and the USA. Ombudsman Kräuter criticised the inadequate protection of

employee rights, the lack of consideration for domestic agriculture and the poor food ethics of the TTIP free trade agreement.

A series of events for NHRIs took place during the European Development Days 2015 organised by the European Commission; almost 100 institutions worldwide, including the AOB, attended. A central topic was the role of NHRIs in the implementation of sustainable development goals.

European Development
Days

4.2.5 SEE Network presidency of the Austrian NPM

Since October 2013, the NPM has also been a member of the South-East Europe NPM Network (SEE NPM Network). This association of ombudsman institutions from Albania, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Slovenia and Austria provides a forum where knowledge and experiences are shared and mutual support is provided. Assisted by commission members, the AOB regularly takes part in the meetings.

At a Network meeting in late June 2015 in Tirana, there was a workshop on the topic of “Access to health care in prisons and detention centres”. In October 2015, delegates of the SEE NPM Network and representatives of the CPT and SPT again met in Tirana to consult on the refugee crisis in Europe; the topic of this meeting was “Migration and Asylum”. There were discussions about the challenges from a human rights perspective experienced by all the countries along the Balkan route during the massive refugee and migration flows. Core points of the sharing of opinions were particular risk factors for serial human rights violations as a result of this development, situations that are critical from a human rights perspective during forced returns, as well as the role of NPMs as the control body of the exercise of acts of direct administrative power and coercive measures. The second main topic of this meeting was the organisation of transit and emergency reception stations for refugees and the responsibility of the individual nations when registering the arriving persons. Agreement was reached to the effect that compliance with standards in the provision of basic care, i.e. health services, food, water, housing, sanitary installations, had to be monitored more thoroughly by the NPMs and that closer cooperation among the NPMs is absolutely necessary to maintain the human dignity of the asylum seekers.

Topics 2015

After a unanimous vote, the Austrian NPM will be the chair of the SEE Network for 2016. Mr Siroos Mirzaei, a member of the Austrian NPM in Commission 6, was elected to chair the Medical Group of the SEE Network and will undertake to develop medical standards that are deemed indispensable.

4.2.6 NPM Network meeting in Vienna

After a very stimulating first meeting with colleagues from NPMs in German-speaking countries (2014 in Berlin), the AOB invited to a follow-up meeting in Vienna in October 2015. At the request of the representatives of the German and Swiss NPM, the focus of this meeting, which was held over the course of several days, was on the monitoring

Good exchange

and control of social institutions, which were being included in the visiting plans of these two countries for the first time. Unlike in classic detention situations, there is neither a comprehensive set of relevant international and national human rights standards nor has there been basic research done in social sciences with regard to these types of facilities and institutions, which could be built upon. In this area, the Austrian NPM has already largely autonomously established a body of knowledge gained from experience about how preventive monitoring and control can be undertaken efficiently from a human rights perspective. In addition to theoretic modules that were presented by expert members of the commissions, the German and Swiss colleagues were given the opportunity to accompany three commissions of the Austrian NPM during visits to retirement and nursing homes and to reflect on the insights they have gained.

4.2.7 NPM workshop for Ombudsman institutions in Riga

In his function as Secretary General of the International Ombudsman Institute (IOI), Ombudsman Günther Kräuter spoke the opening words at the first IOI training which was developed especially for ombudsman institutions that also function as an NPM and took place in Riga in June 2015.

Cooperation between IOI and APT

In close cooperation with the Association for the Prevention of Torture (APT), which is headquartered in Geneva, the IOI developed a training format that deals with the implementation of this preventive mandate. As part of their responsibility to protect and promote human rights, an increasing number of ombudsman institutions are also charged with the prevention of torture and are thus establishing new methodologies and approaches in their organisations for this purpose. The need for such a tailor-made training workshop is evident and the demand for the training, which was fully financed from IOI membership fees, was commensurately great.

Renowned experts of the APT guided the audience through the interactive programme that not only conveyed knowledge to the participants but also provided the opportunity to share ideas and experiences. In case studies and group discussions, topics such as methodology and the ethics of conducting visits were explored. The role of external actors was defined and the importance of public relations was analysed as well.

4.2.8 Macedonia - EU Twinning project

Twinning with the BIM

In collaboration with the Ludwig Boltzmann Institute for Human Rights (BIM), the AOB participated in the Twinning Light project “Promotion of the Ombudsman competences and enhancement of its capacities” over the course of several months. The project was organised by the European Commission and concluded in February 2016.

Trainings

At a kick-off event in Skopje, the twinning project was presented to the public in mid-May 2015. Between May and November, experts sent by the AOB and BIM undertook working visits lasting several days and worked with deputy ombudspersons in branch offices in Bitola, Kichevo, Kumanovo, Tetovo, Shtip and Strumica on methods and monitoring and

control responsibilities, as well as on how to better exercise the mandate to protect basic rights and freedoms. Furthermore, a central component of the Twinning Light project was dedicated to the work of the Macedonian ombudsman institution as NPM. In June 2015, the AOB and the *BIM* conducted joint trainings of the Macedonian NPM team in Skopje and, for this purpose, visited a detention centre. In July 2015, a study visit by a Macedonian delegation to the AOB took place as part of this twinning project. During this one-week stay, the Macedonian guests were prepared for problems that arise during asylum proceedings at both, a theoretical and a practical level. The Macedonian delegation also had the opportunity to accompany commissions of the Austrian NPM during visits to a police detention centre, a reception centre and a police station. This enabled the delegation to observe practical monitoring and control from close up. In September, the persons heading the project at the participating institutions met to evaluate the progress of the project and to discuss the next points of focus. The topic of asylum and the current refugee situation in Europe were also a main component of the discussions between Ombudswoman Gertrude Brinek and Ombudsman Ixhet Memeti. At the end of the year, Ombudswoman Brinek and her Macedonian colleague visited the border crossing in Gevgelija and the fenced-off camps, where refugees from Syria, Afghanistan and Iraq were waiting to travel to northern Europe. It became clear that without technical aids (passport readers, appropriate software, etc.), it is completely at the discretion of the individual border police who can travel onward and who cannot. The persons present reported many doubtful and arbitrary decisions. Ombudswoman Brinek supported her colleague Ombudsman Memeti, demanding that the border officials receive better equipment. She emphasised the importance of initial care (food, clothing, and medical assistance) and pointed out the necessity of technical aids to improve the collection of information about the origin of the arrivals.

4.2.9 Conferences and bilateral contacts 2015

Due to the massive migration flows in Europe, the Ombudsman of Serbia organised a conference in November in Belgrade to examine the role of the ombudsman institutions and NHRIs. Ombudsman Kräuter was in Serbia during the preparations for this event and had an active role in the conference as moderator and speaker. The “Belgrade Declaration” was adopted by 32 institutions, with the commitment to stand up for compliance with refugees’ fundamental and human rights.

Belgrade conference on human rights and migrants

In his function as Secretary General of the IOI, Ombudsman Kräuter attended the 13th International Conference of Ombudsmen in Baku. The conference was devoted to the 20th anniversary of the Constitution of Azerbaijan and addressed the importance of ombudsman institutions for the protection of human rights. It also highlighted various aspects of Azerbaijan’s Constitution and the role NHRIs play in the implementation of international standards with regard to fundamental rights.

International Conference of Ombudsmen in Baku

During the year under review, the AOB received visitors from numerous countries. The new Ombudswoman of South Tyrol, a delegation of the Taiwanese Control Yuan and a delegation from Thailand came to Vienna for a bilateral sharing of experience. In 2015,

Bilateral visits at AOB

members of the AOB held meetings with a delegation of the Kyrgyz National Center for the Prevention of Torture, with representatives of the Interministerial Delegation for Human Rights from Morocco, with a delegation from the Korean Anti-Corruption & Civil Rights Commission (ACRC) and a delegation from the Ukrainian ombudsman institution. During the period under review, the AOB was also able to establish closer contact to the Ombudsman of Albania, the Ombudswomen of Croatia and the Czech Republic and the Ombudsman of Poland.

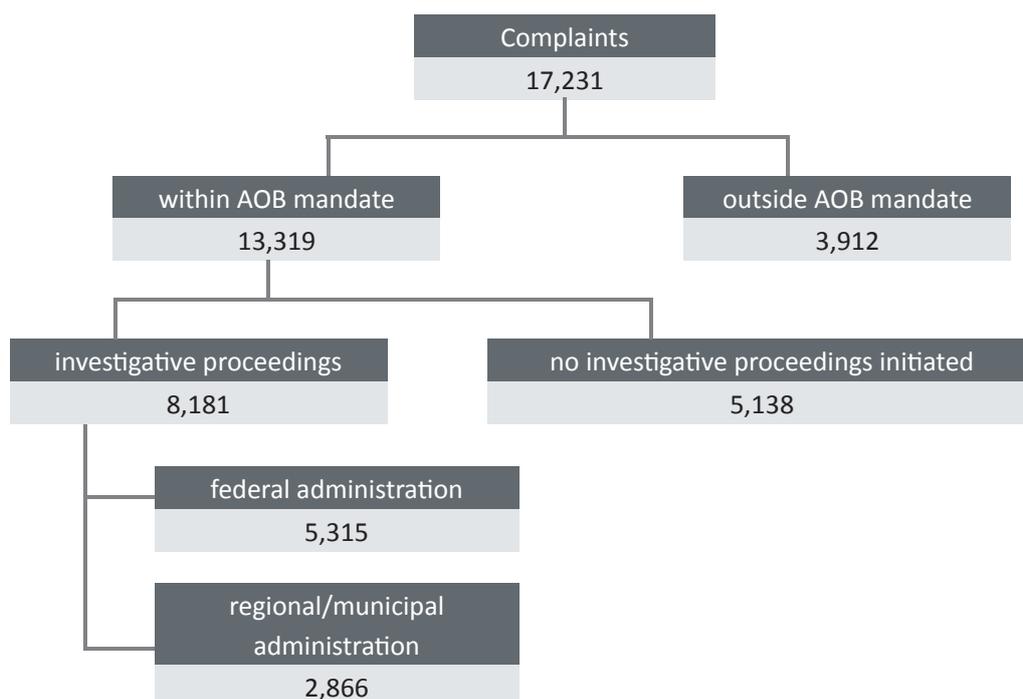
II. EX-POST CONTROL

1. Performance record

1.1 Monitoring public administration

Every sovereign administrative act carried out by the Federal Government falls under the remit of the AOB's monitoring and control authority. This also applies for actions set by the Government as holder of private rights. Persons can turn to the AOB regarding alleged cases of maladministration, provided that all legal remedies have been exhausted. Court decisions cannot be reviewed. The AOB investigates the complaints and informs the persons affected of the result of its investigative proceedings. In the event of suspected maladministration, the AOB can also take action itself and initiate *ex-officio* investigative proceedings. The AOB is furthermore authorised to call upon the Austrian Constitutional Court in order to initiate the revision of the legality of regulations issued by federal authorities.

Monitoring public administration



In the past year, the AOB received a total of 17,231 complaints. This means that on average around 69 complaints each were received by the AOB on a working day. In 8,181 cases – that is around 48% of the complaints – the AOB initiated formal investigative proceedings. In the case of 5,138 complaints, there were either insufficient indications of maladministration or the proceedings before the authorities had not yet been concluded. In these cases, the AOB was still able to inform the persons affected regarding the legal situation and to provide them with additional information. 3,912 complaints

were outside of the AOB's mandate. In such cases the AOB also provides information on further advisory and/or counselling services.

1.1.1 Investigative proceedings within the federal administration 2015

The AOB's investigative activities cover all public administration, i.e. all authorities and departments whose duty it is to implement federal law. The AOB carried out a total of 5,315 investigative proceedings in matters involving federal administration.

Internal administration At 1,496 cases, almost as many investigative proceedings were initiated in the internal security sector as in the previous year. Thus, around 28% of all investigative proceedings fall into this area. This is in line with the trend in previous years and is due to the high number of complaints dealing with asylum law. In the year under review, a substantial portion of the complaints concerned the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*), which is responsible for asylum proceedings in the first instance and – to a lesser extent than previously – the Federal Administrative Court (*Bundesverwaltungsgericht*), which is responsible for appeals in asylum proceedings.

Sector of social affairs 1,488 investigative proceedings were initiated at the federal level with regard to the social security systems sector. Around a quarter of all these investigative proceedings concerned social insurance law or problems surrounding the labour market. Main causes for complaints were deficiencies in the area of the Public Employment Service Austria (*Arbeitsmarktservice*), the assessment of entitlement to care and nursing allowances and problems surrounding pension insurance law. The number of complaints regarding persons with disabilities continues to be high.

Judiciary There were 760 investigative proceedings initiated based on complaints concerning the judiciary. The concerns related to the duration of court proceedings and proceedings by public prosecutors' offices, the penal system as well as topics for which the AOB is not directly responsible, but which it nevertheless addresses or calls attention to if possible. These are primarily problems relating to legal representation or guardianship.

Investigative proceedings in federal administration	number	%
Federal Ministry of the Interior	1,496	28.16
Federal Ministry of Labour, Social Affairs and Consumer Protection	1,488	28.01
Federal Ministry of Justice	760	14.31
Federal Ministry for Transport, Innovation and Technology	313	5.89
Federal Ministry of Finance	274	5.16
Federal Ministry of Family and Youth	253	4.76
Federal Ministry of Science, Research and Economy	192	3.61
Federal Ministry of Agriculture, Forestry, Environment and Water Management	181	3.41
Federal Ministry of Health (excl. health and accident insurance)	132	2.48
Federal Ministry of Education and Women's Affairs	101	1.90
Federal Ministry of Defence and Sports	60	1.13
Federal Ministry for Europe, Integration and Foreign Affairs	35	0.66
Federal Chancellery	27	0.51
TOTAL*	5,312	100

*three cases did not fall into the area of responsibility of any of the Ministries; the AOB maintains them as files to be handled by the Chairperson of the AOB

1.1.2 Investigative proceedings of regional and municipal government authorities in 2015

The AOB monitors and controls public administration in all *Laender*, with the exception of Tyrol and Vorarlberg. In 2015, the AOB conducted a total of 2,866 investigative proceedings of regional and municipal administration. Vienna, the most populous *Land*, continues to have the highest percentage of investigative proceedings (40.8%). Lower Austria had 19.6% of the cases, while Styria and Upper Austria had 12.2% and 11.2% of the cases respectively.

The largest number of complaints at the regional and municipal level concerned the sectors of regional planning and building law as well as general municipal matters. The number of investigated cases regarding youth welfare, the needs-based minimum benefit system and issues concerning persons with disabilities continued to be high. Problems surrounding traffic police and the enforcement of the Austrian Road Traffic Act (*Straßenverkehrsordnung*) as well as citizenship law were additional priorities.

Priorities in the *Laender*

Investigations of regional and municipal government administration	2015	%
Vienna	1,168	40.8
Lower Austria	562	19.6
Styria	349	12.2
Upper Austria	321	11.2
Carinthia	179	6.2
Salzburg	152	5.3
Burgenland	135	4.7
TOTAL	2,866	100

Complaints relative to regional and municipal government administration - focal points	number	%
Need based minimum benefit system, youth welfare, persons with disabilities, basic welfare support	706	24.6
Regional planning and housing, building law	656	22.9
Municipal affairs	454	15.8
Citizenship, electoral register, traffic police	342	11.9
Health care system and veterinary sector	163	5.7
Finances of the <i>Laender</i> , regional and municipal taxes	139	4.8
Regional and municipal roads	111	3.9
Educational system, sports and cultural matters	97	3.4
Agriculture and forestry, hunting and fishing laws	50	1.8
Trade and industry, energy	49	1.7
Office of the <i>Land</i> Government, public services and compensation law for regional and municipal employees	42	1.5
Transport and traffic on regional and municipal roads	29	1.0
Nature conservation and environmental protection, waste management	28	1.0
Science, research and arts	0	0
TOTAL	2,866	100

1.1.3 Resolved complaints relative to federal and regional administration

Of the investigative proceedings initiated in 2015, a total of 7,850 as well as 2,308 from previous years were concluded. In 1,812 cases, maladministration on the part of the administration was determined. In the reporting year, a total of 10,158 investigated cases were resolved. The AOB determined maladministration in 17.5% of all resolved complaints. The members of the AOB jointly determined a case of maladministration in a judiciary matter and issued a corresponding recommendation. Investigative proceedings in Styria dealt with road matters and resulted in challenging a regulation before the Austrian Constitutional Court. In 4,188 complaints, the members of the AOB did not see any reason for criticism. The AOB informed the persons affected within an average of 47 days regarding the result of the investigation.

17.5% of all complaints are justified

Under the Austrian Federal Constitution, the AOB can initiate investigative proceedings *ex-officio* if it has concrete suspicions regarding maladministration. As was the case in the previous years, the members of the AOB made use of this right by initiating 90 *ex-officio* investigative proceedings.

90 *ex-officio* investigations

	case files of other years	2015
maladministration on the part of the authorities	690	1,122
no maladministration found	1,155	3,033
complaints outside the AOB mandate	463	3,695
TOTAL	2,308	7,850

In 2015 a total of 9,257 case files were created; concluded case files in 2015 amounted to 84.8%

1.1.4 Citizen-friendly communication

The acceptance of the AOB's work amongst the population is high, which is clearly substantiated by the number of complaints. This is due in large part to the fact that the AOB can be contacted very easily and informally. Complaints can be submitted in person, by telephone or in written form. The website provides a simple complaint form. The information service can be reached by those seeking help under a cost-free service number. Complaints can also be presented to a staff member in person. Taking stock of 2015, the following picture emerges:

Communication with the Public

- 243 consultation days with about 1,494 personal contacts
- 17,231 people contacted the AOB: 6,873 women (39.9%), 9,729 men (56.5%) and 629 groups of people (3.7%)
- of which 7,974 contacted the information service in person or by phone
- 31,133 documents comprised the AOB's correspondence
- 15,910 letters and e-mails were sent to authorities
- 118,000 hits were registered on the AOB website

During consultation days, people have the opportunity to discuss their concerns personally with an ombudsperson in all of the *Laender*. These opportunities are utilised extensively. In the year under review, 243 consultation days with almost 1,500 personal talks were held, more than in the previous year (2014: 232 consultation days).

Consultation days	2015	%
Vienna	80	32.9
Lower Austria	35	14.4
Upper Austria	26	10.7
Styria	26	10.7
Carinthia	22	9.1
Burgenland	19	7.8
Salzburg	16	6.6
Vorarlberg	10	4.1
Tyrol	9	3.7
TOTAL	243	100

1.2 Budget and personnel

As is the case with the entire Federal Government, the AOB's federal budget statement (*Bundesvoranschlag*) is also broken down into a cash flow statement (*Finanzierungsvoranschlag*) and an operating statement (*Ergebnisvoranschlag*). The cash flow statement sets out incoming and outgoing payments. The operating statement shows the deferred revenues and expenditures on an accrual basis.

In accordance with the cash flow statement, in 2015 the AOB had a budget of EUR 10,475,000 (2014: EUR 10,046,000), of which EUR 300,000 resulted from dissolution of reserves. In accordance with the operating statement, EUR 10,485,000 (2014: EUR 10,039,000) was available to the AOB. In the following, only the cash flow statement is explained, because it represents the actual cash flow (for details, please refer to federal budget statement 2015, section 05, AOB).

In the cash flow statement, EUR 5,720,000 (2014: EUR 5,717,000) was slated for outgoing payments for staff expenditures and EUR 3,749,000 (2014: EUR 3,336,000) for outgoing payments for general administrative expenditures. General administrative expenditures include, for example, payments for the commissions and the Human Rights Advisory Council, expenditures stemming from statutory obligations regarding remuneration of members of the AOB, internships, printed materials, supply of energy and other expenses.

Additionally, the AOB had to make payments stemming from transfers for pensions of former members of the AOB as well as pensions for surviving spouses of former members of the AOB amounting to EUR 907,000 (2014: EUR 894,000). And finally, EUR 73,000 (2014: EUR 73,000) was available for payments from capital expenditures and around EUR 26,000 (2014: EUR 26,000) for advances on salaries.

In order to fulfil the responsibilities incumbent on the AOB since 1 July 2012 under the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), a budget of EUR 1,450,000 (2014: EUR 1,450,000) was planned for 2015 for payments for the commissions and the Human Rights Advisory Council of the AOB. Of this amount, around EUR 1,158,000 (2014: EUR 1,148,029) was budgeted for reimbursements and travel costs for the members of the commissions, and around EUR 91,000 (2014: EUR 95,000) for the Human Rights Advisory Council; roughly EUR 200,000 (2014: EUR 200,000) was available for workshops attended by the commissions and by AOB employees working in the OPCAT sector as well as for expert opinions.

Budget of EUR 10.475 million

Federal budget statement of the AOB (in millions of Euros)			
Cash flow statement 2015		Cash flow statement 2014	
10.475		10.046	
Staff expenditures		General administrative expenditures	
2015	2014	2015	2014
5.720	5.717	3.749	3.336
Transfers		Capital expenditures and advances on salaries	
2015	2014	2015	2014
0.907	0.894	0.099	0.099

73 permanent positions

In 2015, the AOB had a total of 73 permanent positions in the federal personnel budget (2014: 73 permanent positions) This means that the AOB is the smallest supreme body of the Republic of Austria. With part-time staff, persons working reduced weekly hours, internships and staff posted from other local and regional authorities, 90 persons are working at the AOB on average. The 54 members (2014: 48) of the six commissions as well as the 34 members and substitute members of the Human Rights Advisory Council do not count as AOB staff members.

1.3 Projects 2015

1.3.1 Visitor Centre

Visitor centre VA.TRIUM

A priority in the AOB's work in 2015 was to raise awareness of the law and to encourage citizens' rights and human rights education. In the visitor centre VA.TRIUM, everyone can obtain high quality and interesting information about the development and meaning of human rights and the work of the AOB as an institution providing judicial protection.

Focus on young people is a priority

Consciousness for human rights and democracy and a sense of responsibility should be strengthened, especially in young people. In 2015, this focus on young people was bolstered by way of a collaboration with a publisher of schoolbooks as well as the distribution of informational material regarding "Children and their rights" to numerous heads of schools in Vienna. In this way, the AOB fulfils its statutory obligation to cooperate with educational facilities and to inform the public about its activities. Practical examples illustrate in a lively and educationally descriptive manner what it means to have rights and to be able to legitimately and effectively insist that they be complied with.

In 2015, the AOB recorded a total of 36 guided tours through the VA.TRIUM. Primarily school classes, interested groups of students and representatives of various Ministries obtained information about the work of the AOB. Associations and seniors' groups were also among the visitors. The positive reactions from visitors show that the AOB is fulfilling its mandate and that new knowledge can be successfully conveyed.

36 guided tours in the VA.TRIUM in 2015

1.3.2 Website of the Austrian Ombudsman Board

The website of the AOB is an important source of information. Current news and numerous service offerings, such as the online complaint form, make the website attractive for an ever larger user group. In 2015, the complaint form was downloaded 1,339 times.

In addition to current articles about investigative proceedings and various problem areas, information is provided about ongoing AOB events and conferences. Besides, the website is an important instrument to connect with journalists, members of Parliament and other politicians, unions, NGOs and associations: vital informational material about the monitoring and control undertaken by the AOB and its commissions, e.g. all reports to the National Council and the Diets as well as a list of current determinations of maladministration, can be downloaded by anyone from the website. The website was accessed around 118,000 times in 2015.

Website important instrument to connect with interested parties

1.3.3 Events

The AOB always endeavours to organise events about important topics that generally result from its investigative activities. The members of the AOB frequently participate in events in response to invitations to speak in order to explain the experiences and viewpoints of the AOB to a larger circle of interested parties.

When the reports of the AOB were presented in 2015, press conferences were held, during which the AOB introduced selected cases to representatives of the media, pointed out particularly glaring cases of maladministration and clarified ambiguities in various areas of public administration.

Presentation of reports

In spring 2015, the AOB again hosted the NGO Forum, at which the progress of the National Action Plan (NAP) for Human Rights was discussed in detail. The AOB not only provided representatives of civil society and of the participating Ministries with a platform to share information and ideas, but also set out ideas and criticisms itself with regard to this NAP.

Involvement of NGOs

But even outside of the NGO Forum 2015, there was a lively exchange of ideas with various NGOs during the year under review. This included detailed discussions with representatives of the association "*Flucht nach Vorn*" ("Flight Forward") as well as a roundtable discussion with members of unemployment initiatives.

- Woman-specific events In accordance with the goal of achieving a more balanced gender distribution among complainants, the AOB organized events with women-specific topics. At one of these events, members of “Architects of Education” (*“Bildungsarchitektinnen”*), an interdisciplinary platform for women in leadership positions, provided tips on how to make women aware of the AOB and how to address them more directly. There was also an evening event devoted to the topic “Future for Women”.
- Focal point „chronically ill children in school“ Jointly with Parliament, Ombudsman Peter Fichtenbauer initiated an enquiry on the topic of “Chronically ill children in the educational system” (see p. 56 et seq.). On Traffic Law Day 2015, Ombudsman Fichtenbauer spoke about the topic “Experiences of the AOB with the practice of the parking enforcement authorities”. On Human Rights Day, he was invited by the Austrian Human Rights Institute (*Österreichisches Institut für Menschenrechte*) in Salzburg to hold a lecture on “The right to good public administration – interpretation of a non-specific legal concept – effect on Austrian administrative practice”.
- Focal point „legal guardianship“ Within the scope of her ongoing commitment, Ombudswoman Gertrude Brinek organised another panel discussion on the topic of legal guardianship. Under the title “Legal guardianship: benefit, help, support or loss of autonomy?”, Federal Minister of Justice Wolfgang Brandstetter, university professor Franz Kolland and members of the Institute for Sociology of Law and Criminology in Vienna discussed necessary reforms of the law on legal guardianship (see pp. 69 et seq.). Ombudswoman Brinek’s contribution at this year’s Conference of Family Court Judges was dedicated to the topic of legal guardianship as well. Ombudswomen Brinek furthermore participated in a panel discussion at the spring conference of the Austrian Commission of Jurists on the topic of “Growing old autonomously: legal and ethical end-of-life questions. At the Public Prosecutors’ Forum in Walchsee, Ombudswoman Brinek spoke on the topic “Truth in criminal proceedings from the perspective of the Austrian Ombudsman Board”. She also held lectures on the work of the AOB for representatives of educational institutions, school classes and seniors’ groups.

2. Anti-Discrimination

2.1 National Action Plan for Human Rights

The status of the development of the Federal Government's National Action Plan for Human Rights corresponds neither to the expectations of civil society nor to those of the AOB. The withdrawal of NGO representatives from the consultation process in February 2016 should be reason to undertake initiatives at the parliamentary level, which make a strategic pursuit of human rights objectives based on international commitments possible.

In the Annual Report 2014, the AOB reported on its participation in the creation of the first National Action Plan for Human Rights (NAP Human Rights) of the Austrian Federal Government. There are already several National Action Plans (NAP) that primarily provide for human rights measures for groups that are especially susceptible to discrimination, for example, a NAP on Disability, a NAP for Gender Equality in the Labour Market and a NAP on Integration. According to the governmental accord, these already existing sectorial NAPs will be placed in a common framework by the new NAP Human Rights and supplemented in collaboration with the AOB.

Federal Government's first NAP Human Rights planned

In accordance with its constitutional mandate as the National Human Rights Institution, the AOB considered it as its responsibility to integrate civil society into this process and to subsequently encourage the participation of Parliament and the Diets as well.

AOB as a bridge to civil society

The first NGO forum on this subject took place at the AOB in May 2014, with around 70 persons participating; civil society was informed by members of the Federal Government about the consultation process associated with the preparation of the NAP Human Rights and was invited to make suggestions for concrete projects that would, if possible, be implemented during the current legislative term until 2018.

Almost 30 NGO initiatives and scientific institutions submitted suggestions that identify the broad spectrum of problem areas relevant with regard to human rights. On its website, the AOB set up a communication platform which contains all information it has available and where comments on the NAP Human Rights are published on an ongoing basis (<http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/nationaler-aktionsplan-menschenrechte>).

Communication platform of the AOB

In order to prepare and support this process, a NAP Human Rights consultation group was established in December 2014, consisting of representatives of the Federal Government, the AOB and civil society – the latter in an advisory capacity.

All of the suggestions submitted by civil society were compiled and structured by the AOB according to the sequence of the articles of the Universal Declaration of Human Rights and submitted to the human rights coordinators in the individual Federal Ministries

and in the *Laender* for comment and consideration in the development of their project recommendations.

Suggestions by civil society
regarding protection
against discrimination

Many suggestions made by civil society addressed the improvement of protection against discrimination and equal treatment, taking up longstanding recommendations previously made by human rights bodies at both the European and the international level (Council of Europe, UN) as well as suggestions made by the AOB (e.g. Annual Report 2012, p. 62) and other national institutions.

The main demand was the consolidation and simplification of anti-discrimination legislation, which is currently fragmented and spread out across more than 40 different laws and legal acts. Legislation should be simplified and access to justice through equal treatment institutions for victims of discrimination should be made more straightforward. The different levels of protection should be eliminated and a levelling-up process should create a uniform and broadly protected area for discrimination outside the workplace. Additional demands made by civil society were directed towards an improvement of the possibilities for protection under the law, e.g. by creating the possibility of filing a claim for injunctive relief in the event of inaccessibility, by making the legal provisions regarding compensation for damages more strict and expanding the right of collective redress.

As far as protection against racism and ethnic discrimination is concerned, various measures were advocated such as training and sensitisation measures for authorities, the creation of an independent office to investigate allegations of discrimination against the police and the judiciary, introduction of an anonymised application process for the civil service, improvements in asylum law, improvement of the incitement provision in criminal law and data collection of racially motivated actions.

Many suggestions made by civil society related to accessibility and inclusion of persons with disabilities. For example, the suggestion was made that it be made mandatory that accessibility – as part of mainstreaming of persons with disabilities – be a consistent objective and that there be clear distribution of responsibilities with regard to action by the State. The widely differing benefits at the *Land* level should be harmonised, and uniform accessibility standards should be implemented Austria-wide in all areas of life. Deinstitutionalisation of facilities for persons with disabilities, which is advocated in the UN CRPD, should be driven forward quickly and a binding financing plan for the Federal Government and the *Laender* should be developed.

Specific measures to protect women and children from violence, to prevent violence against homosexuals and transgender persons and measures towards full legal equality of homosexuals were also demanded.

Individual Federal Ministries commented in writing on the suggestions made by civil society; these comments were also published on the AOB's website.

NGO forum discusses
Government's draft

In the year under review, another NGO forum took place at the AOB on 24 June 2015, with about 100 representatives of human rights NGOs as well as of Federal Ministries and of the *Laender* participating. On this occasion, civil society was given a progress

report on the development of a NAP Human Rights by the respective representatives of the various Ministries. Within the scope of a number of workshops, the participants discussed the draft submitted by representatives of the Federal Government, which contained around 40 projects proposed by the Federal Ministries and the *Laender*.

The general tenor was that the recommendations of the Federal Government fall far behind the expectations of civil society.

The very central issue of a uniform level of protection in the Austrian Equal Opportunities Act, or levelling-up process, was a mere heading in the draft without any content. A representative of the Federal Government remarked in this regard that the Federal Ministry of Labour, Social Affairs and Consumer Protection has been advocating this for a long time, but there is no political consensus. Therefore, inclusion in the NAP Human Rights is currently not possible despite international recommendations.

But at the same time, it was pointed out that the suggestions made by civil society regarding equal treatment with reference to the Equal Opportunities Act are being intensively discussed within the scope of the comprehensive evaluation of the equal treatment instruments, which is currently taking place.

Planned projects
concerning protection
against discrimination

As far as the complexity and lack of clarity of Austrian anti-discrimination law is concerned, which has long been criticised by civil society and by the AOB, as well as by European and international human rights bodies, the present draft does not contain any legislative measures that would harmonise and simplify it. The only item planned is the creation of a set of guidelines that are supposed to provide victims of discrimination with a simple way to determine which anti-discrimination bodies they can contact in a concrete case. These guidelines and the anti-discrimination hotline, which was set up in 2015 and which refers callers to the appropriate anti-discrimination body for concrete advisory services, are certainly positive steps. However, they cannot replace legislative changes that have been advocated, for example, by the European Commission against Racism and Intolerance (ECRI) in the ECRI Report on Austria, adopted on 16 June 2015, margin no. 14.

Other measures regarding anti-discrimination and equal treatment planned for the NAP Human Rights by the Federal Government are the removal of the term “race” from federal laws, intensification of research projects and training measures, efforts to better prepare Roma for the labour market, development of recommendations regarding the portrayal of Roma in the media, anti-racism measures in sports, as well as simplified recognition of foreign professional qualifications. In future, an annual roundtable on women’s rights is planned. With regard to children’s rights, installation of a coordination mechanism for the further development of these rights is planned and corresponding data will be collected. Furthermore, several measures intended to implement the protection of human rights in the area of business and development cooperation are planned.

As far as measures for the equal treatment of persons with disabilities are concerned, which are frequently demanded by civil society, the representatives of the Federal Government referred to the already existing National Action Plan on Disability (NAP

Disability). The Federal Government wants the NAP Human Rights to close the thematic gaps in human rights protection; however, they do not want it to encroach upon existing National Action Plans.

Civil society disappointed
with regard to draft

In the meantime, the Federal Government has presented an amended draft that has been supplemented by a number of projects, particularly in the area of human rights education (status as at 30 September 2015); this amended draft has also been published on the AOB website. Civil society acknowledged the commitment and efforts of the project coordinators and the representatives of the relevant Ministries; however, it explicitly expressed disappointment about what has been done thus far. In the opinion of civil society, the suggestions submitted by the Federal Ministries trail far behind the recommendations made by international human rights bodies. Unfortunately, this finding is correct; the AOB urgently calls for a stronger integration of Parliament in this critical phase.

In February 2016, representatives of civil society who were participating in the NAP Human Rights consultation group – Amnesty International, Caritas, *Diakonie* and the Austrian League for Human Rights (*Österreichische Liga für Menschenrechte*) – stated that they felt that remaining in the consultation group under these circumstances was not very constructive. In their letter, which is also published on the AOB website, the NGOs emphasise that despite the various efforts of the AOB, as well as of the Federal Chancellery and the Federal Ministry for Europe, Integration and Foreign Affairs, the majority of the suggestions made by civil society and the comprehensive recommendations of international bodies have found practically no reflection in the Federal Government's draft and the projects planned for the NAP Human Rights correspond largely to already existing ones.

On the one hand, the AOB sees itself as a platform for civil society in this process and has endeavoured to enable the greatest possible public access and transparency in the creation process of the first NAP Human Rights. The AOB's annual NGO forums, the structured compilation of all human rights demands submitted by civil society as well as the publication of all information and documents available to the AOB with regard to the NAP Human Rights on the AOB's website are intended as a contribution to this process.

Present draft does not meet
AOB's expectations

On the other hand, the AOB sees itself as a critical force with regard to the results of the NAP Human Rights. From the perspective of the AOB, it must be said that the status of this government project thus far does not meet the standards of an ambitious NAP Human Rights. The AOB will, however, continue to observe the further development and hopes that significant improvements can still be achieved. The AOB also supports a greater integration of the legislative bodies into the NAP Human Rights process.

2.2 Austria-wide investigative proceeding regarding enforcement of ban on discrimination

Ban on discrimination with regard to access to public places and services as well as job and residential advertisements. Some improvements can be seen in the enforcement; however, there is still much to criticise.

In the year under review, an Austria-wide investigative proceeding, which was conducted *ex officio* by the AOB, regarding the enforcement of the ban on discrimination in the access to public places and services, was concluded. As reported in the previous Annual Report, the aim was to investigate whether the statutory amendment of Article III (1) (3) of the Introductory Act to the Administrative Procedures Acts (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen*), which was implemented upon recommendation by the AOB, resulted in the intended improvement of protection against discrimination.

Amendment of the law to improve protection against discrimination upon AOB recommendation

The aforementioned statutory provision prohibits discrimination due to ethnic origin, religion or disability with regard to access to public places and services. It is up to authorities to prosecute infringements of this ban on discrimination. If it is deemed proven that discrimination occurred, the authorities must impose a fine of up to EUR 1,090 or issue a warning in the event of a lesser offence.

Goal achieved?

In two cases from 2007 and 2011, the AOB determined maladministration and found that denial of access to discotheques to men whose appearance led to the assumption of a migrant background and advertisements that offer jobs or residences only for Austrians were not prosecuted and punished sufficiently by the authorities.

As a reaction to these determinations of maladministration by the AOB, the aforementioned statutory provision was amended in September 2012 and clarified that no particular intention to discriminate must be proven to be deemed punishable discrimination; this enables a more efficient prosecution of discrimination and deprives any subsequent defensive allegations of their basis. The proceedings conducted since the amendment of the law have now been reviewed by the AOB.

At the same time, due to a complaint by the Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*), the AOB examined the enforcement of similar provisions of the Equal Opportunities Act (*Gleichbehandlungsgesetz*), which specifically make discriminatory job and residential advertisements punishable under the law.

In the process, information about the number and outcome of all relevant proceedings was obtained from all *Laender* and more than 160 files were reviewed. This investigation was conducted from September 2012 to November 2014. The review of all proceedings that were concluded with definitive legal effect resulted in the following picture:

Austria-wide investigation

Ban on discrimination in accordance with Article III (1) (3) of the Introductory Act to the Administrative Procedures Acts 1991: proceedings concerning racist hate speech, discriminatory denial of access to pubs/clubs or denial of services:

Racist hate speech and denial of access to pubs/clubs

Proceedings concerning infringement of the ban on discrimination in accordance with Article III (1) (3) of the Introductory Act to the Administrative Procedures Acts 1991 pertained to either racist hate speech or cases in which persons whose appearance led to the assumption of a migrant background or cases in which persons with a disability were denied access to a pub/club or were denied a service (e.g. transportation by taxi).

In Vienna, five fines amounting to EUR 210, 350 and 525 and one warning were issued. Eight proceedings concerning racist hate speech were discontinued, because the perpetrator could not be identified or because sufficient proof for conviction was lacking.

A bouncer in Vienna received two fines of EUR 350 each due to discriminatory denial of access to a club and racist hate speech against two men whose appearance led to the assumption of a migrant background. One proceeding concerning discriminatory denial of access was discontinued, because the perpetrators could not be identified. However, the AOB found that the file did not clearly establish which steps the authorities had taken to find the perpetrators. Another proceeding concerning discriminatory denial of access was discontinued, as the authorities (and in this case also the Equal Treatment Commission) found the explanations of the club to be transparent and verifiable, as they declared that denial of access was not for racial reasons, but because the number of persons in the club was limited. One proceeding concerning discriminatory refusal of transportation by taxi was also discontinued, because discriminatory reasons could not be proven.

In Carinthia, a fine of EUR 100 was imposed for racist hate speech.

In Lower Austria, a fine of EUR 100 was imposed against the manager of a discotheque for denying access to two men from Turkey. The proceedings against the bouncer were discontinued. Another case concerning denial of service in a pub/club was also discontinued, because after questioning several witnesses, it could not be proven that service was denied for discriminatory reasons.

In Lower Austria, proceedings concerning refusal of transportation by taxi for a visually impaired man accompanied by a guide dog was discontinued without any penalties. The reason given was that the exclusion of animals which are not in a cage is covered by Lower Austrian taxi service regulations (see the AOB's assessment below). Proceedings concerning the ejection of an asylum seeker from a tobacconist's were also discontinued, as this apparently did not occur due to ethnic discrimination but due to the man's conduct.

In Lower Austria, a fine of EUR 100 was imposed for racist hate speech. Two proceedings concerning racist hate speech were discontinued, as the hate speech could not be proven.

In Upper Austria, two fines of EUR 70 and 100 were imposed for racist hate speech. Three proceedings against bouncers concerning ethnically discriminatory denial of access to a club were discontinued, as the ethnic reasons could not be proven and/or the concrete bouncer could not be identified.

In Salzburg, a fine of EUR 250 was imposed on the management of a shop that had a sign saying “We no longer sell anything to Gypsies”. The management justified this with “continuous problems with mobile ethnic minorities”. This does not change the fact of discrimination. In other proceedings concerning denial of access to a business premises and racist hate speech, a fine of EUR 200 was imposed.

Also in Salzburg, a proceeding against a bouncer concerning discriminatory denial of access to a club was discontinued. According to the statement by the bouncer, access was denied because the club was full. It was not possible to question the person who filed the complaint. The police noted that no other relevant complaints had been filed against this club and that most bouncers have a migrant background themselves. Besides, the police stated that they were aware that young people with a migrant background were customers in the club (see the AOB’s assessment below). Proceedings concerning racist hate speech were discontinued due to a lack of proof.

In Styria, fines amounting to EUR 70, 100 and 300 were imposed in three cases for racist hate speech. In two cases, complaints concerning ethnically discriminatory denial of access to pubs/clubs were discontinued, as credible arguments were made that access to the pub/club was denied for objective reasons, namely, the person in question had been previously banned from the premises and/or access was restricted to everyone but regular customers, as the premises were almost full.

In Tyrol, five fines of EUR 80, 100, 180 (twice) and 200 were imposed for racist hate speech. Proceedings concerning racist hate speech were discontinued, as it could not be proven that the hate speech actually occurred. A fine of EUR 80 was imposed against a bouncer for ethnically motivated denial of access to a pub/club.

Proceedings concerning the ejection from the premises of a pub/club of an asylum seeker were discontinued without any penalties, despite the fact that two witnesses stated that the customer had conducted himself properly and that they saw no objective reason for his ejection from the premises, and despite the clear statement to the police by the owner of the premises who had ejected the customer that she had told the Moroccan asylum seeker to leave the premises because she “did not find him congenial and did not like him” (see the AOB’s assessment below).

In Vorarlberg, proceedings concerning racist hate speech against a man with dark skin were discontinued; the reason given was that a statement without actual discrimination is not punishable under the law (see the AOB’s assessment below).

Proceedings against a bouncer concerning denial of access to a pub/club in Vorarlberg were discontinued, as discriminatory reasons could not be proven.

Ban on discrimination in accordance with the Equal Opportunities Act: proceedings concerning discriminatory job and residential advertisements:

The Equal Opportunities Act explicitly prohibits discriminatory job or residential advertisements (Sections 10, 24, 37, 58). Also the requirement stipulated in the Equal Opportunities Act to state the minimum salary under the law or the collective agreements

Discriminatory job and residential advertisements

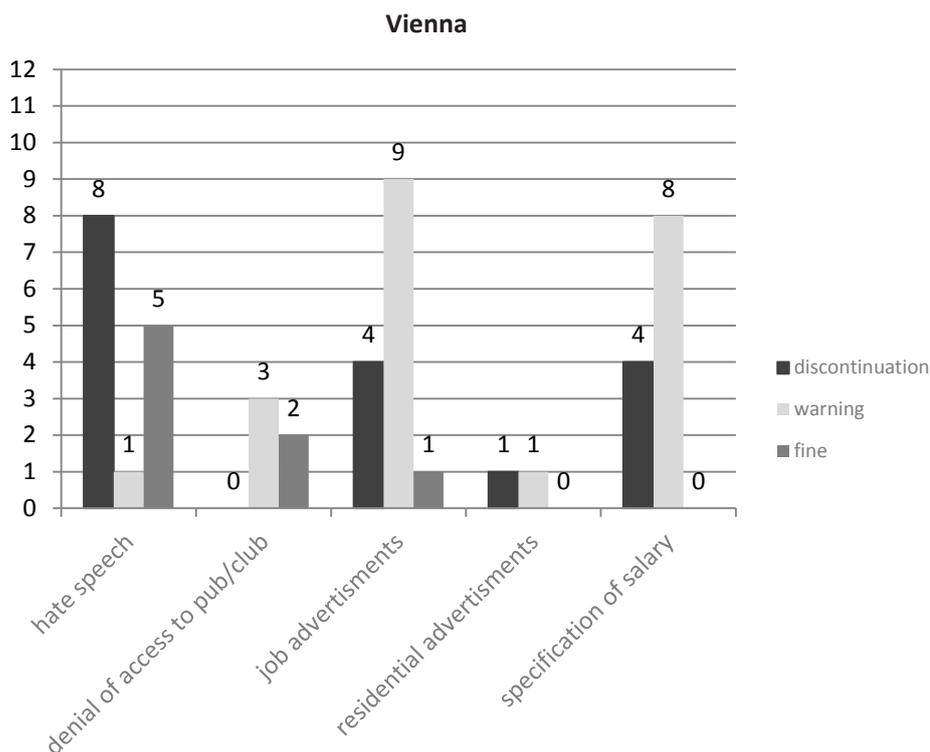
and to indicate any willingness to pay in excess of the minimum salary is intended to prevent discriminatory practices in determining remuneration for women. In contrast to the ban on discrimination under the Introductory Act to the Administrative Procedures Acts 1991, infringements of these bans on discrimination under the Equal Opportunities Act can only be prosecuted if a complaint is filed by a person affected by these practices or by the Ombud for Equal Treatment. Violations are punishable by a fine of up to EUR 360 or a warning for a first-time violation. Recruiters or employment agencies are subject to a fine already for a first-time violation of the statutory requirements for non-discriminatory job advertisements.

During the period of the investigation, a total of 28 proceedings were carried out in Vienna: a fine of EUR 150 was imposed on a recruiter/employment agency for a job advertisement that was directed solely to young persons. In nine cases, warnings were issued for job advertisements that were discriminatory ethnically (“only persons with a perfect command of German” or “persons born in Austria”), based on gender (advertisements worded so as to apply solely to men or “seeking female cleaner”) or based on age (“between the ages of 18 and 35”).

Four proceedings concerning discriminatory job advertisements were discontinued: in one case, the statute of limitations had expired; in another case, no information was provided when and where the relevant advertisement had been published; in the third case, the authorities determined that the requirement of at least five years of professional experience was objectively justified and did not represent age discrimination. In the fourth case, the justification for the discontinuation of the proceedings was that the entire text of job listings does not need to be worded in a gender-neutral way, but a clearly emphasised heading, e.g. “Electrician/senior technician (m/f)”, is sufficient to show that the advertisement is directed explicitly to both genders. This was also confirmed by the Vienna Administrative Court.

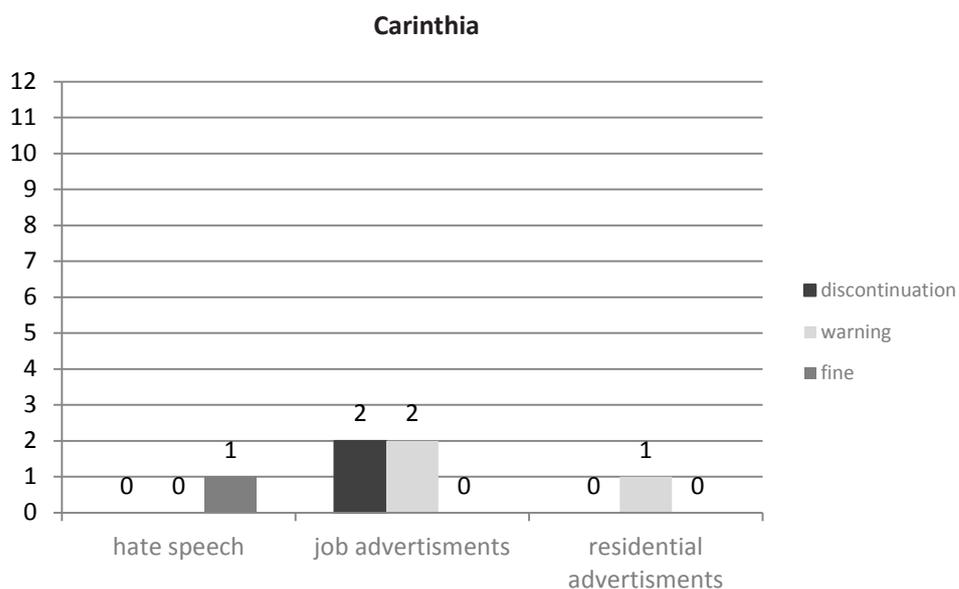
Eight warnings were issued, because the job advertisement did not indicate the minimum salary stipulated under the law or the collective agreements, which is mandatory by law. Four proceedings concerning absent or incorrect information about the minimum salary were discontinued, because the salary indicated was correct after all or because there is no stipulated minimum salary in the sector or because the perpetrator could not be identified.

One warning was issued in Vienna concerning discriminatory residential advertisements (e.g. “to let only to Austrians”); one proceeding was discontinued because the person who had placed the advertisement could not be identified.



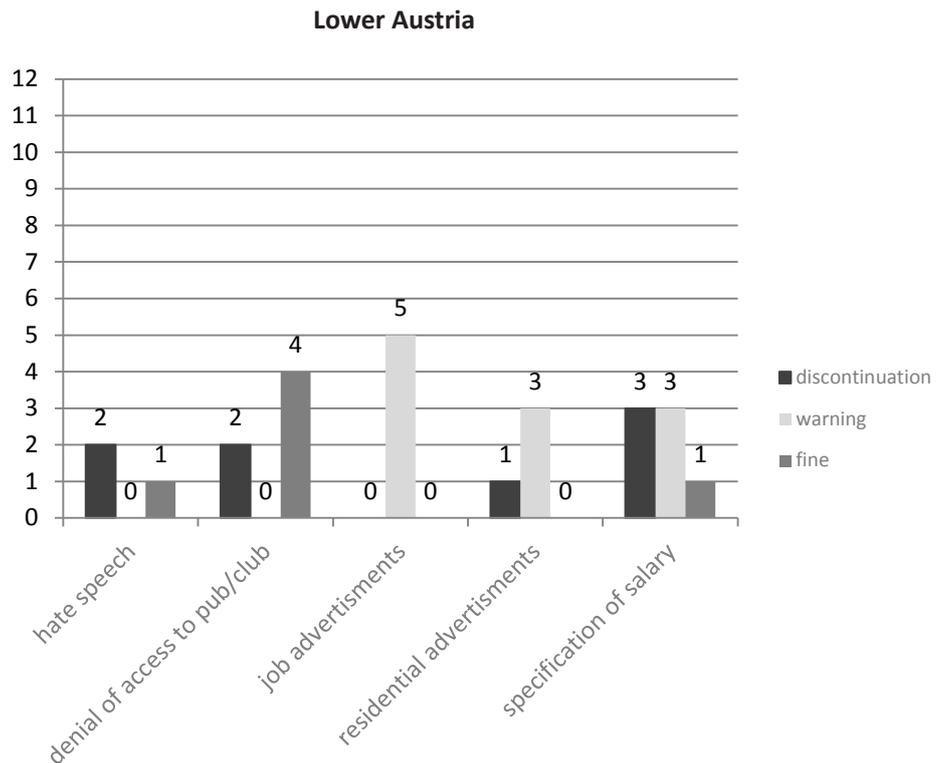
In Burgenland, two warnings concerning a job advertisement worded so as to refer solely to men and lacking any specification regarding remuneration were set aside by the Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*), because the authorities had not described the violation concretely enough and had referred to the incorrect provision under the law.

Two warnings were issued in Carinthia concerning discriminatory job advertisements and one warning was issued concerning a discriminatory residential advertisement.

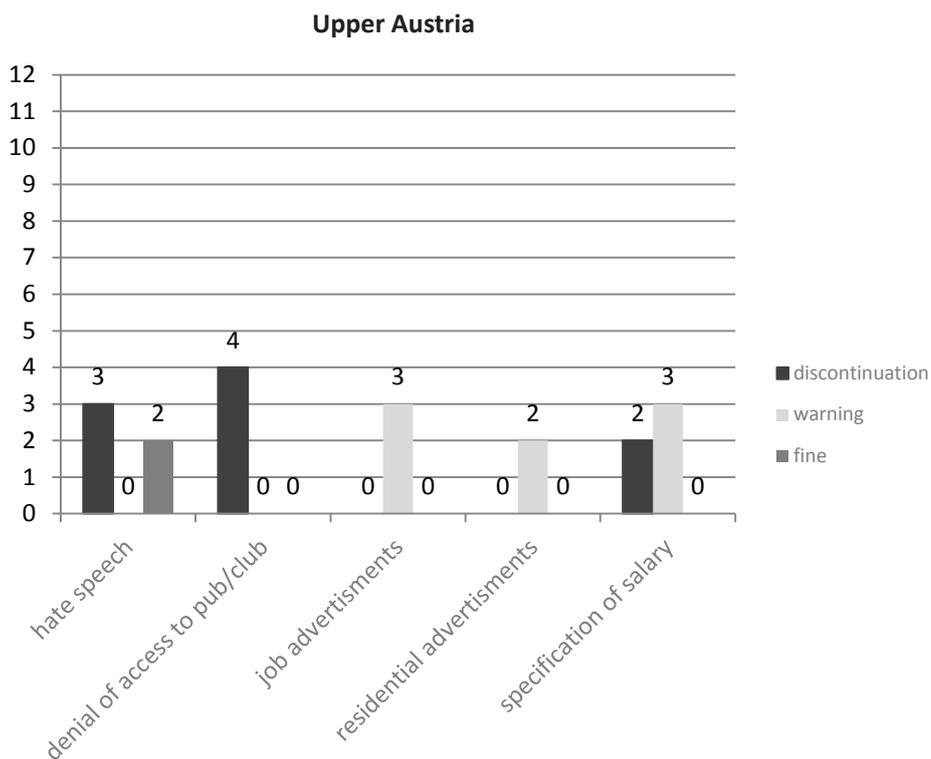


In Lower Austria, five warnings were issued concerning job advertisements that discriminated based on age, gender or ethnicity; in some of the advertisements, the specification of the minimum salary was absent. Three warnings were issued concerning discriminatory residential advertisements. One proceeding was discontinued, because the person who had placed the advertisement could not be identified. The District Authority noted in this decision that the Equal Opportunities Act does not stipulate a duty to cooperate on the part of the police and that the means available to the District Authority are more limited than those available to the Ombud for Equal Treatment (see the AOB’s assessment below).

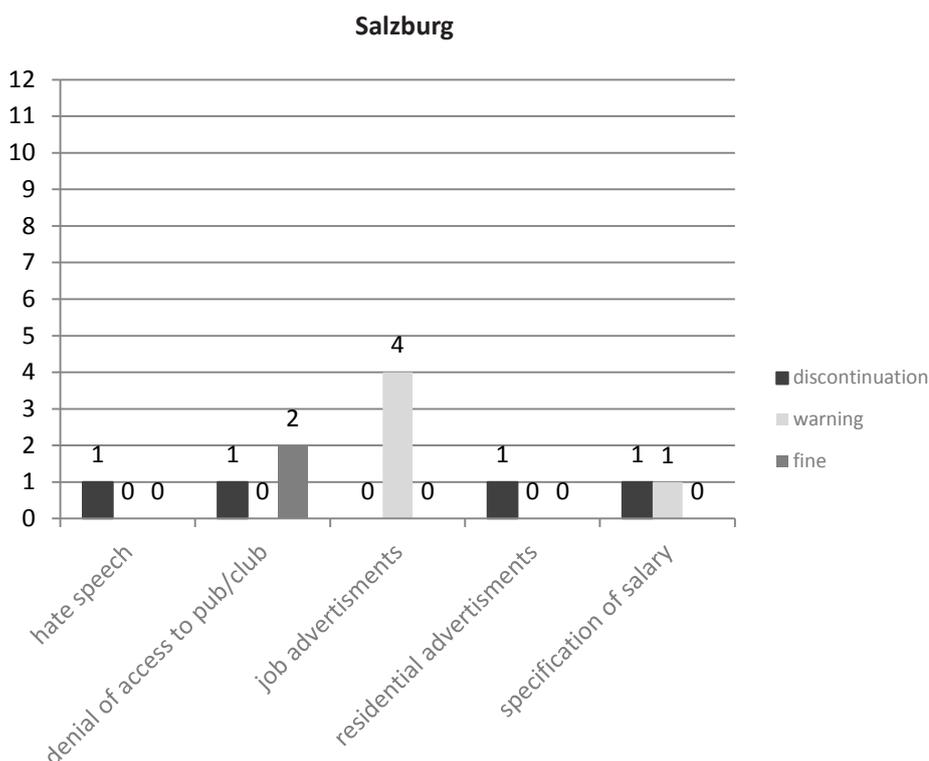
In one case in Lower Austria – in which the Ombud for Equal Treatment had called attention to relevant previous convictions – a fine of EUR 30 was imposed, because the minimum salary was not specified (see the AOB’s assessment below). A warning was issued in three additional cases. Three proceedings concerning the absence of an indication of a minimum salary were discontinued, because no formal complaint had been filed and/or the statutory requirement did not apply to municipal employees.



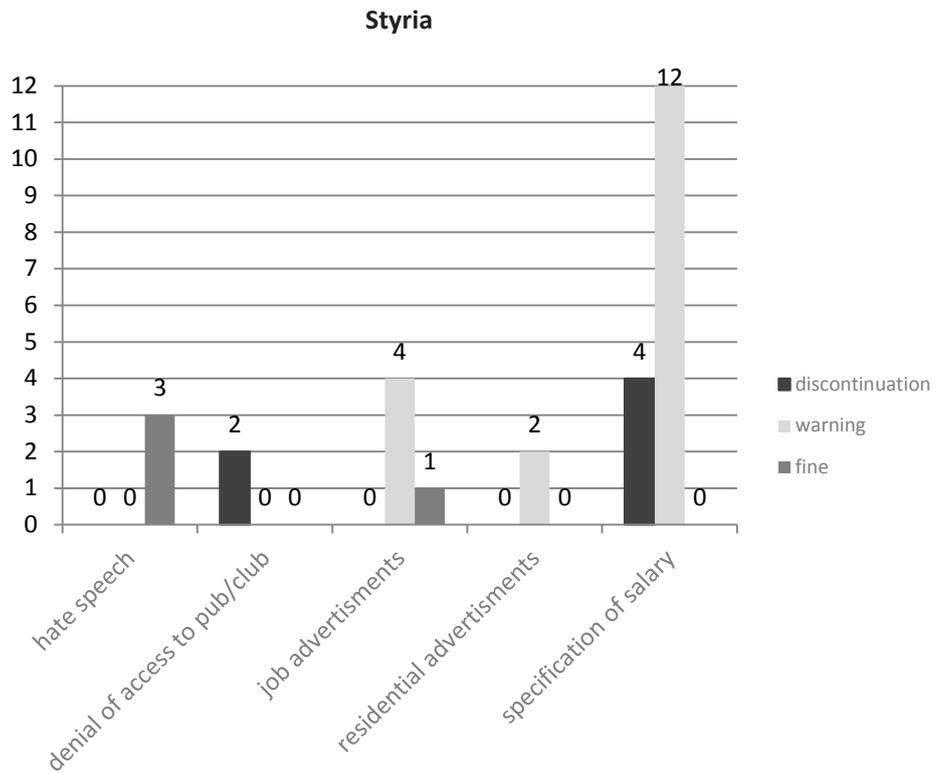
In Upper Austria, three warnings concerning discriminatory job advertisements based on gender or ethnicity were issued, as well as two warnings concerning ethnically discriminatory residential advertisements. Three warnings were issued in Upper Austria concerning the absent specification of the minimum salary. Two proceedings with the same grounds were discontinued, because the accused could not be held responsible for the violation or no complaint had been filed.



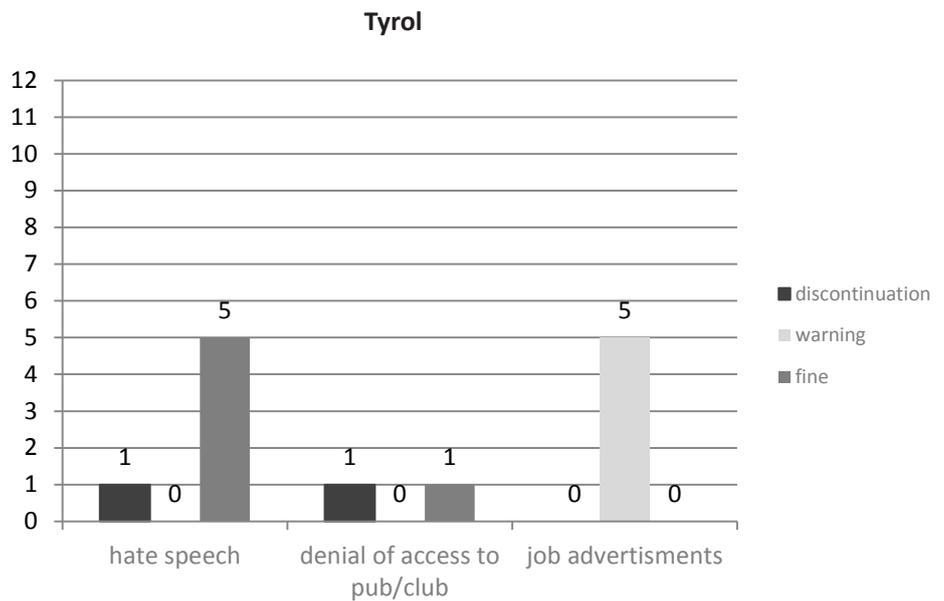
In Salzburg, four warnings were issued concerning discriminatory job advertisements and one warning was issued concerning the absent specification of the minimum salary. Proceedings concerning a discriminatory residential advertisement were discontinued, because no complaint had been filed. Proceedings concerning the absent specification of the minimum salary were discontinued, as there is no statutory requirement in this sector.



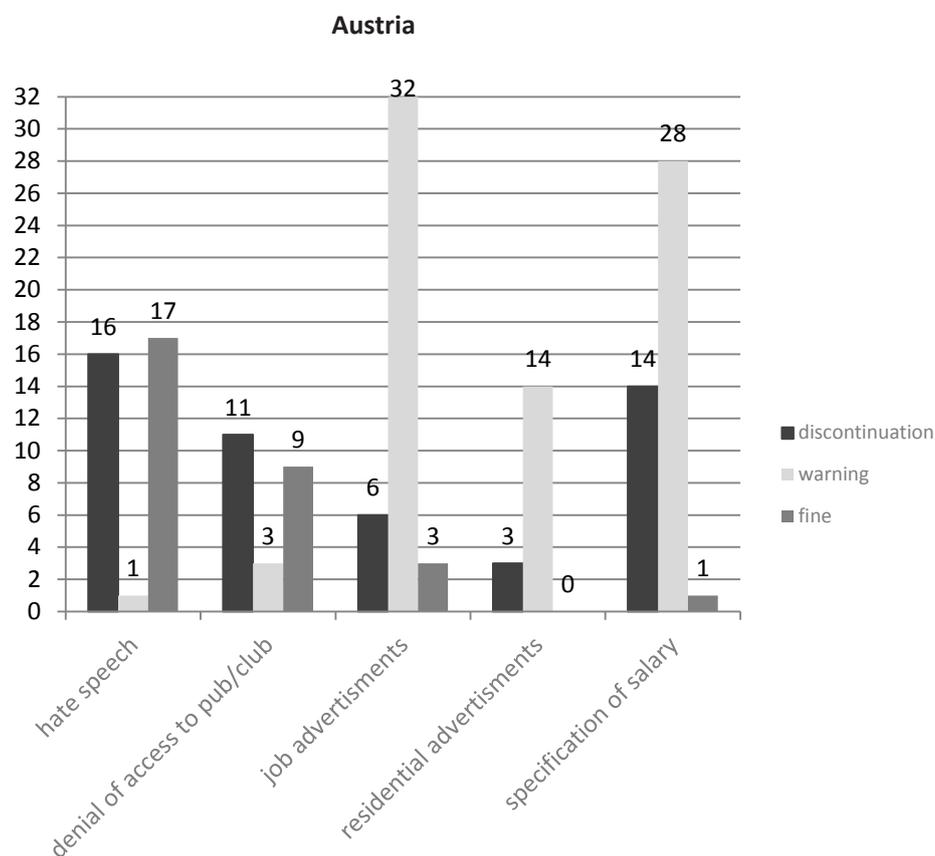
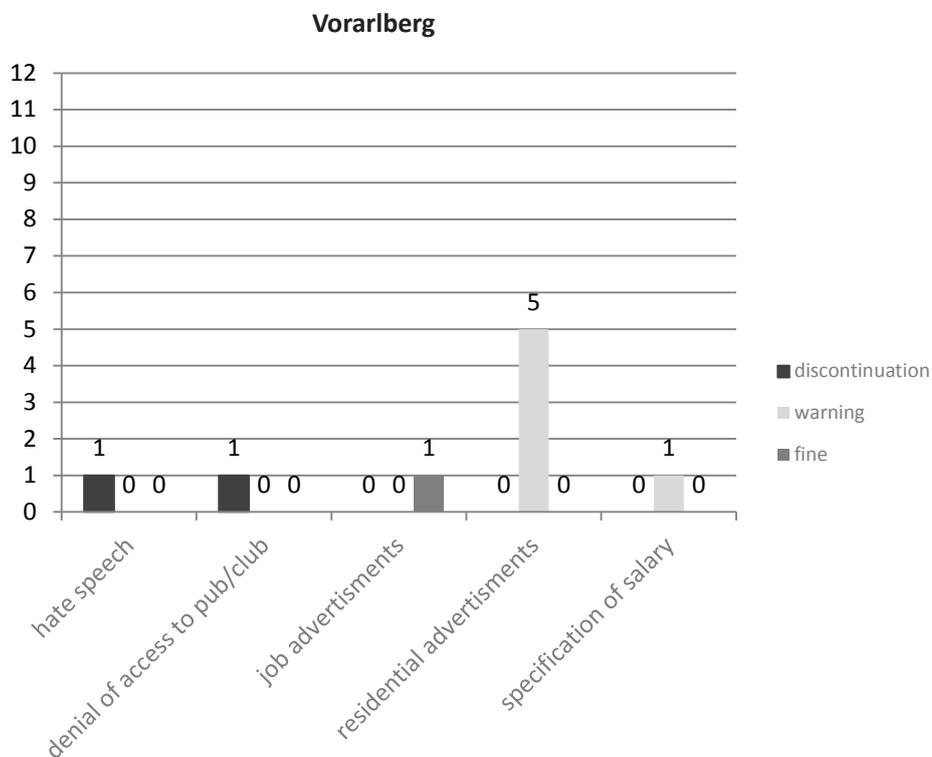
In Styria, four warnings were issued concerning discriminatory job advertisements. In one case, in which the Ombud for Equal Treatment had called attention to comparable previous violations, a fine of EUR 70 was imposed. Two warnings were issued in Styria concerning discriminatory residential advertisements. Twelve warnings were issued, because the job advertisements did not specify the minimum salary. In four cases, the proceedings were discontinued, because the accused was no longer the managing director or because there is no minimum salary for the job concerned.



In Tyrol, five warnings were issued concerning ethnically discriminatory job advertisements.



In Vorarlberg, a recruiter/employment agency was fined with EUR 70 for four job advertisements worded so as to refer solely to men and for the absent specification of the minimum salary. Furthermore, five warnings were issued concerning discriminatory residential advertisements.



Assessment of the AOB:

Some improvements
in protection against
discrimination

In an overview of the investigated proceedings, one can state that in comparison with the determinations of maladministration by the AOB in 2007 and 2011, improvements have been made.

In the past, discriminatory residential and job advertisements were often viewed by the authorities as petty offences and were not adequately pursued and punished. Some authorities did not view such advertisements as prohibited discrimination unless there was concrete discrimination against a certain person. This has now changed.

Proceedings based on
complaints by Ombud for
Equal Treatment

The reason is primarily the stipulation of explicit prohibitions of discriminatory job and residential advertisements in the Equal Opportunities Act in 2011, as well as the fact that the Ombud for Equal Treatment frequently checks the media for discriminatory advertisements and files complaints with the authorities. It is noteworthy that proceedings concerning discriminatory job or residential advertisements are almost exclusively based on complaints made by the Ombud for Equal Treatment. Therefore, the sphere of competence granted to the Ombud for Equal Treatment under the law represents an important contribution to protection against discrimination in this area.

As far as the involvement of the Ombud for Equal Treatment in these proceedings, which is enshrined in the law, is concerned, the AOB found that in a number of cases, the authorities actually overlooked the legal standing of the Ombud for Equal Treatment in these proceedings and neglected to inform the Ombud of the outcome of the proceedings. Improvements were announced in this area.

Under the law, violations against the statutory requirement for non-discriminatory job and residential advertisements, including the obligation to provide information on the minimum salary, are subject to a fine of up to EUR 360 or, in the case of a first-time violation, a warning. Recruiters or employment agencies are subject to a fine for a first-time violation of the statutory requirements for non-discriminatory job advertisements.

Accordingly, proceedings concerning discriminatory job and residential advertisements ended largely with a warning (74 out of 101). Of 101 proceedings, 23 were discontinued. Fines for discriminatory job and residential advertisements were very rarely imposed (4 out of 101), and only when recruiters or employment agencies were involved or if the Ombud for Equal Treatment called attention to previous violations. The amount of these fines ranged from EUR 30 to 150.

The fact that repeated violations of the ban on discrimination could only be determined by the authorities if they took place in the same administrative district or *Land*, prompted the *Laender* to request that the Federal Government creates a central register of administrative penalties. Such a register has not yet been created and this could be a reason why the provision as under trade and industrial law, according to which companies can have their trade/business licence revoked in the case of serious violations of the ban on discrimination, has actually never (!) been applied.

As far as proceedings concerning racist hate speech or denial of access to pubs/clubs or denial of services in accordance with Article III (1) (3) of the Introductory Act to the Administrative Procedures Acts 1991 are concerned, during the period of the investigation from September 2012 to November 2014, a total of 57 proceedings were carried out in all of Austria. Of these, 27 proceedings were discontinued and four warnings were issued. In 26 cases, a fine was imposed that ranged from EUR 70 to 525. In most of the cases, fines issued did not exceed EUR 200. The question arises whether the penalties and/or warnings issued when discrimination has been determined, are actually effective or have a deterrent effect as required under EU law.

Warnings and small fines have no deterrent effect

Furthermore, it stands out that proceedings for discriminatory denial of access to pubs/clubs are usually undertaken only against the bouncers as such, but not against the management. The proceedings are then frequently discontinued, because the identity of the concrete bouncer cannot subsequently be ascertained. In the opinion of the AOB, it is at least equally important to examine the responsibility of the management as the instigator under Section 7 of the Administrative Penal Act, in order to prevent a discriminatory door policy in future if possible.

Denial of access to pubs/clubs: frequently only proceedings against bouncers, not management

Of a total of 57 proceedings for racist hate speech or discriminatory denial of access to pubs/clubs, 27 were discontinued. In many cases, this was transparent for the AOB as well, for example, if after interviewing several witnesses, it appeared more likely that the reason for denial of access was the conduct of the person in question or other objective reasons, for instance that the number of persons allowed in the pub/club was limited.

There are, however, cases that merit criticism in the opinion of the AOB. For example, proceedings concerning racist hate speech against a man with dark skin were discontinued; the reason given was that a statement without actual discrimination is not punishable under the law. In the opinion of the AOB, this is not correct. The decision of the Independent Administrative Tribunal cited by the authorities, also only states that a global statement – i.e. a statement not directed at a certain person – does not represent a prohibited discrimination (Upper Austrian Independent Administrative Tribunal, 14 November 2011, VwSen-301097/3/Fi/JK/Ga). In this specific case however, the hate speech was due to the colour of the skin of a concrete person, which clearly fulfils the elements of the offence in accordance with Article III (1) (3) of the Introductory Act to the Administrative Procedures Acts 1991.

Discontinuation of the proceedings not always transparent for AOB

For example, the discontinuation of proceedings concerning the ejection of an asylum seeker by the owner of a pub/club is not transparent for the AOB. Two witnesses stated to the police that the customer had conducted himself properly and that they saw no objective reason for his ejection from the premises. The owner of the venue herself stated explicitly to the police that she had told the Moroccan asylum seeker to leave the premises because she “did not find him congenial and did not like him”. Only later did she justify herself through her legal counsel that the reason for turning him away had been the imminent closing hour.

In one case, the authorities justified the discontinuation of proceedings against a bouncer by stating that no previous relevant complaints had been filed against the pub/club

and besides, most bouncers had a migration background themselves. The authorities also stated that they were aware that young people with a migrant background were customers in the club. From the perspective of the AOB, it must be argued that the fact that bouncers themselves have a migrant background does not exclude the possibility that they could deny access to members of certain ethnic groups, possibly in accordance with instructions from the management. The AOB has already pointed this out in a determination of maladministration it made in 2011. Persons affected often report so-called “foreigner quotas”, that is, the practice that only a certain number of persons with a migration background is permitted into a venue.

Refusal of transportation
by taxi for visually impaired
persons accompanied by
guide dogs

Also the discontinuation of proceedings concerning the refusal of transportation by taxi for a visually impaired man accompanied by a guide dog is not transparent for the AOB. The discontinuation was based on the taxi service regulations of the *Land*, according to which the exclusion of animals, which are not in a cage, is permitted. This case clearly amounted to discrimination based on a disability. It is apparent from current reports in the media that cases, in which visually impaired persons accompanied by a guide dog are refused transportation by taxi, occur repeatedly. As far as the AOB can see, the taxi service regulations have already been amended in some *Laender* (Vienna, Salzburg and Burgenland) and an explicit obligation to convey persons accompanied by a guide dog is enshrined in the regulations. No corresponding amendments of the legal bases have as yet been made in the other *Laender*. This and the question of whether, despite the obligation to convey persons accompanied by a guide dog, discrimination in this area continues to occur and how it is prosecuted is the subject of an *ex-officio* investigative proceeding by the AOB so that in future, discrimination of persons who are visually impaired can be avoided in taxi transportation.

In the past, the AOB has called attention to the problem of underreporting of cases of discrimination. For example, a study by the European Union Agency for Fundamental Rights (FRA) in 2011 showed that 82% of all persons EU-wide, who had experienced discrimination, did not report the incident to the authorities (FRA, Racial Equality Directive, 2011, p. 19). The figures in Austria show this as well: according to the response to a parliamentary enquiry, in 2007 and 2008, a total of 31 complaints concerning ethnic discrimination in access to pubs/clubs were filed. In 2009, only ten complaints were filed and in 2010, a mere two complaints.

More complaints than
before; problem of
underreporting however
remains

As far as the period of the latest investigative proceedings by the AOB from September 2012 to November 2014 is concerned, a total of 90 complaints were lodged Austria-wide according to information provided by the *Laender* for violations of Section III (1) (3) of the Introductory Act to the Administrative Procedures Acts 1991; most of them concerned discriminatory denial of access to pubs/clubs or racist hate speech. While this means a noticeable increase of the figures, in future, it should be ensured that each case of possible discrimination is prosecuted and punished with all legal means in order to strengthen people’s confidence in the authorities.

2.3 Barrier-free accessibility

The deadline to ensure complete accessibility in public spaces ended at the beginning of 2016. The deadline for public federal buildings was extended. There is still much to be done.

The transitional provisions to ensure accessibility ended at the beginning of 2016. After the end of the ten-year transitional period, all places, goods, services and information, which are intended for the general public, must be fully accessible and barrier-free. For public federal buildings, the deadline was extended by another four years until the end of 2019.

Under the Federal Act on the Equal Treatment of Persons with Disabilities (*Bundes-Behindertengleichstellungsgesetz*), buildings, public transportation and communication systems are deemed accessible if “they are accessible and usable for persons with disabilities in the generally customary way, without particular difficulty and without assistance”.

The accessibility requirement refers primarily to structural barriers, e.g. medical practices or shops which can be reached only by means of steps, ramps that are too steep or elevators that are too narrow for a wheelchair. It includes but is not limited to barriers on public streets, e.g. high kerbs, pavements that are too narrow or lack of a guidance system for the blind. An important area also concerns frequently existing barriers in communication, e.g. texts with complicated wording that are difficult to understand, films without closed captioning and the absence of translations into sign language.

A significant limitation of the statutory provisions is that whenever the existence of a barrier has been determined, only compensation for damages must be paid. There is no obligation to eliminate the barrier itself. The AOB – like many other human rights bodies – advocates that an entitlement to the removal of barriers be enshrined in the law. The AOB also criticises the further extension of the deadline to ensure accessibility in public federal buildings.

Complaints about the lack of accessibility in public institutions are a perennial issue for the AOB. Persons with disabilities or the elderly are affected by the lack of accessibility in hospitals, day care centres for children, retirement and nursing homes, authorities and courts, for example.

Lack of accessibility: a perennial issue for the AOB

In one case of a complaint about the sparse offerings of accessible offices of preferred medical providers, the AOB emphasised that the right to have access to free or affordable health care must be available to persons with disabilities to the same extent and in the same quality as to those without disabilities. The AOB has demanded a rapid improvement of this situation and better information about accessible entries to doctors’ offices as well as equipping doctors’ offices with facilities for persons with disabilities.

There are many complaints about poor accessibility at railway stations and the lack of facilities for persons with disabilities on trains.

The AOB is also frequently faced with communications barriers and has been able to achieve successes in some areas: for example, upon recommendation by the AOB, the provision of a sign language interpreter free of charge in interactions with social security institutions has been enshrined in the law. The AOB has been demanding an improvement of offerings for hearing- and visually impaired persons by public television (ORF) for a long time. It has also been advocating so-called telephone relay centres that enable hearing- and language-impaired persons to speak on the telephone with hearing and speaking persons.

Persons with disabilities also have to deal with barriers in their professional lives: for example, the AOB has criticised the discrimination against a visually impaired applicant for an administrative internship in the civil service, because the aptitude test was not barrier-free. It is true that the statutory provisions stipulate that an aptitude test is not required if a permanent position has been explicitly put out to tender for the severely disabled. However, the AOB was of the opinion that effective protection against discrimination cannot be insured by way of exemptions, and that only the general accessibility of testing procedures ensures that factors that are not connected to a candidate's personal aptitude are blocked out during the application process.

In another case as well, the AOB emphasised that effective protection against discrimination cannot be achieved by way of exemptions: the Act on Contractual Employees (*Vertragsbedienstetengesetz*) stipulates a person's full capacity to act as a prerequisite for acceptance into an employment relationship. In the concrete complaint, the AOB was able to achieve that a mentally disabled woman could be employed as a kitchen assistant in the civil service under a special agreement. The AOB is urging that the Act on Contractual Employees be amended in order to avoid the necessity of such exemptions in future.

The accessibility requirements apply to all areas of life, including sports and recreational activities. Here, the AOB was able to achieve amendments in legislation at the *Laender* level, in order to enable persons with disabilities to participate in the sport of fishing. Recently, an *ex-officio* investigative proceeding was initiated to examine discrimination of visually impaired persons accompanied by guide dogs in taxi transportation.

By signing the UN CRPD, Austria has committed itself to ensure that persons with disabilities can participate equally in all areas of life. The end of the transition period to ensure full accessibility under the Federal Act on the Equal Treatment of Persons with Disabilities represents an important milestone in this matter. Despite another extension of the deadline for public buildings, hopefully, steps to establish maximum accessibility will be taken quickly.

3. Investigating Human Rights

3.1 Labour, social affairs and consumer protection

3.1.1 Subsidies for assistive computer technologies may not be provided in an arbitrary manner

Assistive computer technologies enable persons with disabilities to access digital technologies (computers, tablets, smartphones, the Internet, etc.) more easily. Affected persons, who have been placed in a facility that provides assistance to persons with disabilities, have thus far not been provided with any subsidies from the Support Fund for Persons with Disabilities. The AOB has obtained a change in the existing practice, but considers additional measures within the meaning of Article 9 of the UN Convention on the Rights of Persons with Disabilities (CRPD) to be necessary.

About 630,000 persons with disabilities live in Austria. Of these, more than 60,000 have speech impairments. They are not mute, but they are being rendered mute because obtaining financing for assistive communication equipment is the equivalent of running a bureaucratic obstacle course through various government offices, and assistance is often denied in the end.

A computer with a voice synthesiser can be controlled with a joystick, the eyes or even individual muscle groups. It enables persons with severe physical disabilities to communicate with the outside world. However, it is expensive to purchase. In one case examined by the AOB, the cost was about EUR 21,000.

EUR 21,000 for computer with voice synthesiser

Although other public and private bodies had already promised subsidies totalling EUR 13,500, no donation from the Support Fund for Persons with Disabilities (*Unterstützungsfonds für Menschen mit Behinderung*) was awarded. The former Federal Social Welfare Office (now *Sozialministeriumservice*) denied the subsidy because the applicant lives in a facility financed with public funds. In such a case, it allegedly must be assumed that care and support commensurate to the person's individual needs is already being given.

Sozialministeriumservice did not wish to provide a subsidy

This argument did not seem reasonable to the AOB. Rather the argument is discriminatory at its core. In inpatient facilities that provide assistance to persons with disabilities, the personnel situation is very tight – as the part of the report dealing with preventive monitoring demonstrates. Access to and participation in work, leisure activities and education by persons with disabilities cannot be made dependent on the place of residence or whether and which public funds are utilised for the person's residential accommodations. Rather, Articles 9 (1) and (2) of the UN Convention on the Rights of

Persons with Disabilities (CRPD) obliges the Federal Government and the *Laender* to ensure equal rights of access to information and communication, including information and communication technologies and systems, and to promote the design, development, production and distribution of such assistive technologies.

AOB obtains a reversal

The Federal Ministry of Labour, Social Affairs and Consumer Protection conceded that assistive technologies foster the independence and self-determination of persons with disabilities. Therefore, payments from the Support Fund for Persons with Disabilities should benefit a wider group of affected persons. Persons with disabilities in inpatient facilities can now receive this support if other public sector institutions also share in such financing.

Only a legal right to supportive aid and resources and obligatory training for all social service occupations in the areas of assisted communication and assistive technologies can eliminate social barriers.

3.1.2 Complaint in connection with rules governing frontier workers

When becoming unemployed, frontier workers may only claim benefits from their country of residence, even if there is a close relationship with the country of employment. The affected persons consider it a hardship that they cannot choose between the country of residence and the country of employment.

In connection with the aforementioned problem, the AOB has concerned itself primarily with two types of cases:

Austrians residing abroad

The first type concerned Austrians who have given up their residence in Austria and established a residence in a neighbouring Eastern European country, mainly in Hungary and primarily for reasons of cost. This group of people was suddenly confronted with the fact that the Public Employment Service Austria stopped paying benefits, such as unemployment benefits and emergency financial aid, or rejected their applications after their employment in Austria ended. The affected persons were referred to the employment offices in the relevant EU member states, such as Hungary, which now had jurisdiction.

Problems for EU citizens with dual residency

The second type concerned EU citizens from Central European countries, many of whom have been employed under employment contracts in Austria for many years and who informed the Public Employment Service Austria that they have residences both in Austria and in another EU member state. This group of people complained about the fact that in the course of examining their claims for unemployment benefits, the Public Employment Service Austria, sometimes asked them intimate questions about details of their private lives or their lifestyles. In other cases the Public Employment Service Austria denied benefits under statutory unemployment insurance on the grounds that Austria could not be recognised as place of residence.

The complaints described above must be viewed in light of the applicable frontier workers provisions of Article 65 of EC Regulation No. 883/2004. In this context, persons who are employed or self-employed in one EU member state and have a residence in another member state to which they return on a daily basis or at least once a week are defined as “frontier workers”. For this group of persons, Article 65 (2) in conjunction with (5a) of the cited EC Regulation provides that the country of residence is responsible for granting unemployment benefits in accordance with its own legislation. According to the clear wording of this provision, this group of persons has no right to choose whether the country of residence or the country of employment will be responsible for these benefits. Under the case law of the Administrative Court (e.g. Zl. 2013/08/0075) and the European Court of Justice (e.g. Matter of Jeltens, C 443/11), this also applies if the individual case is one of a so-called atypical frontier worker, who has a closer relationship to his country of employment than to his country of residence due to his specific personal circumstances. Before Regulation No. 883/2004 took effect as of 1 May 2010, the case law of the European Court of Justice still recognised a right of choice for atypical frontier workers, with the result that unemployment benefits could also be claimed in the country of employment.

EU law has changed since 2010

In light of the aforementioned legal situation, it is clear that the complaints of the affected frontier workers are primarily directed at the legal situation itself and not so much to the performance deficiencies on the part of the Public Employment Service Austria. In the opinion of the AOB, it should be particularly recognised that the Public Employment Service Austria is required to make relatively precise enquiries in individual cases regarding a person’s private living situation, especially their residence and family situation. Nevertheless, even in light of the controlling case law, a person’s residence is always assumed to be where the “habitual centre of interests” is located (Administrative Court, Zl. 2013/08/0074). The mere presentation of a residence registration certificate is generally insufficient, although it can be regarded as a certain indication. However, in the opinion of the AOB, the Public Employment Service Austria should make every effort to provide better information to the affected group of persons in advance and to inform them of the legal requirements in detail. In this way, irritation and resulting complaints can be avoided or at least moderated.

Better notification of the legal situation necessary

3.2 Education and women

3.2.1 Event on chronically ill children in the school system

The parents of chronically ill children continue to complain that their children receive treatment in school that is inappropriate and does not – or does not adequately – meet the needs of their children. This topic was discussed with experts in May 2015 in conjunction with a panel discussion held in Parliament.

Chronically ill children are confronted with special challenges in coping with life from an early age. Most of the time, these children are not burdened with limitations that manifest on a continuous basis. Thus, for example, children with diabetes can generally participate in everyday school life without limitations. They merely have to inject insulin at certain times and may have to eat between meals. It is similar for children with asthma or epilepsy, if they are not suffering an acute attack.

Often such children need little or no assistance, but primarily they need understanding for their situation. Nevertheless, the AOB has received a report of a diabetic child who was admonished for eating during class, which was “forbidden” but in this case, medically necessary. Where more sophisticated medical assistance is actually needed, the school system must create the appropriate conditions. The goal of the event in Parliament was to address the medical and legal aspects and to discuss proposed solutions for all persons concerned. At times teachers shy away from providing assistance due to legal concerns. A legal basis should be created that will provide security for teachers in this regard.

Another goal was to raise awareness and provide information to teachers through the experts present at the event. These included leaders of the school administration and the employee representatives. The aim was to effectively deal with incidents like the one described above in which a child was admonished for the medically necessary ingestion of food.

The lecturers were university professor Reinhold Kerbl, Vice-President of the Austrian Society for Paediatrics and Adolescent Medicine Lilly Damm, Public Health Expert at the Medical University of Vienna Gabriele Hintermayer, Managing Director of *Mobile Kinderkrankenpflege* (mobile nursing care for children), Head of Department Gerhard Aigner, Head of Section II in the Federal Ministry of Health, and Ombudsman Günther Kräuter. The moderator, who was also quite knowledgeable, was the ORF journalist Peter Resetarits. The AOB plans to publish the lectures and recommendations for improvements in the course of 2016.

3.3 Family and youth

3.3.1 Support of unaccompanied minor refugees

As soon as an application for asylum is filed, it should be ensured that unaccompanied minor refugees are cared for by the child and youth welfare organisations and promptly supported in acquiring language skills, in making full use of educational opportunities and in coping with stress and trauma. The standards provided by reception conditions under the Basic Provision Agreement are not suitable to safeguard essential basic children's rights.

War and terror, particularly in the Arab world, led to a massive increase in asylum applications by unaccompanied minor refugees in 2015. While 2,260 children and adolescents without parents fled to Austria in 2014, the number rose to 9,128 in 2015 (of these, 609 were children under the age of 14). Most minor refugees come from Afghanistan, Syria and Iraq.

No implementation by the *Laender* despite agreed-upon procedure

At the beginning of 2015, *ex-officio* investigative proceedings initiated by the AOB showed that there was a serious lack of care facilities for minor refugees. In May 2015 the *Laender* agreed on quotas for unaccompanied minor refugees on the territory of Austria. The efforts made until the end of 2015 were inadequate. Seven *Laender* did not meet the requirements (only Lower Austria and Salzburg met their quotas for unaccompanied minor refugees). The consequence was that minors had to wait for months until they were allotted adequate places in mass accommodations of the *Laender*. In January 2016, more than a third of the unaccompanied minor refugees were housed in federal support facilities that did not suit their needs. Among other things, living in initial reception centres for months – without care and support, schooling or daily structure – violates all professional, socio-pedagogical, children's rights and humanistic principles. The most important fact is that the support provided to unaccompanied minor refugees by the Federal Government, does not include any adequate educational offerings for those who are 15 years old (and older) and no longer required to attend school.

Only two *Laender* met quota for unaccompanied minor refugees

The investigative proceedings, which were concluded in February 2015, also found other cases of maladministration. It was and is particularly critical that no one takes responsibility for the care of children and adolescents until they receive basic provision under the reception conditions of a certain *Land*.

AOB found several cases of maladministration

A critical look should also be given to the fact that the *Laender*, which are the competent authorities for children and youth welfare and protection, make a distinction between unaccompanied minor refugees who are underage (i.e. until the age of 14) and those who are of age (i.e. from age 14 to 18) when selecting an accommodation. While those under the age of 14 are placed in child and youth welfare facilities, those over 14 years of age are placed into facilities which provide reception conditions under the Basic Provision

Discrimination in accommodating minor refugees based on age impermissible

Agreement and which do not meet the standards of child and youth welfare facilities. The difference in treatment based on age is neither justified by the Acts on Children's and Youth Services, the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*), the Federal Children's and Youth Service Act or the UN Convention on the Rights of the Child and therefore is criticised by the AOB. Since the percentage of unaccompanied minor refugees under the age of 14 is less than 7%, it can be said that 93% of unaccompanied minor refugees are not supported the same way as children and adolescents who have their residence in Austria and must be placed outside their homes. The AOB considers this a severe discrimination against refugee children.

Large differences in support There are also large differences between facilities that fulfil the reception conditions under the Basic Provision Agreement in different *Laender*. There are facilities with a staff ratio of 1:10, which come closest to the standards of Austrian child and youth welfare facilities. For this form of accommodation, the daily rate was retrospectively increased from EUR 77 to 95 in August 2015. At the beginning of 2016, a total of 2,557 adolescents lived in such shared accommodations. The daily rates for the two other forms of support, i.e. the ones with staff ratios of 1:15 and 1:20, were only increased by EUR 1.50. This relates to 619 unaccompanied minor refugees, who were living in such facilities with a lower level of support in January 2016.

Clearing centres should determine needs of unaccompanied minors Unaccompanied minor refugees are currently being assigned to facilities with different levels of support on a random basis, since it is not possible to determine their specific needs at initial reception centres. Therefore, children and youth advocates and the AOB demand the establishment of clearing centres, which ascertain the children's mental and physical state of health as well as the knowledge and skills of each refugee child and then ensure the age-appropriate and best possible support and placement in a child and youth welfare facility, a foster family or some other age-appropriate residential situation as well as access to education and employment opportunities, language courses and psychotherapeutic and medical care, if necessary.

Positive example of foster parent model The initiatives of some *Laender* to attract more foster families to provide support to unaccompanied minor refugees should be positively highlighted. Lower Austria has developed a model under which the foster family is provided with support by an association. The foster family receives an ongoing expense allowance of EUR 690. The costs of therapy and leisure activities can also be charged. In addition, double the budget is available for German courses to minors in foster families. A similar model was also developed in Vienna. The AOB welcomes this development and would like to see more such models throughout Austria.

3.4 Finances

3.4.1 Introduction

In the reporting period the AOB received 274 complaints relating to financial legislation. This means that this year fewer issues were brought to the AOB in this regard. This is partly attributable to the fact that enquiries regarding the taxation of German pensions have significantly decreased.

The topics brought to the AOB's attention are essentially similar to those in previous years: questions regarding employee tax assessments (primarily for extraordinary expenses), enforcement measures and unexpected tax liabilities or tax liabilities that are not understandable to the affected persons, customs duty assessment notices, particularly for the import of medicines ordered on the Internet, and with respect to the tax on real estate gains.

Topics

There was also more criticism of the conduct of tax administration employees. However, no examination could be made, since the criticisms mainly related to oral statements made by employees whose names were not known directly or via the phone.

Conduct of tax administration employees

It was gratifying to note that the Federal Ministry of Finance always answered the AOB's enquiries quickly and comprehensively, and that two of the AOB's recommendations were also implemented. These related to letters of apology for procedural delays and a clearer formulation of income tax assessments when a restructuring gain has to be taken into account in the assessment.

Recommendation of the AOB followed

3.4.2 Implementation of AOB recommendations

The AOB recommended to the Federal Ministry of Finance that the relevant Tax Office apologise to any person affected by a procedural delay and, if necessary, inform them about an estimate timeline for the finalisation of their case. This not only constitutes service-oriented administration but is also required by the European Code of Good Administrative Behaviour and Article 41 of the EU Charter of Fundamental Rights.

Apologies for procedural delays

It was gratifying that the Federal Ministry of Finance accepted this recommendation. If a tax assessment cannot be issued at the present time, taxpayers, who already have to wait too long for processing, will receive a special letter from the Tax Office stating the reasons for the delay. Otherwise, an appropriate apology will be attached to the rationale for the tax assessment.

The second recommendation related to the text of income tax assessments in cases where a restructuring gain (arising after insolvency proceedings) will increase the tax base. The restructuring gain that arises from the fact that business assets are increased (under enrichment laws) due to the complete or partial cancellation of debts is considered to be income to the insolvent (former) individual entrepreneurs (i.e. "income from commercial

Referring to restructuring gains in the income tax assessment

operations”). Consequently, it is shown as income on the income tax assessment notice, even though in reality it is not at one’s disposal.

The granting of social benefits is often linked to the amount of income determined by the tax administration. Former individual entrepreneurs are prevented from applying for social benefits if their income tax assessments show an income that is too high.

Now, at the recommendation of the AOB, the rationale for the income tax assessment will explicitly state that a gain from the cancellation of debts was recognised in determining income and the amount of that gain. Thus, it will be clear to the offices granting aid and assistance what income was really and actually received.

3.4.3 Craftman’s bonus

As already mentioned in the Annual Report 2014, the AOB received numerous complaints in connection with the implementation and processing of the so called “craftsman’s bonus” (*Handwerkerbonus*). This topic was also discussed in the ORF television programme *BürgerAnwalt* (“Advocate for the People”) in the year under review.

Statutory framework The Federal Law to Subsidise the Services of Craftsmen provided EUR 10 million to subsidise services rendered in 2014 and EUR 20 million to subsidise services rendered in 2015. The goal of the subsidy was to combat illegal work, strengthen honest economic activity and provide an impetus to economic growth.

Several prerequisites had to be met to receive the subsidy for craftsman’s services to renovate living space. Among others proof had to be given that the payment of the subsidised invoice was made to the account of the service provider, i.e. the craftsman who had been hired.

The subsidy campaign, which began on 1 July 2014, was utilised by so many citizens that the subsidy funds for 2014 had already been exhausted by 19 November 2014. Numerous persons who had already paid for craftsman’s services but had not yet received an invoice for various reasons or who had not yet applied for the subsidy were angry that they would now come away empty-handed. Therefore, the Federal Ministry of Finance changed the subsidy guidelines and used the subsidy funds for 2015 in advance.

Two criticisms Two matters were frequently criticised to the AOB: the first was the obligation to prove payment for the craftsman’s services with a bank transfer certificate, and the second was the solution found by the Federal Ministry of Finance after the subsidy amount for 2014 was exhausted prematurely.

Cash payment not permitted Many persons saw the exclusion of the option of payment in cash as harassment. Minor craftsman’s services are usually paid for in cash immediately after completion of the work and by issuing a receipt. The fact that this proof of payment was not recognised was considered to be an implied charge of dishonesty, almost a general suspicion of aiding and abetting tax evasion.

The Federal Ministry of Finance argued that the interposition of a banking institution, i.e. an “uninvolved third party”, makes the path that the money has taken “obvious at first glance”. This argument is only partially satisfying. The AOB does not dispute that there are businesses that issue a receipt and then fail to include the invoice in their accounting. Since the participation of the client in the subsidy campaign makes the company that provided the services and billed for them already traceable, the tax administration could carry out an inspection of the company that was hired.

The decision of the Federal Ministry of Finance to use the subsidy funds for 2015 after the funds for 2014 were exhausted at a surprisingly early date was even more difficult to understand. The early utilisation per se was not criticised but rather the apparently arbitrary change in the subsidy guidelines.

The first and original version of the guidelines provided that the subsidy funds for 2015 would only be used for services commenced by 1 January 2015 at the earliest.

After the subsidy funds for 2014 had been exhausted, the public information site on the Internet stated that, to claim subsidy funds for 2015, the services must be provided between 19 November 2014 and 31 December 2015. The subsidy guidelines were appropriately adjusted.

Multiple changes to the guidelines

Another version of the subsidy guidelines, published on 10 December 2014, stated that the invoices submitted must not be dated earlier than 19 November 2014 to be entitled to participate in the subsidy campaign for 2015. Apparently, according to this version, the services itself could have been provided earlier than the aforementioned date.

As a consequence, people who had construction work started before 19 November 2014 and who therefore did not file a subsidy application in accordance with the second version of the guidelines because they did not know about the further changes to these provisions, did not file a subsidy application even though they could have done so.

The Law clearly states that “subsidies for 2014 [may be granted] in the maximum amount of EUR 10 million, and subsidies for 2015 [may be granted] in the maximum amount of EUR 20 million”. Therefore, in the opinion of the AOB, moving up the start of the 2015 subsidy period violated the Law.

3.5 Interior

3.5.1 Immigration and asylum law

Systemic deficiencies in the support provided to asylum seekers

The conditions in the Federal Support Facility East in Traiskirchen made headlines in summer 2015. Between March and September 2015, the NPM commission visited the facility and was confronted by inhumane living conditions. The visit to the Federal Support Facility in Leoben also revealed serious failings.

As described in the Annual Report 2014 (p. 58 et seq.), since 2005, the Basic Provision Agreement between the Federal Government and the *Laender* has provided that, after admission to asylum proceedings, the *Laender* are generally responsible for caring for asylum seekers. The Federal Government is obliged to ensure that there is sufficient capacity for emergency cases. The so-called refugee centre in Traiskirchen serves two purposes: on the one hand, it is an initial reception centre where admission to asylum proceedings is examined. On the other hand it also houses the Federal Support Facility East for asylum seekers, who have been admitted to the asylum procedure.

If the placement and support situation in the initial reception centre of Traiskirchen facility was strained, but not distressing in June 2014 (see Annual Report 2014, p. 59 et seq.), the situation changed dramatically in summer 2015. After becoming aware of the presence of many unaccompanied minor refugees in the Traiskirchen initial reception centre, in March one of the NPM commissions carried out the first of a total of six visits to the facility in 2015. The following interim report is intended to present the most important criticisms from the AOB's investigative proceedings that followed and that are still ongoing.

Overcrowding had led to homelessness

The initial reception centre/Federal Support Facility East is designed for a maximum of 1,840 persons. At the time of the visit on 15 July 2015, a total of 3,828 asylum seekers were housed there, of whom only 1,940 had a bed available. About half of those persons who had to sleep outdoors, in tents or on the floor of one of the houses were unaccompanied minor refugees.

Housed in busses

On its follow-up visit on 12 August 2015, the commission was confronted by the consequences of the so-called freeze on the acceptance of new residents. According to a decision by the health authorities, no additional persons were allowed to be admitted to the Traiskirchen facility. In total 2,726 persons, of whom 500 were officially listed as "homeless", had been placed at this facility. 1,178 persons had been admitted to the site of the Security Academy SIAK, which is located right next to the facility. This solution

only provided 186 women with children with a place to sleep in the SIAK building. The remaining persons had been placed in tents for multiple persons and in busses.

The enormous overcrowding on the entire grounds of the Federal Support Facility East, including the grounds of the Security Academy, led to great deficiencies with respect to housing and support. Even particularly vulnerable persons (e.g. pregnant women, women with small children, unaccompanied minor refugees, elderly and sick persons) had to sleep outdoors. The medical and psychosocial care was inadequate. The sanitary facilities were degrading and a health hazard. Showers that were unshielded from view and the lack of a possible gender separation constituted a particular safety problem for women and prevented regular bathing. The supply of food on the grounds of the Security Academy was also inadequate. In addition, the commission observed limitations regarding general information, education and private and family life, which jeopardised the welfare of the unaccompanied minor refugees placed there in particular. The lack of interpreters for psychological sessions and medical examinations was evident.

Degrading living conditions

In its response, the Federal Ministry of the Interior emphasised that, despite urgent requests, some *Laender* had not provided adequate accommodations which fulfil reception conditions under the Basic Provision Agreement. This fact and the massive increase in applications for asylum have led to a backlog in the federal support facilities. On 1 October 2015, the so-called federal right to take action (*Durchgriffsrecht*) took effect. Under this right, the Federal Ministry of the Interior can create housing for refugees on federal land or in buildings rented by the Federal Government, if *Laender* and municipalities fail to offer adequate housing. The right to take action is an adequate means of providing placement for all asylum seekers in Austria. The fact that implementation has caused more problems than it has solved was demonstrated by the visits of one of the NPM commissions to the Federal Support Facility in Leoben at the beginning of December 2015.

Right of direct access should ensure more housing

Starting in November 2015, the Federal Ministry of the Interior began to house about 300 unaccompanied minor refugees and about 100 asylum seekers in family groups in the building of a former construction market in the city of Leoben. The AOB criticised the joint placement of large numbers of unaccompanied male minor refugees with different ethnic backgrounds. The lack of professional support for adolescents who were often traumatised led to regular nightly police operations due to fights. Even though the families in this housing felt threatened and harassed by the often inebriated adolescents, the management of the facility did not intervene. The commission also pointed out the lack of medical care on site and the cold temperature and high noise level in the building.

As of the editorial close, the Federal Ministry of the Interior had made no response. According to media reports, the situation in Leoben has become less tense because most of the unaccompanied minor refugees have been relocated.

The AOB adheres to its recommendation to create several small initial reception centres (see Annual Report 2014, p. 59 et seq.). In this way, groups of persons needing special protection can be supported and ethnic conflicts avoided. In particular, unaccompanied minor refugees need crisis intervention and suitable housing after their arrival.

Positive example A good example for a well-organised support for asylum seekers in general and for unaccompanied minor refugees in particular could be witnessed at the Federal Support Facility in Erdberg (Vienna) in the review period from August 2015 to the end of November 2015. The spacious accommodations and the pedagogical support for unaccompanied minor refugees were exemplary. In addition, the adolescents could move about freely and received legal advice and medical care in their native languages, when possible.

Further investigative proceedings initiated The AOB has immediately reacted to the problems that have recently arisen: a bedbug infestation at the Federal Support Facility Steyregg and a media report that asylum seekers in the Federal Support Facility East were being housed in a tent resulted in the immediate initiation of two investigative proceedings. In addition, the AOB requested that the competent regional NPM commissions conduct visits. The allocation centre in Ossiach, also a place where the Federal Government made use of its right to take action, is currently undergoing a monitoring by the NPM regarding its suitability from a health perspective.

Lengthy proceedings before the Federal Office for Immigration and Asylum

In 2014, complaints regarding the length of asylum proceedings before the Federal Office for Immigration and Asylum began to increase sharply. While only 58 persons complained in 2013, the number of complaints quadrupled in 2014 to 228. In 2015, a total of 745 asylum seekers contacted the AOB, and in 556 cases the AOB found that the duty to issue a decision within the legal deadlines had been violated, constituting delay on the part of the Federal Office for Immigration and Asylum.

In 2014, the AOB presumed that the increase in complaints was primarily attributable to the reorganisation of the authority. On 1 January 2014, the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) replaced the Federal Asylum Office (*Bundesasylamt*). The Federal Office for Immigration and Asylum has more responsibilities than its predecessor. However, the complaints tripled again in 2015. Any initial difficulties or organisational problems should have been mastered within two years. Therefore, the reorganisation could not be the main reason anymore.

Enormous increase in complaints The number of applications for asylum in 2015 increased by more than threefold to about 90,000; the complaints to the AOB regarding the length of the proceedings also tripled: 139 persons complained about proceedings pending since 2015; 418 complaints related to proceedings pending since 2014; 80 persons complained about proceedings pending since 2013; 27 persons complained about proceedings pending since 2012 and five persons about proceedings pending since 2011. In most of the proceedings examined – apart from the initial examination – the Federal Office for Immigration and Asylum had taken little or no action for months or even since the start of the proceedings.

In only 55 of the complaints reviewed in 2015 did the AOB receive notification from the Federal Ministry of the Interior that the Federal Office for Immigration and Asylum had closed the proceedings in the meantime. A positive note was that very few complaints, i.e. 15, related to family reunification proceedings. The AOB found delays in nine of them.

The complaints regarding proceedings pending since 2011 were filed by three Afghan nationals, one man from Pakistan and one man from Bangladesh. In three cases, the AOB found that the duty to issue a decision within the legal deadlines had been violated. One proceeding had already been closed and one proceeding was pending before the Federal Administrative Court (*Bundesverwaltungsgericht*).

Asylum seekers from Afghanistan complained the most frequently (197 complaints). The second largest group of complainants came from Syria (112). Large numbers of complainants came from Somalia (66), Iraq (55) and Iran (44). Additional complainants came from Sudan, China, Russia, Nigeria, Bangladesh and other countries.

As it had last year, the Federal Ministry of the Interior cited the large number of applications and the shortage of personnel as the main reasons for the delayed proceedings. The tripling of applications had not led to a tripling of personnel. Moreover, the Federal Office for Immigration and Asylum is not only responsible for asylum proceedings, but also for proceedings under the aliens' laws. In the first eleven months of 2015, the Federal Office for Immigration and Asylum issued 37,651 decisions in the area of asylum and a total of 77,488 decisions. However, 62,495 asylum proceedings were pending: 49% for less than three months and 27% for between three and six months. According to the Federal Ministry of the Interior, the average length of asylum proceedings in January 2015 was about 3.3 months. In December 2015, it was about 6.3 months.

As of the reference date of 1 December 2015, the Federal Office for Immigration and Asylum employed 885 persons (including administrative trainees, apprentices and persons performing alternative service). An increase in personnel is inevitable to cope with the number of asylum proceedings, which is expected to increase. According to the Federal Ministry of the Interior, 500 employees will be hired this year with a focus on the area of asylum. Since high-quality services are to be provided, some months will be necessary for training and preparation. An organisational change is also planned through the construction of seven additional field offices in the *Laender*.

Additional personnel and more field offices

Above all, consideration will have to be given to where additional personal should be utilised. The Federal Office for Immigration and Asylum has nine regional directorates in the *Laender*. The most complaints received by the AOB concerned the Regional Directorates of Upper Austria (344) and Tyrol (177). The numbers of complaints against the Regional Directorates of the other *Laender* were as follows: Vienna – 86, Lower Austria – 52, Styria – 45, Carinthia – 8, Salzburg – 5, Burgenland – 4 and Vorarlberg – 3. The Federal Ministry of the Interior confirmed that the Regional Directorate of Upper Austria was particularly burdened by the migration routes and the stream of migration. Due to the current situation, it is scarcely possible to reach an internal balance.

Complaints regarding Regional Directorate of Upper Austria

By contrast to the complaints regarding the length of the appeal proceedings before the Federal Administrative Court, the developments within the Federal Office for Immigration and Asylum are worrying. Therefore, the proposal to amend the Asylum Act (*Asylgesetz*) of 2005, made by the Federal Ministry of the Interior in autumn 2015, was even more incomprehensible. The proposed amendment would – among others – only grant asylum for three years. After that, a systematic examination of whether asylum rights should be continued would be carried out.

Asylum Act amendment
counterproductive

Under current law, it is the task of the Federal Office for Immigration and Asylum to determine on its own initiative whether there are grounds for revoking asylum and to commence *ex-officio* proceedings. During the evaluation procedure, the AOB stated that the planned examination of each temporary residence permit three years after recognition of asylum status would constitute an enormous administrative burden, which would have no “control effect” in the short to medium term. An exceptionally large number of personnel would have to be made available to the Federal Office for Immigration and Asylum to implement this amendment.

Humanitarian residence
title

However, the Federal Office for Immigration and Asylum delayed proceedings not only with respect to asylum matters in the narrower sense but also in the area of proceedings for obtaining a residence title by the aliens. The responsibilities of the Federal Office for Immigration and Asylum include the granting of residence titles on humanitarian grounds. Such a residence title can be based on having a family and a private life in Austria (Article 8 of the European Convention on Human Rights), on the particular worthiness of the alien for protection or on other factors worthy of consideration.

In two cases examined, the AOB found substantial delays in proceedings, since the Federal Office for Immigration and Asylum took no action in proceedings nor investigative actions during a period of ten and eleven months, respectively. In another case, the AOB criticised a delay of nine months because the Federal Office for Immigration and Asylum had mistakenly forwarded the file to an authority with no jurisdiction. In its comments, the Federal Ministry of the Interior justified the lack of activity on the part of the Federal Office for Immigration and Asylum by the very high volume of work and the massive increase in the number of applications for asylum.

3.5.2 Police

Handling of allegations of abuse

The handling of allegations of abuse against the police by Austrian authorities and the courts has been criticised by national and international institutions and organisations for years. The AOB asked what measures the Federal Ministry of the Interior has taken to implement existing ideas for reform.

The AOB was interested to learn which steps had been taken since the report entitled “Independent external complaints office for allegations of abuse against police officers – a visionary concept or an unnecessary institution?” was issued by the former Human Rights Advisory Board of the Federal Ministry of the Interior. The Board’s first working group, which ended its activities in 2006, developed a “Guide on how commissions can handle allegations of abuse that come to their attention” and investigated the approach taken by state institutions with regard to allegations of abuse against police officers in its report “The police as perpetrators”.

From 2008 to 2011, the second working group examined how effective investigation of allegations of abuse can be ensured, taking into account the tension between “speedy” and “independent” investigations. It was also emphasised that the situation of police officers who are suspected of “police brutality” can be improved by a speedy and objective investigation. An independent external complaints office should be created, which can provide information to the affected persons and conduct independent investigations. The results should be sent to the public prosecutors’ office or the disciplinary authorities.

Several working groups
in Federal Ministry of the
Interior

The terms “abuse” and “degrading treatment” should not solely be understood to mean bodily injury within the meaning of the Austrian Criminal Code (*Strafgesetzbuch*). To increase sensitivity to allegations of abuse, the term “abuse” should be treated as relatively independent of the criminal context and should instead be oriented towards the provisions of international conventions, particularly those of the European Convention on Human Rights. The problems of interfacing with the public prosecutors’ office and the disciplinary authorities were also examined. Another important demand was a speedy and independent medical examination by a physician chosen by the victim.

Medical examination

In 2011, another working group discussed the results of the report. The treatment of allegations of abuse was divided into three levels: the level of accusation (point of contact or reporting office), the investigation level and the decision-making level. For each level, proposals were developed for future models for an independent complaints and investigation office.

The Federal Ministry of the Interior told the AOB that it professes to combat abusive acts and argued that it had conducted numerous training sessions on the topic of human rights. It also made reference to the Federal Bureau of Anti-Corruption as a special criminal investigation unit and explained its tasks. However, at meetings of the former Human Rights Advisory Board of the Federal Ministry of the Interior the prevailing opinion

Ministry refers matter to
jurisdiction of Federal
Bureau of Anti-Corruption

was that the creation of the Federal Bureau of Anti-Corruption was disadvantageous to the investigation of allegations of abuse as compared to the former Federal Bureau of Internal Affairs because the Federal Bureau of Anti-Corruption was primarily responsible for investigating corruption and only secondarily for investigating allegations of abuse.

The Federal Ministry of the Interior forwards all reported allegations of abuse to the AOB, which forwards them to the relevant NPM commission. Thus, “problematic” police stations can be identified and included when the commissions plan their visits. The AOB is very much aware that the Federal Ministry of the Interior and the police stations subordinate to it, investigate allegations of abuse and send reports to the public prosecutor’s office. The AOB also welcomes the training offered to officers regarding human rights.

Collaboration between
Ministry of the Interior and
Ministry of Justice

The AOB also asked the Federal Ministry of the Interior for information on whether it cooperated with other Federal Ministries, particularly the Federal Ministry of Justice, since the role of the public prosecutors’ office and the courts in prosecuting allegations of abuse against police officers has been repeatedly criticised. The creation of a department within the public prosecutors’ office to exclusively examine allegations of abuse against police officers is not within the competence of the Federal Ministry of the Interior. The Federal Ministry of the Interior emphasised that both Ministries had established a joint approach, including in the form of decrees. There is an ongoing exchange of information.

The information provided by the Federal Ministry of the Interior contained no reform ideas with respect to an independent external police complaints and investigation office – as advocated by international and national organisations. The Ministry justified this by stating that an independent investigation authority outside of the police departments is not compatible with the existing structure of the security authorities under the Federal Constitution. However, the constitutional situation was the same at the time the former Human Rights Advisory Board of the Federal Ministry of the Interior conducted its activities.

The AOB is aware that the establishment of an external police investigation authority would require appropriate statutory changes, which would likely include changes on the constitutional level. The fact that this is not an insurmountable obstacle is demonstrated by the establishment of the Independent Federal Asylum Senate (*Unabhängiger Bundesasylsenat*) – to replace the Federal Ministry of the Interior, which previously had jurisdiction in this area – under constitutional law in 1998. In this instance, legislators responded to the demand for the creation of independent asylum law appeals authority that had existed for years. Enhancing the office of the legal protection specialist could also be contemplated.

Limited abilities of AOB

Even though the AOB itself was named by the mixed working group of the former Human Rights Advisory Board of the Federal Ministry of the Interior as a possible external complaints board, the AOB is set up as an *ex-post* control institution. It is true that the AOB examines individual complaints of abuse by police officers and also undertakes *ex-officio* investigations of allegations of abuse in isolated cases. However, the AOB must always act within its mandate. In particular, the AOB lacks sovereign power or

enforcement authority to conduct an investigation. Moreover, the resources of the AOB would be inadequate to investigate several hundred allegations of abuse annually – even if it had investigative powers.

The existing structures for the investigation of allegations of abuse should be reformed. On the occasion of its visit to Austria in autumn 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) voiced serious doubts as to the total independence and impartiality of investigations conducted by employees of the Federal Bureau of Anti-Corruption or employees of regional police departments (e.g. regional offices of criminal investigations) against other police officers.

The Federal Ministry of the Interior pointed out that a new decree with respect to allegations of abuse is being developed, in which the terminology would be re-categorised and expanded. The decree will also establish mandatory evaluation loops, evaluation teams and close cooperation with the Federal Ministry of Justice. Civil society will also be involved through the project “Police protects human rights”.

New decree being developed

The AOB considers these steps to be very positive. In the opinion of the AOB, an initiative towards an external investigation authority is in the interests of the Federal Ministry of the Interior since the police are continually having – at times unjustified – difficulties due to individual allegations of abuse, which are taken up by the media and lead to intensive reporting. An investigation authority that is detached from the police would minimise accusations that matters are being “swept under the rug” and protect the police against unjustified accusations.

External investigation authority would also protect the police

3.6 Judiciary

3.6.1 Legal guardianship

In 2015, the AOB received 219 complaints from throughout Austria in connection with legal guardianship. In addition, the AOB received many telephone enquiries regarding legal guardianship, which, after providing comprehensive information regarding the responsibilities and competencies of the AOB, did not require written submissions.

Large number of complaints

As an *ex-post* control body for the public administration, the AOB often cannot provide the expected assistance. Legal guardians are appointed, replaced and removed by court order. Decisions of the independent courts can only be reviewed by judicial appeal. In addition – contrary to the hopes of many affected persons and their relatives – the AOB cannot provide legal advice to them or represent their interests vis-à-vis the legal guardian, the independent courts or third parties.

Relatives have no voice Therefore, the AOB referred affected persons with such concerns to the competent specialised court section. However, the problem is often that especially older persons or persons who have dementia are no longer able to articulate their needs and therefore cannot bring about any change in a situation they may consider to be intolerable. Concerned relatives, friends and neighbours have no standing before the court and therefore no right to file a petition. This can leave persons, who can no longer help themselves and who cannot be assisted by third parties due to a lack of standing before court, completely without protection. The AOB cannot examine how the courts react to the recommendations of third parties in this regard. A particularly serious case is that of a 98-year-old woman with dementia whose legal guardian did not respond to the numerous requests for aid from her close relatives and only provided EUR 80 per week to each of the two caregivers for all expenses, even though a high pension, care and nursing allowances and sufficient assets to obtain amenities for the affected person were available. The attorney hired by her niece told the court manager at the competent court that the two caregivers even had to “wash disposable gloves” since the legal guardian not even provided enough money for this. The situation only changed after the media reported on this specific case.

The topics of complaint in the year under review were comparable to those in previous years.

Legal guardianship is often recommended by hospitals The affected persons or their relatives frequently complained that legal guardianship was not necessary or was no longer necessary. The complaints stated that, after accidents that required hospitalisation, the hospital recommended appointment of a legal guardian to the court and that legal guardianship continued after the person’s health had been restored and they had returned to their own home.

Deficient support As before, many affected persons questioned if appointing a legal guardian made any sense, when they had the feeling that the legal guardian was not appropriately assisting them. Numerous complaints stated that legal guardians did not take care of the affected persons personally or hire care workers for this purpose. The legal requirement of contact at least once a month was not being met in many cases. Another criticism was that legal guardians “brushed them off” on the phone. This criticism was frequently directed at legal professionals who had been appointed as legal guardians. The complainants emphasised repeatedly that “legal guardian law firms” would neglect their core responsibilities due to the number of legal guardianships they took on – far in excess of the prescribed number of 25 legal guardianships. It should be expressly pointed out that complaints regarding the activities of professional guardians (“Vereinsachwalter”) were extremely rare in this reporting period.

Criticism of placement in care facilities Numerous complaints by affected elderly persons stated that they would prefer to live in their former homes rather than in care facilities and hoped that the AOB would assist them in this regard.

The friend of an elderly married couple turned to the AOB in distress and complained that the wife, who had dementia and had originally been under the guardianship of her husband and was cared for by him for years, was placed in a nursing home after he

suffered a stroke. Even though the husband was now being cared for at home with 24-hour assistance, his wife had to remain in the nursing home at the behest of the new legal guardian. The couple had always lived together, was happy and belonged together.

The wife of a 91-year-old affected person in Lower Austria complained that her husband was treated unkindly in the nursing home and the legal guardian did nothing about it. Due to the distance between the nursing home and her place of residence and the travel expenses, she herself could visit and help her husband on a daily basis. Her recommendation to transfer her husband to a nursing home closer to her place of residence was also not taken into consideration.

As in the past, another criticism was that legal guardians are extremely miserly with the finances of affected persons even when this is not necessary. Persons who had saved their whole lives for a pleasant retirement or who had a large pension were given a small amount of pocket money. According to the complaints, many affected persons did not even receive pocket money from their legal guardians on a regular basis and did not know how they were to live.

Financial dispositions made
by legal guardians

An elderly retired physician in Lower Austria complained that the considerably younger wife of her brother suggested legal guardianship for her, and that, as legal guardian, she pocketed her large pension and did not give her enough money even to make small purchases. In addition, there were uncertainties regarding the mortgaging of the physician's apartment and former practice by the legal guardian. The physician suspected that this constituted a criminal act on the part of the legal guardian.

A similar case is that of a 90-year-old pensioner from Vienna, who, after an accident and a successful hospitalisation, remained under legal guardianship even though she was able to take care of herself despite her advanced age. The woman had been thrifty and debt-free her whole life. She complained that the legal guardian did not provide her with enough money so that she could use a transport service from time to time – as she had done in the past – to make necessary purchases of supplies and ingredients to cook a soup.

Also in Vienna, the daughter of an affected person with dementia simultaneously contacted the AOB and the competent court, because the legal guardian had blocked her mother's account without prior notice. Bills (e.g. to pay the reception of public television and radio broadcasts) were not paid and cash disbursements for her to maintain her accustomed lifestyle (purchases of food, visits to the hairdresser, etc.) were refused.

In addition, there are again numerous complaints that legal guardians petition the court to sell the real property, houses or condominium apartments of affected persons with no actual financial need and have this approved in order to "optimise" their own income from acting as legal guardian. Another criticism was that affected persons were deprived of the ability to return to their own homes after a hospitalisation, which they regarded as temporary.

Unnecessary sales of real
estate?

The grandson and sole heir of a retired Viennese business woman stated that the legal guardian's intended sale of his grandmother's condominium apartment – which was

equipped for senior living –against the express wishes of the family only failed because his grandmother unexpectedly died in the nursing home.

The brother of an affected person criticised in the name of his other siblings that the legal guardian from outside of the family provisionally appointed by the court immediately terminated insurance policies. In addition to the termination of the life insurance and retirement insurance policies, the termination of the health insurance policy constituted a particular problem since the affected person underwent a heart operation in 2014, was not healthy and was likely to be hospitalised additional times.

2016 reform of the legal guardianship law

During personal visits and telephone conversations questions were repeatedly raised regarding reform of the legal guardianship law announced by the media, which is “overdue” in the opinion of affected persons and their relatives. The reform is currently being developed in working groups at the Federal Ministry of Justice, in which the AOB also takes an active part. According to an announcement by the Federal Ministry of Justice, a draft law should be available in the first half of 2016.

3.6.2 Court fees

Late fee specifications

The AOB finds a lack of information with respect to the court fees that are demanded from the complainants. These cases are often closed for years. In such cases, the AOB explains the system of ex-post review of the fees by auditors at the Court of Appeal, who monitor the decisions made by the clerks responsible for the fee collections of the courts. It is understandable that the monitoring by the auditors sometimes takes longer. Therefore, it is all the more important to point out to parties that – within the five-year statute of limitations – charges or refunds of court fees might occur.

New rules since July 2015

Complaints regarding court fees show that persons seeking legal recourse must carefully examine whether they can afford to go to court. Therefore, the AOB welcomes the new rules on court fees, which took effect on 1 July 2015 (Federal Law Gazette I No. 19/2015) and which reduce or eliminate court fees in guardianship and family law proceedings dealing with minors.

Fees are reduced by statute in family law matters

The new provisions eliminate fees for contact rights and parentage proceedings and for proceedings to clarify whether a person is of marriageable age. In addition, there is no fee for the support of family court assistance during parental visits and of the children’s advocates in proceedings related to custody or contact rights at the initial stage. The fact that fees are reduced in practically all proceedings relating to children matters, constitutes a significant relief for families, children and adolescents who go to court.

Fee exemption for non-contested divorces

The support provided to persons who consensually divorce should also be given positive emphasis. The court fees for non-contested divorce proceedings and for the divorce settlement agreement have been eliminated for spouses whose assets do not exceed EUR 4,414 and whose annual income does not exceed EUR 13,244. Unlike in the past,

the spouse must file a separate petition for legal aid or initiate legal aid proceedings. The relief from fees applies to proceedings instituted after 30 June 2015.

3.6.3 Penal system

Health care system

Health care in correctional institutions is of particular relevance to the activities of the AOB. Numerous inmates have complained about inadequate medical care in the course of the year under review. An inadequate level of health care can have a negative impact on the general quality of life at the facility.

Health care in correctional institutions

Inmates should receive medical care from the prison health care service that is equivalent to that for persons who are at liberty. Moreover, nursing services, suitable diets, physiotherapy, rehabilitation measures and other necessary special treatment methods should be made available under conditions comparable to those persons at liberty enjoy.

Equivalent medical care

The following examples of complaints from imprisoned persons give an overview of what health care in the penal system entails and what problems arise.

An inmate at Garsten correctional institution, who is allergic to dust mites, had to wait eight weeks until his request for hypoallergenic bed linen, which had been prescribed by the physician, was approved. He complained to the AOB that, despite his strong allergy, he received the regular institutional bed linen, which caused itching.

Garsten correctional institution: delayed delivery of medical bed linen

The Federal Ministry of Justice confirmed that the inmate first requested the purchase of medically indicated bed linen in October 2014 and the request was not approved until December 2014. The “hypoallergenic bed linen” was finally delivered at the end of December 2014.

The Penitentiary System Act (=) provides that care must be taken to maintain the physical and mental health of prisoners. Not only is the entire prison to be set up so that it does not impair the physical health of the prisoners, but, if there is a physical illness, appropriate measures must be taken.

The Federal Ministry of Justice conceded that there had been errors or avoidable communication problems and assured that measures had already been taken to prevent future errors similar to those in the incident.

Another investigative proceeding was initiated by the AOB with respect to compliance with protective measures when providing first aid services. The reason was a suicide attempt by an inmate at the Garsten correctional institution. When he attempted to slash his wrists, a fellow inmate gave him first aid. The arriving prison employees did not provide the fellow inmate with gloves, but merely threw bandaging materials into the inmate cell through the feeding flap. The employees did not know that protective gloves reduce the risk of infection even after the skin has been contaminated.

Inadequate knowledge of protective measures

The conduct of the prison employees and their lack of knowledge are deficiencies worthy of criticism. Also in the view of the medical superintendent, not providing the inmate with disposable gloves was considered to be a lapse.

Emergency and first aid training

The Federal Ministry of Justice assured that it would provide the necessary clarification in the form of revised emergency and first aid training in future training courses. To avoid similar complaints, the AOB recommended that all prison employees be provided with appropriate follow-up training.

Gap in treatment of several months

In another case, a mentally ill offender at the Mittersteig correctional institution in Vienna has mental health care needs and complained about a gap in treatment of several months during proceedings for a transfer to a different correctional institution. The affected person had lost confidence in his therapist due to specific incidents. He requested the assignment of an external psychotherapist and a transfer to a different correctional institution.

Processing continued for five months

The inmate was not assigned a new individual therapist while the proceedings for transfer to a different facility were pending. A decision on his request was not issued for five months. The lengthy processing time was justified by the workload of the relevant case worker at the (former) prison administration.

In the opinion of the AOB, a case involving the transfer to a different correctional institution should always be treated as a priority when the therapeutic treatment of a mentally ill offender depends on the decision.

Too little fresh fruit and vegetables

The AOB also found a need for improved nutrition. A random sampling of diet plans revealed that the monthly ration of fruit and raw vegetables established in a basic decree of the Federal Ministry of Justice was not being provided at the Floridsdorf satellite facility of the Vienna-Mittersteig correctional institution.

A balanced diet can be important to the health of imprisoned persons. Therefore, diet plans should not only be varied, but should also ensure that inmates regularly receive sufficient vitamin-rich food.

Decree revised, guideline values established

Under the impetus of the AOB and in close collaboration with the Austrian Nutrition Society a new provision on meals, which would take the latest findings of nutritional science into account, has been elaborated. The consumption of 400 grams of vegetables and salad (total) per day and an additional 250 grams of fruit per day is recommended. The WHO's recommended minimum is 400 grams of vegetables, salad and fruit per day.

Mother abruptly separated from her infant child - Feldkirchen correctional institution

If there is no mother-child department, a mother is to be allowed contact with her infant or small child as soon as possible after the start of imprisonment.

During a follow-up visit to the Feldkirch correctional institution, the AOB found that a female inmate had been placed into the correctional institution without her 14-month-old daughter, even though she was still nursing the infant at that time.

Nursing mother placed in correctional institution without her infant child

In the first days after her imprisonment, the nursing woman was only permitted one visit behind a glass partition, so that she could not touch or nurse her infant at that time. Table visits were not approved until several days later.

The Federal Ministry of Justice stated, *inter alia*, that approving and granting a table visit on the following weekend was not possible because the night shift started on Friday afternoon.

It seems questionable to the AOB that such cases can occur due to the tight personnel situation. The early start of the night shift cannot provide suitable justification for not allowing a mother, who is still nursing, to have contact with her infant child as soon as possible after the start of imprisonment.

The AOB emphasised to the Federal Ministry of Justice that the focus should not only be on the rights of the mother in evaluating the specific case, but also on the rights of the infant. Regardless of whether the inmate was aware of her impending imprisonment and was free to contact the Feldkirch correctional institution, the sudden separation of the infant from the mother could place a heavy strain on the child with possible long-term effects.

Rights of the infant must be protected

In our society, children are among the most vulnerable groups. Special care and kindness for mothers who have parental authority over minor children who are imprisoned is therefore essential. This is all the more true when nursing mothers are involved. Irrespective of the rights of the parents, state institutions must ensure that suitable measures are taken to protect the welfare of children.

State institutions must protect the welfare of children

If it is necessary to separate a small child from its mother, care must be taken to minimise the shock of separation for the child. In such a situation it is indispensable to seek a suitable "setting" for mother and child in which the penal purpose can be ensured while protecting the child to the greatest extent possible. It is the responsibility of the prison administration to provide suitable facilities and opportunities. A failure on the part of the mother may not adversely affect the welfare of the child.

Suitable „setting“ for mother and child is necessary

The AOB criticises both the separation of the mother from the infant and the failure to promptly and adequately react to the separation, such as by immediately allowing table visits to ensure that the mother can nurse the child, if necessary. If special mother-child

departments are not available, the mother must be allowed contact with her infant or small child as soon as possible after the start of imprisonment.

- Ministry rejects criticism

The Federal Ministry of Justice rejected the criticism of the AOB and emphasised the mother’s failure to promptly contact the prison authorities. At the same time, the Federal Ministry of Justice argued that the placement of a child into a correctional institution can have adverse consequences for the child.
- Improvements announced

However, a promise was eventually made that, based on the current experience, more efficient solutions will be sought in due time in the future. Moreover, the Federal Ministry of Justice announced that the (former) prison administration had been asked to examine how to equip every correctional institution in a manner that is suitable for children if the institution has no mother-child department due to a lack of the proper structural prerequisites. The AOB welcomes the announced measures.

Inadequate support for inmates with serious mental retardation - Wilhelmshöhe satellite facility

During a visit to the Wilhelmshöhe satellite facility of the Vienna-Josefstadt correctional institution, an inmate was encountered whose placement in this facility seemed very questionable due to her mental condition.

The Federal Ministry of Justice made reference to the lack of alternative placement options for persons with such mental retardation and conceded at the same time that the inmate needed 24-hour care.

- Forced to rely on fellow inmates

According to credible statements from fellow prisoners and prison guards, no additional nursing staff was provided for her support. Nursing activities – such as assisting with eating, washing and dressing – mainly had to be provided by other inmates.
- Criticism of inmate cell assignments

In addition to the lack of adequate support personnel, inmate cell occupancy seemed questionable to the AOB as well. Thus, according to one officer, a man on the developmental level of a five-year-old was held in an inmate cell with a particularly dangerous recidivist for several days. If he was abused, it would have been very difficult for him to report it or defend himself due to the state of his mental development.

The Federal Ministry of Justice denied that the recidivist posed a threat and stated that the impaired man was being cared for by him under the “buddy system”. A “buddy” is a fellow inmate who provides support to an emotionally challenged inmate in coping with the situation. In general, the buddy is chosen by the psychological service due to his emotional and social competence.
- More caution required

The AOB welcomes such support of new arrivals. At the same time, it must question whether an inmate, who has been classified as a dangerous recidivist (under Section 23 of the Austrian Criminal Code), is a suitable “buddy”.

Failure to adhere to required separation of adolescents on hunger strike - Vienna Josefstadt correctional institution

Adolescents must be detained separately from adults. The purpose of this rule is to protect adolescents. The requirement of separation can only be waived in an individual case for detainees awaiting trial if there are reasonable grounds for this.

According to his own information, a young Moroccan was placed into detention pending forced return on 12 February 2015. The purpose of detention pending forced return was to ensure that a deportation order was taken into account. The affected person was to travel to Bulgaria, which was responsible for his asylum proceedings.

Protest against forced return

After detention pending forced return was ordered, the asylum seeker went on a hunger strike. Thereafter, he was transferred to the Vienna-Josefstadt correctional institution on 16 February 2015 where he was placed into the infirmary.

Upon reception there, the affected person was subsequently enticed to eat solid food on 18 February and promised to eat again. He did not have to be force-fed nor did he have to be given infusions to improve his condition. On 20 February 2015, the asylum seeker was returned to the Hernalts police detention centre.

Relocation to correctional institution

Investigation revealed that the hunger striker was the only adolescent in the infirmary during his stay, but he was not placed in a single cell. He was assigned to an inmate cell which he shared with a fellow countryman who was in detention pending trial. The latter succeeded in convincing the affected person to end his hunger strike by talking to him and offering him food and drink. The treating physician and the prison guards on duty also encouraged the asylum seeker to eat.

Assistance by an adult instead of isolation

Even though the AOB advocates strict compliance with the requirement to separate adolescents and adults, whether this relates to detention pending forced return, detention pending trial or imprisonment, the deviation from this statutory requirement in the individual case seemed justified to promote the health and well-being of the adolescent.

Health risk averted

The European Court of Justice clarified how narrow the leeway for action is in the *Pham/Deutschland* case (Rs C-474/13). Under no circumstances may an adolescent be placed together with the “regular prisoners”.

Deviation only in exceptional cases

3.7 National defence and sports

3.7.1 Symbolic acts against national defence

Spiritual national defence constitutes an important element of a comprehensive national defence. It subsists on symbols, above all, which build and safeguard the soldiers' and the population's will to defend the country. However, the recent actions of the Federal Ministry of Defence and Sports were signals that could achieve the opposite effect.

Spiritual national defence is intended to ensure that the understanding of the population for all aspects of comprehensive national defence (military, civil, economic and spiritual) is constantly reinforced. It should be made clear that men and women must be ready and able to muster all of their strength to defend their democratic freedoms and the rule of law even if they suffer losses, states a standard commentary on Austrian constitutional law.

Proven military institutions, often established over decades, with high regard even outside of the military, have a positive dual effect here. On one hand, they constitute a type of "business card" for the military in civil society. On the other hand, they also have an internal effect as positive motivational factors. If such institutions are damaged or eliminated, this has negative consequences for spiritual national defence.

Cutting back on
military music

This has happened many times recently, justified by financial considerations. Most examples are distinguished by two elements: comparatively low savings, but a large negative symbolic effect or damage to or elimination of proven institutions. This can be demonstrated with the example of military music. When plans to drastically reduce the size of military bands became known, the AOB initiated an *ex-officio* investigative proceeding and questioned the plan.

In particular, the following concerns were voiced: due to the smaller ensembles, certain musical pieces could no longer be played or, at least, not in the manner intended by the composer. In particular, performances for military ceremonies, such as military tattoos, hymns and marches, could not be performed in the open air as the composer intended. The reductions in personnel would also cause a limitation on military bands as a training place for the next generation of musicians. This means that the contribution of military music to Austria's traditional musical culture will be weakened.

Prominent personalities have opposed this reform, such as Dennis Russel Davies, principal conductor of the Linz Bruckner Orchestra, Albert Schwarzmann, lecturer on brass-band music at the *Salzburg Mozarteum*, and professor Thomas Kreuzberger of the University of Music and Performing Arts, as well as such institutions as the Conference of the Austrian Music School Association (*Konferenz der Österreichischen Musikschulwerke*) and the Austrian Association of Municipalities (*Österreichischer Gemeindeverband*).

All of these legitimate criticisms did not have the desired effect: according to the “2018 Structural Package for the Austrian Federal Army”, military bands will be combined into one Austrian military band with field offices in all *Laender*, and the level of personnel will be reduced by about 50%.

The federal secondary school with emphasis on science (*Bundesoberstufenrealgymnasium*) at the Theresian Military Academy is a school with a high reputation that specialises in natural sciences. In addition to a secondary school education, students can obtain basic military knowledge, which makes the school a favourite place for training the next generation of military men.

Abolishment of secondary school at Military Academy

In 2015, the school celebrated its 50th anniversary. This was overshadowed by the decision to abolish the school itself. No more students will be accepted starting with the school year 2015/2016. Massive protests could not achieve changes in the plans of the Federal Ministry of Defence and Sports, nor could the intervention of the AOB. At least, the operation of the school seems to be guaranteed until final exams for the last year are completed.

Under Section 32a of the National Defense Act (*Wehrgesetz*), the Federal Ministry of Defence and Sports must “[...] appoint a militia officer for a period of five years to protect and promote the interests of conscripts who were entrusted with a function in the operational organisation of the armed forces and who have served in the armed forces”.

Delay in the appointment of militia officers

In autumn 2013, the militia officer’s term of office ended. When no successor had been appointed by the beginning of 2015, the AOB initiated *ex-officio* investigative proceedings. The AOB reminded the Federal Ministry of Defence and Sports that Section 32a of the National Defense Act does not grant any discretion as to whether to appoint a militia officer, but mandates such an appointment. The provision is closely linked to the basic concepts of the Austrian defence system. Accordingly, the armed forces are to be “organised in accordance with the principles of a militia system” (Section 79 (1) of the Austrian Federal Constitution).

A new militia officer was not appointed until April 2015, which the Federal Ministry of Defence and Sports reported to the AOB without any justification for the unlawful delay. When the AOB enquired as to the reasons for this delay, the Federal Ministry of Defence and Sports merely stated that the search for a suitable person took some time.

Section 32a of the National Defense Act establishes a precise term of office for the militia officer, which should enable anticipatory personnel planning. Therefore, the answer of the Federal Ministry of Defence and Sports is not an acceptable explanation for the delay.

After media reports of a plan to end military swearing-in ceremonies in public places, the AOB initiated *ex-officio* investigative proceedings and pointed out the related negative effect on spiritual national defence. Public swearing-in ceremonies create a certain positive bond between the military and the local population.

Discussion of public swearing-in ceremonies

The Federal Ministry of Defence and Sports replied as follows: “Due to limited financial resources for bus rentals, the armed forces command considered whether swearing-in

ceremonies could also be carried out in the garrison area. However, these considerations were rejected". It was ultimately confirmed that swearing-in ceremonies would take place in public in 2014 and 2015.

Thus, a discussion that was unnecessary in the opinion of the AOB was taken off the table. However, the AOB doubts that such unnecessary signals make a positive contribution to shaping the public's opinion regarding the national defence.

3.7.2 Gaps in air surveillance

In addition to passive air surveillance with technical equipment, the use of military aircraft is an active and central component of assuring air sovereignty. Limiting the operational readiness of military aircraft to certain times of the day constitutes a breach of constitutional and international law. However, the Federal Ministry of Defence and Sports will retain its inadequate surveillance practice.

„Pauses“ in air surveillance Various media reports stated that the Austrian air force is not operationally ready around the clock. Therefore, the AOB initiated *ex-officio* investigative proceedings.

The Federal Ministry of Defence and Sports was of the opinion that certain discretion was applicable regarding the operational readiness of the air force, which, in the opinion of military experts, should be utilised. Certain situations in the country's air space and therefore possible violations of its air space depend on the time of day. It is legitimate to limit active air surveillance to times when there is a relatively high probability of violations of air space.

Under the predominant opinion and under international law, Austria is a neutral country despite joining the UN and despite integrating itself into the EU's Common Foreign and Security Policy. Of course, the original form of Austrian neutrality underwent significant modifications and restrictions as a result of integration into the aforementioned organisations. However, outside of UN and EU systems, Austria continues to be considered neutral.

Except for Switzerland, which is also neutral, and Liechtenstein, which has no substantial military power, all of Austria's neighbours are members of the EU. Switzerland and Liechtenstein are also closely integrated with the EU. In light of the numerous concomitant economic and political connections, it is extremely improbable that a war or armed conflict will break out with Austria's immediate neighbours in the near future. However – except for Switzerland and Liechtenstein – all of the neighbouring states are also members of NATO. NATO member states were recently, or are still, involved in massive armed conflicts.

Security policy dimensions NATO states involved in these conflicts primarily relied, or rely on, their air forces as weapons of war. In most of these conflicts, it seemed, or seems, at least doubtful whether reliance on exceptions to the prohibition on the use of force in the UN Charter or as part

of the Common Foreign and Security Policy of the EU was or is legitimate. Austria has repeatedly taken this circumstance into account, relied on its neutrality and prohibited the affected conflict parties from flying military aircraft over the country. Examples of this are attacks by NATO (air) forces on Serbia in 1999 and on Iraq in 2003. The air attacks also occurred during times when the Federal Ministry of Defence and Sports now intends to suspend active air surveillance.

From past experience it is evident that foreign forces have a substantial military interest in using Austrian air space. In light of the current military conflicts in which NATO states are involved, this interest has not significantly changed. Therefore, Austria is obliged to (also) maintain active military air surveillance around the clock. Overflights by foreign air forces must be prevented at all times or a credible advance announcement must be made of the intention to prevent overflights.

Breach of obligations under neutrality laws

A suspension of active military air surveillance for certain periods on a daily basis will create a practically daily recurring window of time during which Austria's neutrality can be violated. This constitutes a breach of the recognised obligations of a neutral state under international law and also a breach of applicable constitutional law (Declaration of Neutrality).

Under Section 79 of the Austrian Federal Constitution, the core task of the armed forces is to militarily defend the nation. In addition, there is also an obligation to engage in security police assistance operations, which may have to be performed without a request from civilian authorities. Therefore, the operational readiness of the armed forces must be based on current military threats.

The armed forces' obligation of continuous operational readiness, adapted to current threats, also finds expression in other legal provisions. Thus, Section 2 (3) of the National Defense Act explicitly codifies the armed forces' continuous obligation of operational readiness. Of course, this provision also applies to the air force as part of the armed forces.

Armed forces must be operationally ready

In particular with respect to the air force, Section 26 (1) of the Military Powers Act (*Militärbefugnisgesetz*) requires continuous protection of air sovereignty. The legislative materials relating to the Military Powers Act stress the obligation to maintain – even in times of peace – brigades that can be utilised immediately, including the necessary air force brigades. Even in times of peace, precautions must be taken so that, regardless of the incident, unauthorised flights in Austrian air space can be detected and prevented through continuous operational readiness.

In light of the situation with neighbouring countries already described, the need to defend against an attack by a neighbouring state in the classic sense currently seems to be of low probability. However, the need to defend against an “asymmetrical warfare” can justify military action. This can be difficult to distinguish from a mere threat situation in individual cases with security police intervening. Thus, there have been discussions about whether an attack comparable to the events of 11 September 2001 would justify

Realistic threat scenarios

military action or merely activate the armed forces' obligation to provide assistance to the security police.

Of course, the obligation of the armed forces to maintain continuous operational readiness does not only apply to military national defence, but also to assistance to security police operations. Terrorist attacks, including with the aid of aircrafts, are possible. The temporary suspension of active air surveillance can also create a "window of opportunity" in these cases, and it can be used for overflights of foreign air forces, which violate neutrality.

Unsatisfactory response of
the Ministry

The response of the Federal Ministry of Defence and Sports to the comments of the AOB is a negative example of cooperation between the AOB and the public administration authorities it monitors. The AOB substantiated its criticism in detail and included numerous proofs from the legal literature. In addition, a significant portion of these proofs originated with academic employees of the Federal Ministry of Defence and Sports. Nevertheless, the Federal Ministry of Defence and Sports did not consider it appropriate to discuss the AOB's arguments. Rather, it contented itself to merely state that it could not accept the criticism of the AOB.

III. NATIONAL PREVENTIVE MECHANISM (NPM)

1. Overview

1.1 Mandate and understanding of the mandate

As the NPM based on its constitutional mandate and according to national law, the Austrian Ombudsman Board (AOB) and its six multidisciplinary commissions monitor and control public and private institutions and facilities that are classified as “places of deprivation of liberty within the meaning of Article 4 of the OPCAT” nationwide and on a regular basis. The OPCAT mandate and the mandate additionally granted to the AOB and its commissions under Austrian constitutional law as set out in Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities (CRPD), which consists in monitoring all forms of violence, abuse and exploitation in institutions and facilities dedicated to persons with disabilities.

Since its implementation in July 2012, the Austrian NPM has from the very beginning endeavoured to interpret the OPCAT mandate broadly and to fill it with life to the fullest extent. In the past three and a half years, the commissions conducted 1,575 visits, of which 501 took place in 2015. Unlike other NPMs, some of which were established earlier, classic places of detention (correctional institutions, police stations, police detention centres) as well as so-called less traditional places of detention (psychiatric institutions, hospitals, retirement and nursing homes, child and youth welfare facilities) are being included regularly in the planning of quarterly visits by all the commissions, in order to fulfil the mandate of nationwide monitoring and control visits across Austria.

A total of 1,575 visits by commissions

In 2016, the NPM will be vested with a new area of responsibility. After the involvement of the Human Rights Advisory Council in 2015 it was clarified with binding effect that within the scope of the NPM mandate commissions can indeed accompany forced return flights. The applicability of OPCAT to such flights, which has now been resolved and is no longer in dispute in Austria, corresponds to recommendations by the UN Subcommittee on Prevention of Torture (SPT) in accordance with OPCAT, of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Union Agency for Fundamental Rights (FRA). The CPT itself has taken part in three such forced return flights.

OPCAT - filling the mandate with life

In the past three years, all 27 correctional institutions and twelve satellite facilities were visited multiple times. As had been the case in 2014 with regard to the newly constructed facility for detention pending forced return in Vordernberg, the NPM contributed its expertise again in 2015 prior to the opening of two newly constructed correctional institutions. When planning visits in the more numerous types of facilities (retirement and nursing homes, and facilities for persons with disabilities), the NPM must, in contrast, pre-select facilities that are to be monitored and controlled for the first time and – due to capacity reasons – weigh the necessity of follow-up visits in a

NPM involves itself in planned projects

facility. The main responsibility of the NPM is less to examine isolated cases of concern, but rather to detect structural aspects that can lead to such cases. The NPM is flexible enough and also has enough resources to react quickly to extraordinary circumstances outside of the planned visits. Most of the visits in 2015, namely six, were solely to the Traiskirchen Initial Reception Centre, which was necessary due to unacceptable human rights conditions on the ground - such as mass homelessness and inadequate care of almost 1,500 persons during the summer.

NPM activities result in reports and recommendations

Initiation or management of change processes in organisations is only successful where a shared insight into the objectives focused on by the NPM can be created. It arises from the mandate and the overall character of the OPCAT that the activity of the NPM must be carried out with a monitoring perspective that is centred on human rights and must result in reports and recommendations. This requires the systematic study of the social realities encountered, their assessment in light of international and national human rights standards, demanding suitable measures to achieve these standards and their initial establishment if they do not yet exist on the national level. The NPM must address the changes it believes to be necessary in depth in order to fully maximise the proactive potential of the preventive mandate.

Increased dialogue is necessary

In addition, the importance of visits, of constructive dialogue with the management of the facilities and institutions and with the entities that own or operate them, as well as with ministries, supervisory authorities, and the legislature, should not be underestimated. In order to effectively prevent human rights violations and to demand changes – which are clearly necessary – it is mandatory to process and discuss the results of commission visits with all those responsible, with cooperation partners, and also with legislative bodies. The authorities and administrative departments that fall into the NPM’s area of responsibility are obligated under Article 22 of the OPCAT to enter into a dialogue with the NPM regarding possible implementation measures, and they in fact do so. Permanent working groups on subjects regarding the NPM have once again been established in cooperation with the Federal Ministry of the Interior in 2015; discussions with other bodies are conducted as required.

Guarantee, protection and respect for human rights

Behind the system of preventive visits is the conviction that there is an increased danger of abuse when people deprived of their liberty are subject to an especially high degree of government authority or the authority of private actors that is tolerated by the state and, are, at the same time, hidden from the attention of a public that engages in advocacy. Torture and other cruel, inhuman or degrading treatment or punishment is the most serious human rights violations. They equally destroy human dignity and body and soul. As the 2015 report shows, there is an increased danger that such risks actually materialise, especially when the available resources for placement and care are inadequate and human rights obligations vis-à-vis vulnerable groups are viewed as disposable. A state that respects human rights and wishes to prevent torture, violence and degrading conditions must do far more than merely keep the people in its custody alive. This is particularly apparent when the resulting organisational and budgetary challenges are great. A nation governed by the rule of law cannot simply shake off the obligation to guarantee the protection of and respect for human rights and human dignity – not even

selectively. In this sense, the inviolability of human dignity must be understood in the most literal sense and the principle of the rule of law stands or falls with it.

1.2 Developments within the NPM in the reporting year

1.2.1 Monitoring framework, methodology and recommendations of the NPM

The year 2015 made it obvious that with increasing practical experience, it is necessary to further develop and adapt the structures and processes of the NPM. The “triangulation of methods” used by the NPM refers to this process of cross-checking all information – not only to ensure its accuracy, but particularly to identify certain patterns and structural problems. In preparing a visit, each individual investigative step that must be undertaken (e.g. interviews, access to medical histories, enforcement plans, care concepts) is worked out in advance. Equally, it must also be considered how circumstances that are discovered during conversations can best be cross-checked. Depending on usefulness and topic, the cross-check is undertaken by way of subsequent control activities or a review of the provisional results by way of other methods.

NPM states its procedure proactively on website

As required by the SPT, the Austrian NPM sets out uniform methods and standards for all of its activities in July 2015 in order to improve its effectiveness. In a process that has taken more than a year, the AOB and the commissions have taken fundamental decisions with regard to monitoring framework, methodology and further action and have also published them on the website (see Annex I). All the recommendations made by the NPM between 2012 and 2014 have also been published on the website (see Annex II). This document is being updated regularly and provides some direction for the facilities and institutions visited with regard to the criteria used to assess them.

1.2.2 Database for NPM reports installed

Much intensive preliminary work and the assistance of the heads of commissions were required to install a database for NPM visit reports. This makes both access and analysis of the reports produced by the commissions thus far easier. Its straightforward handling is also a significant convenience for the planning and implementation of follow-up visits. Each commissions with its regional competency enters the notes about its observations right after the end of a visit in a secure space on the website that cannot be accessed by the other commissions or by the AOB; they are also able to attach photographs or requested paperwork (documentation, duty rosters, house rules, etc.). After all the commission members have entered their observations and findings, the head of the commission undertakes the human rights assessment and the subsequent approval of the report. The other commissions and the AOB can access the reports only after this

Database provides significant assistance for AOB and commissions

approval. Based on the standardised templates for such reports and the anchor points contained therein, both systematic and thematic assessments can be made of either all or only particular reports. At the same time, the database provides the basis for a targeted assessment of entries regarding Austria-wide monitoring priorities and topics with a special focus of the individual commissions.

Human Rights Advisory
Council receives
anonymised report excerpts

Since April 2015, anonymised excerpts from human rights assessments by the commissions are being made available to the Human Rights Advisory Council, which consists of NGOs and representatives of the federal government and of the *Laender*, in order to facilitate the Council's consultations with the NPM. It goes without saying that these types of instruments only function and facilitate the sharing of information if the database is used by everyone as intended. In order to ensure this, training was held for all commission members and AOB employees. More in-depth assessment in spring 2016 will show if follow-up training is necessary.

1.2.3 The NPM's public relations concept

Fundamental principles of
public relations defined

After a fundamental debate in December 2014, in which strategy, audience, objectives, content, usefulness and dangers of public relations were discussed in detail by the AOB and all commissions, a pilot team was put in place, which will address questions related to the NPM's communication strategy. There is agreement to the effect that the necessary discussion about human rights should not be conducted by regularly shaming facilities and institutions or the individuals who act on their behalf. Public confrontations with individuals that head facilities and institutions are only one available instrument. The NPM cannot and may not limit itself to attracting the attention of journalists or to making human rights violations visible and evaluating them in legal terms. Preventive human rights work as such depends on the acceptance of what it is attempting to achieve. Informing the public about preventive human rights work therefore has to be guided by a course of action supporting this goal.

Only those human rights that people know and understand can be effective. The objective of the NPM's public relations work in the medium term is therefore to reach the persons who live in facilities and institutions, their relatives and persons of trust, as well as the staff in order to make them allies. Apart from events, which cannot be foreseen and make a reaction that creates public awareness necessary, meetings take place every two months. At these meetings a team consisting of AOB staff and commission members decides which problem areas will be highlighted on the NPM website through more detailed articles or interviews, who will participate in press conferences and which media formats will be sought out for collaboration, etc. This sometimes requires targeted preparation. For example, it was possible to participate in a television documentary series of the Austrian public broadcaster ORF called "*Menschen und Mächte*" (People and Powers) that dealt with a comparison between nursing homes in Scandinavia and in Austria. This gave one of the NPM commissions the opportunity to present its observations. The ORF series *Hohes Haus* (Parliament) and *BürgerAnwalt* (Advocate for the People) also showed a commission at work visiting a retirement and nursing home

and highlighted the legitimate concerns of persons with disabilities who expressed them themselves.

1.3 Personnel changes in the commissions

As of 1 July 2015, the tenure of three heads of commissions and of 21 commission members expired.

As early as January 2015, public notices were placed in various daily newspapers in order to ensure timely appointment of new commission members. Additionally, numerous professional associations and NGOs at both the federal and the *Laender* level were specifically made aware of these listings to enable these positions to be filled in a gender-balanced, pluralistic, multidisciplinary and multi-ethnic way. As was the case in 2012, interest in participating in the OPCAT mechanism was fortunately exceptionally high. Of the 64 applicants for the three positions as heads of commissions, 14 were invited to a 45-minute interview, when they were questioned by the Human Rights Advisory Council and by the members of the AOB.

New commission members

The following heads of commissions were appointed: Verena Murschetz, Professor of Criminal Law and Criminal Procedural Law, for Commission 1 (Tyrol/Vorarlberg); Gabriele Fischer, university professor and Head of Addiction Research and Therapy at the Centre for Public Health of the Medical University Vienna for Commission 3 (Styria/Carinthia) and Heinz Mayer, university professor and former Dean of the Faculty of Law of the University of Vienna for Commission 5 (Vienna/Lower Austria).

Three new heads of commissions

The remaining commission members were selected from 600 applications after an intensive selection process and a hearing by the Human Rights Advisory Council. This also made it possible to ensure a more uniform and at the same time a broader range of specialist expertise in each commission. All six commissions have been expanded by one member and now consist of eight members each and a head of commission.

Although the commissions were and are at liberty to supplement any missing or additionally required specialist expertise by consulting external experts, the new composition guarantees that each commission has at least one permanent member with specialist knowledge in psychiatry, nursing and caretaking and pedagogy. A total of 54 experts belong to the six commissions. Some experts that could not be appointed as commission members in 2015 stated that they were willing to be available as part of a pool of experts.

The principle of partial replacement of commission members every three years is provided for by law. At the end of the selection process a re-stabilisation process is required to reflect on both what has been achieved and which deficiencies exist. This can result in new perspectives and ways of internal differentiation and can open up space to break up and recreate patterns of collaboration. This also promotes the system's openness and capacity to gain new viewpoints.

Continuity and renewal as a structural principle

The NPM would like to thank Karin Treichl, Angelika Vauti-Scheucher and Manfred Nowak, as well as all retired experts for their work and commitment in the very challenging development phase of the NPM.

1.4 Second shadow monitoring for NPM

Due to the large number of newly appointed commission members, a two-and-a-half day shadow monitoring similar to the one practiced previously in 2012 was conducted in September 2015. The European Training and Research Centre for Human Rights and Democracy (ETC) in Graz, whose director, Renate Kicker, is the Chairperson of the Human Rights Advisory Council, was entrusted with the execution and coordination of the event. At the same time, the ETC was requested to separately evaluate the suitability of NPM monitoring priorities defined thus far, as well as the methodology used.

The prevailing topic on the first day of the training module was the structured preparation of visits. Internationally recognised experts accompanied the commissions during their visits in a correctional institution, a police detention centre, a psychiatric facility, a retirement and nursing home, a child and youth welfare facility and a facility for persons with disabilities. On the last day, Silvia Casale (criminologist, former Chairperson of the SPT and the CPT), Veronica Pimenoff (psychiatrist, CPT expert), Margarete Suzuko Osterfeld (psychiatrist, SPT and German NPM expert), Jean-Sébastien Blanc (APT), Markus Jaeger (Council of Europe) and Michael Neurauter (legal expert, department head at the CPT) analysed the information collected. The international experts agreed that they did not only contribute their experience as “shadows”, but also profited themselves from shadowing the commissions. The heads of commissions and the AOB emphasised the necessity of continuing to work together on establishing uniform standards, especially where no standards at all have as yet been established. It was also deemed beneficial for the functioning of the NPM if AOB employees would occasionally participate in commission visits as well.

Structured feedback and the written analyses provided by the experts and by the ETC are viewed as enrichment and will provide helpful orientation towards making additional progress in the organisational development process of the NPM.

1.5 Monitoring and control visits in numbers

In the year under review, the commissions completed a total of 501 visits. In 439 cases, the visits and observations were unannounced, in 62 cases they were announced in advance. Thus, the general procedure is to make unannounced visits. In 2015, the average duration of a visit was six and a half hours.

The six commissions visited 445 facilities and institutions across Austria. As was the case in previous reporting years, the commissions focused on the far more numerous institutions that fall within the category of so called “less traditional places of detention”. This included 93 visits to institutions that are dedicated solely to persons with disabilities.

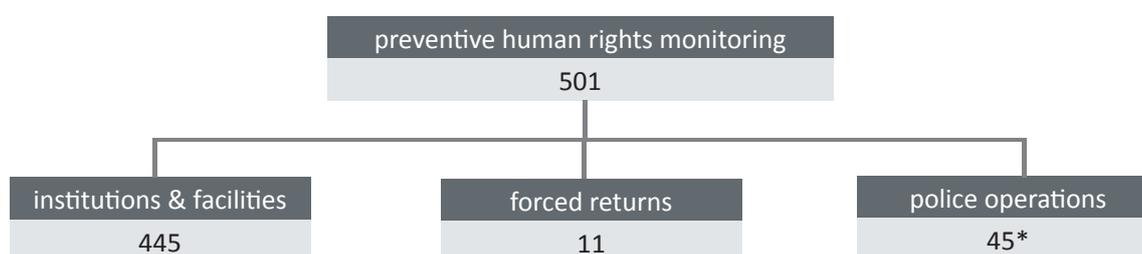
445 visits to facilities and institutions

In 56 cases Austria-wide, the commissions also observed the conduct of authorities empowered by the state to exercise direct administrative power and to carry out coercive measures.

The largely unannounced visits by the commissions have both a preventive purpose and a preventive effect. Simply the fact that persons, who have been deprived of liberty based on a directive by courts or by administrative, medical, nursing/caretaking or pedagogical authorities, have the opportunity to speak in confidence with independent experts of the NPM and to call attention to their situation can protect them against violence and abuse and/or identify such actions. The fact that these interviews are largely carried out by commission members themselves (i.e. without depending on external interpreting services), has proven to be extraordinarily conducive to building trust. In addition to their foreign language skills, a number of commission members know sign language or have professional training in dealing with non-verbal communication techniques and can therefore directly get in touch with persons with disabilities or dementia.

Interviews are of central importance

Monitoring and control activities by the commissions in 2015



*these include: manifestations, events, assemblies

	pol.	ret. + nur.h.	youth	inst. f. disabl.	psych. wards	corr. inst.	bar..	return	pol. op.	oth.
Vienna	21	25	36	33	12	16	0	11	17	5
Burgenl.	2	5	2	3	1	2	1	0	3	0
Lower Austria	9	30	16	17	7	9	0	0	3	9
Upper Austria	4	4	3	7	0	5	0	0	6	2
Salzburg	8	6	2	11	1	0	0	0	5	1
Carinthia	5	8	4	8	3	3	0	0	2	2
Styria	8	9	3	2	3	6	0	0	4	2
Vorarlb.	6	1	0	0	2	2	0	0	0	0
Tyrol	6	17	12	12	1	4	0	0	5	1
TOTAL	69	105	78	93	30	47	1	11	45	22
<i>(unannounced)</i>	<i>(62)</i>	<i>(102)</i>	<i>(76)</i>	<i>(91)</i>	<i>(28)</i>	<i>(44)</i>	<i>(1)</i>	<i>(6)</i>	<i>(35)</i>	<i>(18)</i>

Legend:

pol.	= police
ret. + nur.h.	= retirement and nursing homes
youth	= youth welfare
inst. f. disabl.	= institutions and facilities for persons with disabilities
psych. ward	= psychiatric wards in hospitals and medical facilities
corr.inst.	= correctional institutions
bar.	= military barracks
return	= (forced) returns
pol.op.	= police operations
oth.	= others (district authorities, police department of the competent <i>Land</i>)

Monitoring and control activities by the commissions in 2015 by *Laender*

<i>Land</i>	2015	2014
Vienna	177	133
Lower Austria	100	75
Tyrol	58	54
Styria	37	53
Carinthia	35	35
Salzburg	33	25
Upper Austria	31	25
Burgenland	19	19
Vorarlberg	11	9
TOTAL	501	428

The Austrian NPM is making all possible efforts to not only address complaints but also to work intensively to develop solutions. Besides visiting facilities and institutions, it is also occasionally necessary to contact the legal entities that operate them, the supervisory authorities and/or the ministries in order to work with them on improvements. Therefore, the processes, which occur subsequently to the transmission of commissions' reports and which are conducted by the AOB, are not concluded for quite some time; sometimes not until the following year.

The commissions found points of criticism with regard to the human rights situation during 312 of their visits. As the commissions sometimes address multiple criticisms during their visits, the NPM has made recommendations that will be described in the following.

Monitoring statistics 2015			
	criticisms	no criticisms	still pending
institutions & facilities	294	72	79
forced returns	5	6	0
police operations*	13	29	3
Total	312	107	82

*these include: manifestations, events, assemblies

1.6 Budget

In 2015, a budget of EUR 1,450,000 was available to remunerate the heads and members of the commissions, as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,158,000 (2014: EUR 1,148,029) was budgeted for reimbursements and travel costs for the commission members alone and around EUR 91,000 (2014: EUR 95,000) for the Human Rights Advisory Council. Around EUR 200,000 was available for workshops for the commissions and the AOB employees working in the OPCAT sector, as well as for other activities. The psychological burden and the resilience under pressure of the commission members is repeatedly challenged in different settings and situations. Therefore, in collaboration with experts, the AOB offers commission members supervision and counselling both in groups and individually to maintain their psychological hygiene. In 2015, this option was increasingly utilized and the costs incurred were covered.

Budget cuts that the AOB had to undertake did not affect the NPM. The number of visits and concomitant monitoring by the commissions was ensured, both with regard to quality and quantity.

1.7 Human resources

1.7.1 Personnel

In order to implement the OPCAT mandate, the AOB has received 15 additional permanent positions in order to fulfil its responsibilities. Since then, one permanent position was eliminated due to budgetary restrictions. The OPCAT secretariat is responsible for coordinating the collaboration with the commissions. It furthermore examines international reports and documents in order to support the NPM with information from similar institutions. The AOB employees who are entrusted with NPM responsibilities are legal experts who have experience in the areas of the rights of persons with disabilities, children's rights, social rights, police, asylum and the judiciary.

1.7.2 Commissions

Six regional commissions

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT (*OPCAT-Durchführungsgesetz*), the NPM must entrust the multidisciplinary commissions it has appointed with the tasks they must perform. If required, the regional commissions may involve experts from other specialist areas provided that members of other commissions are not available for this purpose. The commissions are organised in accordance with regional criteria. They each consist of eight members and one head of commission.

Commission 1	Commission 2
Tyrol/Vorarlberg	Salzburg/Upper Austria
Head of Commission: Verena MURSCHEZ (until June 2015: Karin TREICHL)	Head of Commission: Reinhard KLAUSHOFER
Members	Members
David ALTACHER (until June 2015: Susanne BAUMGARTNER)	Doris BRANDMAIR (until June 2015: Markus FELLINGER)
Michaela BREJLA (until June 2015: Max KAPFERER)	Martin KARBIENER (until June 2015: Wolfgang FROMHERZ)
Sepp BRUGGER	Esther KIRCHBERGER
Erwin EGGER (until June 2015: Lorenz KERER)	Robert KRAMMER
Wolfgang FROMHERZ (until June 2015: Monika RITTER)	Margit POLLHEIMER-PÜHRINGER (until June 2015: Katalin GOMBAR)
Elif GÜNDÜZ	Monika SCHMEROLD
Dominik KRAIGHER (until June 2015: Hubert STOCKNER)	Renate STELZIG-SCHÖLER
Martha TASCHLER	Hanna ZIESEL

Commission 3	Commission 4
Styria/Carinthia	Vienna (districts 3 - 19, 23)
Head of Commission: Gabriele FISCHER (until June 2015: Angelika VAUTI-SCHEUCHER)	Head of Commission: Ernst BERGER
Members	Members
Klaus ELSENSOHN	Andrea BERZLANOVICH
Odo FEENSTRA	(vacant)
Ilse HARTWIG	(until March 2016: Georg DIMOU)
Sarah KUMAR	(until June 2015: Sandra GERÖ)
Silke-Andrea MALLMANN	Karin FISCHER
Claudia SCHOSSLEITNER (until June 2015: Daniela GRABOVAC)	(until June 2015: Petra PRANGL)
Erwin SCHWENTNER	Helfried HAAS
Petra TAFERNER-KRAIGHER	Hannes LUTZ (until June 2015: Walter SUNTINGER)
	Christine PEMMER
	Nora RAMIREZ-CASTILLO
	Barbara WEIBOLD
Commission 5	Commission 6
Vienna (districts 1, 2, 20 - 22) Lower Austria (political districts Gänserndorf, Gmünd, Hollabrunn, Horn, Korneuburg, Krems, Mistelbach, Tulln, Waidhofen a.d. Thaya, Zwettl)	Burgenland/Lower Austria (political districts Amstetten, Baden, Bruck a.d. Leitha, Lilienfeld, Melk, Mödling, Neunkirchen, Scheibbs, St. Pölten, Waidhofen a.d. Ybbs, Wiener Neustadt, Greater Vienna)
Head of Commission: Heinz MAYER (until June 2015: Manfred NOWAK)	Head of Commission: Franjo SCHRUIFF
Members	Members
Atena ADAMBEGAN (until June 2015: Harald P. DAVID)	Süleyman CEVIZ
Lisa ALLURI	Margot GLATZ (until June 2015: Karin BUSCH-FRANKL)
Marlene FETZ (until June 2015: Marijana GRANDITS)	Corina HEINRICHSBERGER
Sabine RUPPERT	Siroos MIRZAEI
Katharina MARES-SHRANK (until June 2015: Maria SCHERNTHANER)	Cornelia NEUHAUSER
Eveline PAULUS	Karin ROWHANI-WIMMER
Hans Jörg SCHLECHTER	Regina SITNIK (until June 2015: Elisabeth REICHEL)
Gregor WOLLENEK	Petra WELZ

1.7.3 Human Rights Advisory Council

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

Chair: Renate KICKER

Deputy Chair: Andreas HAUER

Name	Function	Institution
Mathias VOGL	Member	Federal Ministry of the Interior
Matthias KLAUS	Substitute member	Federal Ministry of the Interior
Roland FABER	Member	Federal Chancellery
Brigitte OHMS	Substitute member	Federal Chancellery
Gerhard AIGNER	Member	Federal Ministry of Health
Irene HAGER-RUHS	Substitute member	Federal Ministry of Health
Christian PILNACEK	Member	Federal Ministry of Justice
Gerhard NOGRATNIG	Substitute member	Federal Ministry of Justice
Billur ESCHLBÖCK	Member	Federal Ministry of Defence and Sports
Karl SATZINGER	Substitute member	Federal Ministry of Defence and Sports
Helmut TICHY	Member	Federal Ministry for Europe, Integration and Foreign Affairs
Eva SCHÖFER (until June 2015: Ulrike NGUYEN)	Substitute member	Federal Ministry for Europe, Integration and Foreign Affairs
Hansjörg HOFER	Member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Alexander BRAUN	Substitute member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Shams ASADI (Municipality authority Vienna)	Member	Representation of the <i>Laender</i>
Wolfgang STEINER (Government Upper Austria)	Substitute member	Representation of the <i>Laender</i>

Name	Function	Institution
Heinz PATZELT	Member	Amnesty International Austria in collaboration with SOS Children's Villages
Barbara WEBER	Substitute member	Amnesty International Austria in collaboration with SOS Children's Villages
Angela BRANDSTÄTTER)	Member	Caritas Austria in collaboration with <i>VertretungsNetz</i>
Susanne JAQUEMAR	Substitute member	Caritas Austria in collaboration with <i>VertretungsNetz</i>
Martin SCHENK	Member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Christian SCHÖRKHUBER	Substitute member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Michael FELTEN	Member	Pro Mente Austria in collaboration with HPE
Irene BURDICH (until June 2015: Angelika KLUG)	Substitute member	Pro Mente Austria in collaboration with HPE
Tamara GRUNDSTEIN	Member	Austrian Initiative for Independent Living
Martin LADSTÄTTER	Substitute member	Austrian Initiative for Independent Living
Philipp SONDEREGGER	Member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Nadja LORENZ	Substitute member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Barbara JAUKE	Member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Renate HOJAS	Substitute member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Dina MALANDI	Member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>
Roland MIKLAU	Substitute member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>

1.8 Reports of the commissions

Most commission members replaced In the course of 2015, most of the commission members were replaced, as mandated by law. This process represented a major challenge for the commissions to ensure the seamless integration of new heads and new commission members into ongoing activities and visits.

Shadow monitoring The commissions consider the shadow monitoring that took place in 2015 with the participation of international experts and all the commissions to be an important element in the content-related development of the NPM. The inclusion of commission members in international projects (e.g. twinning project Macedonia) provided the opportunity to share experience in both directions: experience from commission activities can be passed on directly; at the same time, learning about the activities of other NPMs can be useful for the Austrian NPM.

Sharing of experience In addition to their visits, the heads and members of the commissions are involved in many contacts and in the sharing of information with authorities, facilities, institutions and NGOs. In particular, participation in various working groups, for instance the one established in cooperation with the Federal Ministry of the Interior, is an important preventive element. An expansion of this form of cooperation into other areas would be desirable.

The commissions increasingly deploy delegations from across the commissions to utilise the available expertise to the greatest possible extent. External experts are included with the same objective in mind.

In many facilities and institutions, administration of medication represents a problem to the extent that, as perceived by the commissions, medication is often administered by unauthorised personnel.

The commissions are also directly informed by the persons affected regarding abuse allegations against the police. This topic was addressed in earlier reports to Parliament, where the commissions voiced their concern about the fact that the way such cases are processed is unsatisfactory. The commissions consider the avoidance of such incidents to be a priority human rights issue. Therefore the available information and documentation is being forwarded to the AOB with the recommendation that an investigative proceeding be initiated within the framework of the AOB's *ex-post* control. However, this step is the end of any possible course of action by the commissions themselves as the commissions are limited to preventive monitoring and control.

Observations of forced returns The observation of forced returns as part of the statutory mandate of preventive monitoring of acts of administrative power and coercive measures by the authorities is included in the ongoing responsibilities of the commissions, especially Commissions 4, 5 and 6. In the future, the commissions will also be able to accompany forced return flights. The medical examination to determine fitness to fly within the scope of forced returns is also included in the monitoring process. It was observed that further medical care of chronically ill persons in the target country is largely disregarded. Based on this

observation, the AOB initiated an investigative proceeding in 2014. In the opinion of the commissions, it is regrettable that the Federal Ministry of the Interior has not taken up the proposal of the AOB to remind the teams overseeing the forced returns and the doctors involved in the form of a decree to ensure further medical care or to abort the forced return, as this could otherwise be deemed a violation of Article 2 (right to life) or Article 3 (prohibition of torture or degrading treatment) of the European Convention on Human Rights.

The current situation regarding the refugee and migration movement in Europe was repeatedly the reason for visits in refugee housing that were carried out by the commissions on behalf of the AOB. Despite a fundamental understanding for the difficult situation, the commissions pointed out problematic deficits in care from a human rights perspective during all of these visits. These findings related to inadequate hygienic care, inadequate legal advice and insufficient legal counsel for minor refugees.

Visits to refugee housing

Visits carried out by Commission 4 within the monitoring priority “psychiatric care of detained persons” in police detention centres in Vienna showed that – despite the availability of psychiatric care provided according to reception conditions under the Basic Provision Agreement, which is not available to the same extent at other locations in Austria – the system is overburdened by inmates with addictions and other psychiatric illnesses and that as a result, in-depth enquiries and therapeutic conversations cannot be guaranteed with the available resources. This also comprises the problem areas of suicide prevention and hunger strikes.

Monitoring priority
„psychiatric care of
detained persons”

Commission 6 found that in the case of hundreds of unaccompanied minor refugees and asylum seekers age assessment is carried out by way of X-rays, which requires major organisational effort and considerable costs. In many cases, X-rays are made of the wrist, lower thigh, pelvis, dental arch and collarbone. Apart from health concerns resulting from unnecessary exposure to radiation and the scientifically proven inaccuracy of such methods, it must be stated that according to recommendations of UNHCR, when estimating the age of a child, not only the physical appearance should be used as a criterion but the psychological maturity as well. This is sometimes not taken into consideration. The UNHCR also recommends that in cases of doubt the decision should be in the child’s favour if the exact age is uncertain. The key factor is whether the child shows “immaturity” and helplessness that could require more sensitive treatment. The recommendations set out at the international conference of the International Organisation for Migration (IOM) organised in Vienna in 2006 by the Federal Ministry of the Interior stated to this effect: “Due to the evident margin of errors in all age assessment methods, children should always been given the benefit of the doubt, with lowest age selected.”

Age assessment of
unaccompanied minor
refugees

1.9 Report of the Human Rights Advisory Council

Successful work of the NPM In 2015, the Human Rights Advisory Council continued and expanded its successful work for the NPM. During 2015, it held a total of seven meetings and established numerous working groups that held around 25 meetings, sometimes including external experts and other persons with expert knowledge from among AOB employees.

The AOB directed various enquiries (submissions) to the Human Rights Advisory Council that were largely resolved in 2015. These included the following topics:

- NPM mandate for (forced) returns and turning away refugees by air
- supervision and counselling for police officers
- structurally separated toilets in detention facilities at police stations
- uniform human rights standards and monitoring criteria for major police operations
- administrative offences in correctional institutions
- legal protection for children and adolescents with disabilities in the case of age-atypical measures that restrict freedom

Furthermore, a working group titled “Work methodology of the Human Rights Advisory Council” met to discuss questions regarding more intensive cooperation between the NPM and the Human Rights Advisory Council and to optimise the Council’s work processes.

2. Findings and recommendations

2.1 Retirement and nursing homes

2.1.1 Introduction

During 2015, the year under review, the NPM visited 105 retirement and nursing facilities across Austria. Acceptance of the recommendations by the NPM is rising, with them being viewed as valuable input to improve quality.

As noted by the NPM in 2014, the implementation of insights based on scientific findings and standards in the field of health care and the application of various important assessment instruments – including from the perspective of preventive human rights monitoring (e.g. for risk assessment in connection with fall prevention, pain, hygiene, malnutrition, skin damage), is necessary in all *Laender*. This cannot be done without sufficient – and in particular sufficiently qualified – staff. In the opinion of the NPM, the framework conditions for this must be urgently improved. Knowledge about geriatric psychiatric care, palliative nursing and medical care and psychosocial care are becoming increasingly important in view of the increasing number of residents with moderate to serious dementia. This must be included in the training and continuing education of professional nursing staff to a greater degree than before. The NPM repeats its demand of 2014 for a uniform basis across Austria for how to calculate the necessary number of staff and important structural parameters, especially staff and qualification formulas (see NPM Report 2014, p. 27 et seq.).

More and better trained staff

In 2015, there were occasional enquiries directed to the AOB when the time of the monitoring visits by the commissions was scheduled “too late in the day” in the opinion of the nursing home operators. This relates to visits during the period of changes between day and night shift and – more seldom – during the night shift. The commissions endeavour not to disturb the operation of the facilities and institutions more than absolutely necessary and particularly to not place undue burdens on the residents. However, the focal point in 2015 – as had been publicly announced – was to survey mealtimes and bedtimes. As a consequence, the commissions verified when bedtimes are scheduled and how they are handled. There can also be good reasons to monitor night-time operations in particular. In one case in Styria, the visit did not begin until 7:30 p.m. because there had been an anonymous report that both sides of the bed were raised at night, thus restricting the freedom of the person concerned. This was not part of care planning and had also not been reported to the representative(s) of the residents. This complaint was verified without any doubt in a number of cases by Commission 3, which entered the rooms of persons who were already sleeping only briefly and without turning on any lights. An objection was also made that a video monitoring system had been installed without the consent of staff or residents.

Visits can take place at any time

Violence against nursing staff

Working with older persons can be both physically and psychologically challenging. Commissions have noted that managers of the nursing staff change frequently in facilities and that there is a high degree of staff turnover, as well as a large number of staff on long-term sick leave. Furthermore, older and experienced nursing staff complains that there is no commensurate reaction to difficult situations resulting from inadequate staffing, frequent overtime, recurring shift work and night shifts and the fact that older staff needs longer breaks and would like to give their input on work schedules. Early retirement of older nursing staff should be a societal alarm signal that working conditions in the nursing profession must be improved and made suitable for older employees and an ageing workforce. When nursing staff despair of their profession and think about leaving, the reasons also lie in leadership deficits that result in poor work situations and an icy work environment. A lack of support, insufficient transparency, inadequate information as a result of a lack of communication and an absence of appreciation are the reasons cited most often by nursing staff for the decline of satisfaction with their work. Many employees indicated to the commissions that they experience aggression and violence in their job. Therefore, during their visits the commissions also regularly check whether employees have an adequate offering of continuing education measures regarding violence in nursing care. During their visits in retirement and nursing homes, the commissions repeatedly emphasise the importance of supervision and counselling. This is an important component in a professional environment of the caretaking professions. In the opinion of the NPM, it should be mandatory to provide such offers for all employees.

Excessive demands on and overload of nursing staff are a major risk factor for violence against residents. The forms thereof are diverse and range from insults and neglect (e.g. malnutrition, decubitus or incontinence) to restriction of freedom by way of medication or mechanical means.

Violence against persons needing care

Today, prevention of violence against older persons is considered a social concern. The commitment by the World Health Organisation (WHO) clearly demonstrates this. It defines violence as “intentional use of threatened or actual physical force or power against oneself, another person, or against a group or community that has a high likelihood of resulting in injury, death, psychological harm, or deprivation”. The WHO estimates that prevalence of violence against the elderly is high and relies on international studies: it can be assumed that 2.7% of elderly persons in Europe become victims of physical violence every year. This corresponds to around 4 million people in Europe who are 60 or older. The percentage of those who experience psychological abuse is significantly higher at 19.4%, which equals around 29 million people. There are no study data about the conditions in Austria. This topic will become increasingly important due to the demographic development alone and controversial due to the negative images that are associated with “ageing” in our culture.

Rigid rules

Another factor in retirement and nursing homes is that many facilities have a number of their own regulations that represent constraints and compulsion for the persons affected. Standardised mealtimes and bedtimes, days to bathe or shower or fixed seating plans are examples of frequent uses of force, which occur in everyday care and which

seem harmless at first glance. The list of incidents that do not require a direct aggressor is long. In addition, there are many other forms of violence such as financial exploitation or assaults. Aggression between residents of facilities and between the persons needing care and the nursing staff are expressed as disputes, neglect or gross physical conflict.

Sometimes it seems that not enough attention is paid to circumstances that can subsequently trigger violence.

Commissions have often found, for example, that call buttons do not work or are placed where residents cannot reach them. In personal conversations residents have stated that they find it offensive that they are not listened to, that expressed wishes are denied, that they have to wait too long, that their trust is violated and that they are criticised or mocked in the presence of third parties. Residents often pick specific nursing staff members whom they trust for assistance in areas that can create feelings of shame. If the trusted person is not available, the problem is trivialised and belittled. In retirement and nursing homes, special attention should also be paid to privacy. High workload, a hectic pace and time pressure promote poor performance and misunderstandings that could be prevented with more and better communication. Knocking prior to entering a room should nevertheless be a matter of course. During their visits, commissions have unfortunately often experienced the opposite and have also seen that doors to rooms and bathrooms were left open during intimate care tasks and washing. A simple measure in rooms with multiple occupants would be visual barriers by way of screens. In the documentation of a facility in Lower Austria, the commission found an entry according to which a female resident's nails were cut concurrently by three people. The elderly lady struggled vehemently. The commissions also observed the use of dirty plastic bibs; residents were also found wearing dirty bibs outside of mealtimes. Such situations must be designated as humiliating. If protection is required when taking meals, large, washable napkins should be used.

Disregarding needs is violence

In any case, it is scientifically substantiated that there is a strong connection between measures that restrict freedom and aggressive behaviour. An effective prevention strategy must therefore include measures that are suitable for the prevention of violence and aggression and that can have a de-escalating effect in already existing violent situations. Dementia patients are increasingly likely to be subject to measures that restrict freedom. Behavioural abnormalities, such as physically and verbally aggressive behaviour and constant restlessness, are experienced by the people in their environment not just as challenging but as a hardship. It is well known from studies, but also from commissions' reports that psychiatric drugs are misused in nursing homes to confront these stressful situations and sometimes to "tranquillise" the residents (see also Chapter 2.1.2.3).

In the opinion of the NPM, training regarding prevention of falls and dealing with behavioural abnormalities, as well as specific care concepts for dementia patients, are essential approaches in order to prevent measures that restrict freedom.

Ten years after the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) came into force, many facilities and institutions are aware that use of milder measures makes it possible to forego mechanical restraints. There are now alternatives such as

Alternatives to mechanical restraints

sensor floor mats, low-profile beds and hip protectors. Sensitivity on the part of staff regarding interference with the right to personal freedom is growing if they are trained in custodial interventions such as validation and biography work. This training is also important with regard to documenting measures that restrict freedom transparently and comprehensibly, to evaluate them on an ongoing basis and to properly notify the representative(s) of the residents. Facilities and institutions that had deficits were urged by the NPM to make appropriate purchases or to improve decision-making capabilities and alternatives on the part of nursing staff by providing instruction on the enforcement of the Nursing and Residential Homes Residence Act. In some serious cases, in which there were systematic violations, the facilities and institutions were requested to promptly contact the representative(s) of the residents and to then notify the NPM that the unresolved problem areas had been dealt with.

In 2015, there were numerous situations that gave rise to complaints by the commissions. Notification violations vis-à-vis representatives of the residents were frequently criticised. But the commissions also endeavoured to improve specific conditions. For example, Commissions 2 and 6 noticed that in some facilities outdated beds were being used that no longer correspond to health care science and made it easy for limbs to be pinched or trapped. Sensor floor mats were purchased in a facility that does not yet have low-profile beds; however, they were only three to four centimetres thick so that the height of the fall from the nursing home beds was still too great. In another facility, during a visit by a commission a sensor floor mat was not at the edge of the nursing home bed, but was leaning against the wall, although the nursing staff had recognised and documented the necessity of fall prevention measures for this resident.

Electronic means that restrict freedom

The NPM increasingly found violations of notification and/or uncertainties with regard to notification obligations in accordance with the Nursing and Residential Homes Residence Act in connection with electronic monitoring systems, which can also restrict freedom. In the care of the elderly, technical equipment that registers when a person with dementia or with orientation difficulties would like to leave a ward or facility is called a care system for disoriented persons. Acoustic signal generators prevent doors from opening or alert nursing staff. With the assistance of the representative(s) of the residents in this area, the NPM has been able to ensure that staff can act with greater confidence.

Prevention of malnutrition

In some cases, the commissions found persons who were clearly malnourished. The following process steps were determined as a general approach: prevention begins with early recognition of a nutritional risk. This is the only way to create the prerequisite to begin nutritional interventions as early as possible. Standardised screening instruments are available; the most common are the Mini Nutritional Assessment and the Nutritional Risk Screening 2002. If malnutrition or a corresponding risk is determined, the nutritional status must be established by way of a nutritional assessment; possible causes for the nutritional deficits must be clarified. The results of the assessment are then the basis for the planning of additional interventions aimed at maintaining or improving the nutritional status. The interventions must not be limited solely to nutritional measures. Commissions observed that malnourished persons had obstacles to meeting their nutritional needs, e.g. difficulty with chewing and swallowing or poor dentition. These

obstacles must be clarified and remedied if possible. Positive effects can also be achieved by more assistance by staff in food intake as well as by creating a pleasant eating atmosphere, attractive food preparation and meal planning that is suitable for the elderly (smaller portions, multiple meals per day, etc.). In the case of serious errors in dealing with malnutrition, the supervisory authorities were asked by the NPM to pay greater attention during their controls and to ensure that initiated measures were examined at short intervals. Why must such deficiencies always be especially emphasised? Because early signs of malnutrition can be easily missed and from past experience, malnutrition that has become manifest is difficult to cure.

2.1.2 System-related problem areas

Principle of normalisation

Care and nursing of the elderly must be underpinned by ethical principles. Quality care is only possible if it is done respectfully. Respectful care is directed towards doing good for those needing care on one hand and towards protecting them from anything bad and to doing no harm on the other hand. Dignified care respects the individual personality and the right to self-determination and promotes and esteems autonomy, because self-determination and autonomy are important benchmarks for the quality of life of each human being. Therefore, life in retirement and nursing homes should be as normal as possible. Daily routine should follow the individual human rhythm and not rules that have been determined arbitrarily by institutions.

Dignified care

During visits, some facilities lacked a cosy and appealing ambience. They looked shabby and bare and were not personalised. In one facility in Salzburg, the smell of urine and faeces was noticeable even in the dining area.

For elderly people, in particular those who suffer from dementia, a daily routine that resembles normality is very important. In this respect, many retirement and nursing homes are attempting to find their own, new approaches. For example, nursing wards are set up as house communities. They are built around live-in kitchens, where food is freshly prepared together with the residents and other daily activities take place. Specially trained staff is available to create the daily routine with the elderly – and not just for them. However, they themselves do not carry out any nursing activities. In smaller units that are furnished in a homely way, residents can participate in meal preparation, cooking, folding napkins, ironing, etc. and experience personal attention and appreciation that is perceived as important. Even if participating in these activities is no longer possible, memories of favourite dishes or family celebrations are triggered by smells, which has a positive effect on persons with cognitive impairment. The goal is to create a familiar living atmosphere that gives those with dementia security and a feeling of safety, thus creating the feeling of being at home.

House community concept of „live-in-kitchen“ and „living.room“

The house community concept is also suitable for larger retirement and nursing homes. It can minimise the structural deficiencies of large facilities by implementing activities and addressing the life biography of the individual residents. This type of offering can also

be set up in accordance with regional particularities, e.g. in a Lower Austrian facility as “live-in kitchen” (“*Kuchl*”) or as “living room” (“*Wohn.Zimmer*”) in a facility in Vienna. In order to realise the house community concept, appropriate staff framework conditions are necessary. In a retirement and nursing home in Carinthia, Commission 3 found that this model is also bound to fail completely if there is no assisting staff to implement it.

Permitting autonomy and individuality

Mealtimes and bedtimes are indicators from which the culture of facilities, i.e. the level of autonomy and individuality, can be derived. Retirement and nursing homes must also take into consideration to a greater degree that they are providing a home for people with very different habits and needs who want to retain their accustomed rhythm to the greatest extent possible. In facilities residents with personal sleep rituals frequently cannot realise their ideas of good sleep for varied reasons. Loneliness, little external stimulation, frequent or long naps during the day and a lack of exposure to light promote sleep disorders, which are increased by pain, the need to urinate, noise in the environment or physical impairments. In some nursing homes, the attempt is made to address individual sleep-wake rhythm by having increased activities in the late afternoon or sometimes even at night, or by letting residents sleep longer in the morning. Non-medication-based offerings that promote health and sleep, providing a variety in the everyday life of the nursing home and fostering well-being and natural tiredness towards evening (e.g. outdoor excursions, ergo therapy, aromatherapy, music therapy, painting therapy or garden therapy, psychosocial care) are not used everywhere or not systematically enough. In large facilities, occupational offerings and leisure activities, as well as facilitation of physical activity, often provide more diversity, but are organised according to groups or categories and are not coordinated according to individual preferences for a meaningful daily structure so that not everyone can or wants to benefit from them equally. In some facilities, there are no offerings or only sporadic ones. This was observed particularly in Carinthia and in Burgenland. Many residents with restricted mobility go outdoors only when relatives, volunteers or persons performing civilian service take them out, even during warmer weather. The nursing staff usually does not have time for this. This occurs even when green spaces, raised planting beds or dementia gardens have been designed to create incentive for physical activity. Particularly less mobile residents therefore tend to spend too much time in bed because making them mobile requires individual attention that staff often cannot provide with the resources available. It must be taken into account that the sleep requirement of persons with dementia can decline in the course of their illness to around six hours per night (average figure). As a rule, it is impossible to compel them to sleep more by natural means. In the opinion of the NPM, sleep-inducing medication should generally never be the first choice, as they continue to have an effect the next day and cause a numbness or sleepiness that also increases the risk of falls.

Findings by the commissions

With regard to a facility in Lower Austria Commission 5 criticised that it does not correspond to a normal daily rhythm for many when everyone gets breakfast at 9 a.m. and lunch is already served at 11:30 a.m. It is also wrong to deprive persons of breakfast who do not wake up until 9 a.m. and to reprimand them for getting up late as Commission 3 reported about a facility in Styria. Dinner for everyone at 4:15 p.m. or 4:30 p.m., at which time sleeping pills are handed out to immobile residents, is clearly too early. During a

visit by Commission 6 in a facility in Burgenland, at 3:30 p.m. only four persons were still having dinner in the communal room. All the other residents were already in their rooms and for the most part ready for bed. Commission 6 saw for itself that the kitchen in this facility had been completely cleaned by 4 p.m. Some residents complained to the commission about early bedtimes and spending a long time lying in bed, which they were forced to do due to their physical limitations and the resulting physical impairment. In some facilities, the NPM was successful in attaining that late shifts were set up to enable greater flexibility. The number of staff tends to be low everywhere during night shifts and this does not permit responding to requests by residents for more needs-based activities during the day and especially towards evening.

The NPM considers it positive if elderly persons can have a snack at any time after a main meal and that offerings are still available during the night hours, as seems to be the case in many facilities in Tyrol. The staff in a retirement and nursing home in Lower Austria was especially committed. Kitchen staff ask the residents personally if they liked the food; requests for changes are met quickly and the kitchen is staffed until 7:30 p.m.

In order to respond to the habits of each person, biography work should be used in all retirement and nursing homes.

The NPM is of the opinion that the inclusion of residents, in the sense of input and co-determination, should be observed in every retirement and nursing home. Positive examples are, the installation of a “residents’ council” in a facility in Lower Austria, or as is the case in Vienna, the election of residents’ advisory boards.

Inclusion of the residents

The NPM also recognises the need to expand palliative care. Many facilities have already dealt with the topic of “dying with dignity” and have introduced a special unit for palliative care. The commissions have, however, found situations that are not consistent with modern palliative care.

- Activity and occupational offerings during the day as well as regular access to the outdoors increase well-being and prevent complications.
- Respecting the right to self-determination is also necessary with regard to organisation of mealtimes and bedtimes.
- Non-medication-based measures to minimise sleep disorders should be used systematically and documented.

Requirements for the effective prevention of falls

The tendency to fall is a risk factor	The fact that elderly people have a tendency to fall is an especially significant risk factor in retirement and nursing homes. However, contrary to what the term suggests, falls are not a sudden and isolated event, but they often have a history, can happen repeatedly and often have dramatic consequences.
Negative consequences	Up to 50% of all nursing home residents suffer a fall every year; 40% fall repeatedly. When the elderly fall, around one third suffers injuries as a result. Sometimes serious injuries, such as fractures near the hip joint, craniocerebral injuries and bone fractures are the consequence. Residents often lose confidence in their mobility after a fall. Since they are afraid of falling again, they restrict their activities, seclude themselves and thus have a reduced quality of life. Many studies have examined the effectiveness of interventions with regard to prevention of falls. One can roughly differentiate between personal, staff-related and environment-related interventions.
Lacking awareness for prevention of falls by way of structural solutions	Retirement and nursing homes in Austria are not consistently barrier-free, either construction-wise or visually. Unfortunately this is a fact that promotes falls by the very elderly. Additional risk factors that vary as far as concrete effects of health limitations are concerned increase the risk of falls significantly. The living environment of persons with orientation, perception, mobility, vision or coordination impairment must, however, be safe, because residents can no longer adapt to structural barriers.
Outdoor access not barrier-free, even for new construction or remodelled buildings	During their visits, commissions observed that in Vienna and Lower Austria it was not ensured that access to terraces, balconies or gardens is barrier-free even for newly constructed or remodelled buildings. On one hand, such obstacles are tripping hazards that can cause mobility-impaired persons to fall; on the other, they make it impossible for users of wheelchairs to access outdoor areas independently. If in a nursing home, which was opened in 2014 and which also has living areas for persons with dementia, access to the dementia garden via a door that is difficult to open and a path that is too steep becomes a hazard, planning errors have been made. In summer 2015 Commission 4 found that the attractive green spaces were hardly being used for this exact reason and accompanying the mobility-impaired outdoors was only possible to a very limited extent due to staff capacity. The necessity for structural remodelling to prevent falls was not denied. It should be noted that it is not the facility management that is responsible for such deficiencies, but the entity that owns and operates the facility.
Serious deficiencies in older buildings	In the case of older buildings, the deficiencies are sometimes much more serious and relate to residential and communal rooms as well as sanitary facilities. A nursing home in Vienna, which was visited twice by Commission 4, is considered to be no longer suitable for its purpose due to the fact that it is largely not barrier-free. The recommendation of the NPM to make it barrier-free was not complied with. In the absence of a legal basis, the responsible municipal department (<i>MA40</i>) may not subsequently prescribe any official requirements in this case. In this context, the NPM criticises that the Viennese Nursing Home Act (<i>Wiener Wohn- und Pflegeheimgesetz</i>) has granted all operator institutions

periods of transition until the end of 2019 to make approved existing facilities barrier-free.

Other factors can also present hazards for the elderly. For example, according to the findings of Commission 2, the hoses of a central vacuum cleaner in a retirement and nursing home in Salzburg represent a major risk for falls. In other *Laender*, there have also been observations regarding avoidable tripping hazards with regard to slippery floor coverings, insufficient lighting in hallways, stairway steps and ramps that are too steep, missing handrails, etc.

Tripping hazards

The NPM regularly emphasises the importance of structural measures to prevent falls to support the autonomy and quality of life of residents. At the same time, such measures would also relieve staff, because in a barrier-free environment the likelihood of injuries or necessary assistance when entering or leaving rooms can be reduced. Fewer falls also protect the health care system from follow-up costs in connection with necessary medical treatments. It is therefore an important quality characteristic of an institution if it minimises falls and their consequences, e.g. increased dependence, permanent disability or the fear of falling, for the well-being of residents by way of suitable measures.

In nursing homes, the reaction to the danger of falls is sometimes not additional support or appropriate actions, but measures that restrict freedom, which are sometimes demanded by relatives, who do not have any specialised care experience, once falls have occurred. Study results indicate that residents are not kept safe from falling by means of measures that restrict freedom; rather this initiates an insidious cycle. Due to the forced immobilisation, the body loses more and more muscle strength and balance, which ultimately increases the danger of falling even further.

Restriction of freedom
increases danger of falling

Regarding the question of how falls can effectively be prevented, relevant studies and evidence-based guidelines from Germany, which the commissions repeatedly refer to in their reports to the AOB, provide a relatively uniform picture.

Guidelines regarding
prevention of falls

According to them, effective prevention of falls presumes that each resident's risk of falling is comprehensively and systematically ascertained and that personal risk factors, such as external or environment-related factors, are taken into consideration. As the risk of falling can change during the resident's stay, it must be ascertained on a regular basis, at least whenever the state of a person's health or their medication changes. Based on the collected data, individual measures for the prevention of falls should be planned – with the involvement of the persons concerned – and their suitability should be examined on an ongoing basis.

Systematic risk
identification

Many studies have examined the effectiveness of interventions with regard to the prevention of falls. One can roughly differentiate between personal, staff-related and environment-related interventions. Examples for each of these categories can be: hip protectors, training of staff or call systems to summon nursing staff that can be easily reached.

The reports of all six commissions during the past three years show that fall prevention does not meet the requirements of an effective prevention process in some of the

facilities that were visited. The visits made during 2015 substantiated this assessment by the NPM.

Deficiency in new construction, remodelled buildings and old buildings

In one facility in Salzburg and in one in Upper Austria, fall management was set up for the first time upon recommendation by the NPM. In other cases, the commissions objected to the fact that the existing system was not adequately implemented and/or there was no regular evaluation of measures taken after falls had occurred. If existing risks are being ignored completely and over a lengthy period of time, this can have fatal consequences for residents. This was adequately confirmed by way of visits by commissions.

62 falls in two weeks

In a facility in Tyrol, for example, Commission 1 found that based on the documentation within two weeks, a total of 62 falls had been recorded. Residents indicated that since then they were extremely uncertain, they hardly trusted themselves to do anything, even after less serious injuries. Observing painful falls by others made persons needing care fearful. Commission 1 recommended directly on site that a well-founded reassessment of fall prevention for the entire retirement and nursing home be tackled. In the meantime this has been done and was supported by staff training.

Analysis of how falls occur

Expert assessment of each individual fall and the analysis of falls throughout the entire facility (recording of frequency, circumstances and consequences of all falls in the facility) are always required in order to be able to analyse the effects of measures taken to prevent falls over the long term. One of these assessments in a facility showed that falls occur increasingly when there are team meetings, in other words during a period in which fewer staff are available for the residents. By making organisational changes, this hazard could be corrected relatively easily.

Central documentation is absolutely necessary

In the fall prevention process, documentation is an important factor. However, it is often viewed as a burden in daily nursing care when staff resources are scarce. Careful and comprehensive documentation ensures an adequate sharing of information. This is the basis for the evaluation of care planning. The documentation and central recording of fall incidents is necessary in order to identify weak points and to be able to react to them accordingly.

- Only effective fall prevention ensures the right of residents of retirement comes to the best level of health possible.
- Training in fall prevention, dealing with behavioural abnormalities and care concepts for persons with dementia are essential in order to avoid measures that restrict freedom.
- Residents' individual risk of falling must be recorded not only when they enter a facility but on a regular basis, particularly if the condition of their health or their medication change.
- Fall incidents must be carefully analysed, centrally documented and evaluated.

Drug safety (medication-based restrictions of freedom)

Last year, the NPM targeted the sometimes uncritical use of sedating medication (see NPM Report 2014, pp. 33 et seq.). Polypharmacy, but also prescribing medications that can be potentially harmful for the elderly and medication-based restrictions of freedom without examining alternatives, are failures that must be faced. At a press conference, at which the Annual Report 2014 was presented to the public, this topic and others were the focus of attention.

In subsequent emails and telephone calls, the NPM was explicitly requested by relatives, legal guardians, doctors, as well as professional nursing staff to continue to address this topic. On the other side, there was some sharp criticism. The NPM was accused by the Austrian Economic Chambers (*Wirtschaftskammer Österreich*) and by professional health care associations of disparaging nursing staff, in particular, even though prescribing such medication is done by doctors. Among other things, it was explicitly said that homes are responsible only for care but not for the medical treatment of residents. The Federal Association of Austrian Residential Care Homes for the Elderly (*Bundesverband der Alten- und Pflegeheime Österreichs*) even stated in a press release that employees in retirement and nursing homes have to live and work with the existing framework conditions and cannot be made responsible for the results that can be achieved with these conditions. They stated that it is up to society and the political arena to provide more resources, because improvements in staff structures (presence/qualification) have to be reflected in the payments.

NPM reaps both approval and criticism

It must again be clearly said that neither the NPM nor the ombudspersons wish to lay the blame for the criticised conditions at the feet of individual actors. This cannot create any progress in connection with a topic where the focus is and must be on the well-being of residents. It is revealing that advocacy groups have a high level of sensitivity with regard to this subject, but they place the responsibility for it outside of those areas where they themselves can intervene. In organisational sociology the term “diffusion of responsibility” refers to the phenomenon that a task, which must be undertaken, is not accepted or carried out by the bodies or persons suitable for this task, even though there is an adequate number of persons and the necessary awareness. Many seniors in nursing homes are impacted by multi-morbidity; in other words, they suffer from several chronic illnesses at the same time and they therefore require many medications. However, in the case of this kind of polypharmacy, possible medication interactions are exponentially increased. Furthermore, age makes the human organism more susceptible to side-effects, in part because the effect of many medications changes. The NPM would like to sensitise those involved with regard to these problems, and contribute to a reduction of medication-based restrictions of freedom.

The topic of inadequate, inappropriate, not indicated, usually off-label use of psychotropic medication on geriatric patients with behavioural disorders due to dementia, which is a hardship for them and for their environment, has been the subject of critical remarks for years. The commissions have also pointed out these facts and circumstances.

In order to make the discussion more objective, the NPM would like to state the following:

Psychotropic medication belongs to those categories of medications that are prescribed most frequently in nursing homes. Without a doubt, treatment with psychotropic drugs can serve the well-being of nursing home residents and contribute to an improvement of their quality of life, provided that therapeutic standards are implemented responsibly, and clearly defined indications are taken into consideration.

Findings by the
commissions

It was found by the commissions (and this is in line with international study results) that the inappropriate use of psychotropic medication correlates with specific patient characteristics that cannot be considered as medically relevant factors. This includes residents' behavioural abnormalities, such as constant restlessness or aggressiveness. Given this background, it is suspected that psychotropic medication is also misused for the purpose of tranquilising residents. In its report from 2014, which is publicly accessible, the Viennese Care Home Commission (*Wiener Heimkommission*) stated, verbatim, about this subject: "Certainly, psychotropic medication is given with the intention (not to say "indication") of restricting freedom. There are signs that not all, but a substantial portion of psychotropic medication is prescribed inadequately, inappropriately and are not indicated to an unacceptable extent."

There are hardly any figures or research regarding the situation in Austria.

Risk assessment

The NPM considers treatment with a psychotropic medication to be inadequate if it is prescribed in a dose that is too high or over a period that is too long, if no adequate monitoring is carried out, if there is no clear (medical) indication and/or if serious side-effects occur.

The risk for inadequate treatment with psychotropic medication is higher (and these are also the reference points for prevention), particularly if:

- the professional competence of the prescribing doctor is insufficient or appropriate care by doctors with geriatric or psychiatric training is not ensured (psychotropic medication is prescribed by general practitioners; visits by specialists do not take place regularly or take place too seldom);
- the nursing and care staff is not appropriately qualified (in particular as far as dealing with challenging behaviour is concerned);
- the cooperation between doctors, pharmacists and nursing staff is inadequate;
- documentation is insufficient (if, for example, indication, the symptoms being treated and the effectiveness of the treatment are not documented, administration of PRN medication must be adequately specified in order to not leave the decision about the medication up to the nursing staff);
- non-pharmacological measures are given too little consideration or none at all.

There are some positive initiatives, which were begun or expanded after the presentation of the report of the NPM.

In 2015, Lower Austria began the “medication reconciliation” project in collaboration with the Baden Regional Hospital, the Lower Austria State Nursing Home Baden, the Mödling Regional Hospital, the Lower Austria State Nursing Home Mödling, the Lower Austrian Public Regional Health Insurance Office (*NÖGKK*), the Social Insurance Institution for Trade and Industry (*Sozialversicherungsanstalt der Gewerblichen Wirtschaft*) and the Health and Social Fund of Lower Austria (*NÖ Gesundheits- und Sozialfonds*). The intention is to optimise patients’ medication and to reduce the negative effects of polypharmacy.

Lower Austria

Another project in Lower Austria is the “Lower Austrian Nursing Home Polystudy” (*“NÖ-H-Polystudie”*). Within the scope of the study, the medication of all new residents accepted in regional nursing homes is ascertained and re-examined after eight weeks. The results will in all likelihood be available in late 2016.

The improvement of care of patients with dementia, the increase in the number of care and nursing staff in nursing homes, support by local office-based doctors as well as the reduction or adjustment of psychotropic medication is also the objectives of the project “Gerontopsychiatry in Nursing Homes” (*“Gerontopsychiatrie in Pflegeheimen”*), which was begun in Vorarlberg in 2012 and was extended to other facilities and institutions in 2015.

Vorarlberg

In Salzburg, the medication of 72 residents of the retirement home in Bad Gastein was evaluated by a pharmacist. After examining the medication, suggestions for changes of the medication were developed jointly with the head of the nursing staff. Building on these suggestions, 40% of the persons taking sleeping pills and sedatives and 45% of the residents taking pain medication received modified prescriptions from the doctor; in 7% of the cases, the residents were able to stop taking psychotropic medication entirely. The Vice President of the Austrian Chamber of Pharmacists, Dietlind Strasser, was invited to an NPM meeting in Vienna to learn more about this. At this meeting, she presented the subsequent project “Geriatric Medication Management in Stationary Facilities for the Elderly” (*“Geriatrisches Medikationsmanagement in stationären Alteneinrichtungen” – GEMED*). The participants are pharmacies and residential homes for the elderly in the following towns: Abtenau, Bad Gastein, Bad Hofgastein, Kaprun, Mittersill, Radstadt, Werfen and Zell am See. The start is planned for May 2016.

Salzburg

Guideline 3a in the dementia strategy published by the Federal Ministry of Health and the Federal Ministry of Labour, Social Affairs and Consumer Protection in November 2015 “Sensitisation, Development and Strengthening of Competence and Qualification of Medical and Non-medical Actors in Facilities and Institutions of Healthcare and Social Welfare Services” provides for structured medication management and the embedding of specialist aspects and implementation of dementia-specific content in the training and continuing education of all participating professional groups.

Dementia strategy 2015

- The starting point of strategies to avoid inappropriate polypharmacy for geriatric patients is often a complex and time-intensive medication anamnesis.
- The extent to which medication is suitable must be evaluated in each individual case and, if appropriate, an intervention in the form of a medication adjustment must be carried out.
- At the same time it should be remembered: after the evaluation is before the evaluation. A stocktaking of the situation must take place at regular intervals.

Dealing with pain

Pain can be influenced
even in old age

Many believe that pain is a normal symptom of growing older. This is not correct. Often discomfort is simply accepted and the possibilities to reduce or prevent pain are not utilised. The health survey by *Statistik Austria* in 2014 shows why the topic is relevant in retirement and nursing homes as well. "Every fifth man and every fourth woman older than 75 years of age is affected. Every tenth man older than 45 years of age reports (very) severe pain. Women over 75 years of age have the highest prevalence of (very) severe pain (20%)". According to studies, in Austrian retirement and nursing homes around two thirds of residents suffer from pain. This does not surprise anyone who shares the widespread belief that pain is part of ageing. Doctors, however, contradict this and emphasise that pain management is inadequate and that the training of both doctors and nurses leaves much to be desired.

Untreated pain

Pain has very different causes and can occur in many different forms. It can be either chronic or acute and the presence of pain can differ greatly in its subjective severity. This sensation is difficult to grasp objectively. If pain remains untreated, this results in very severe impairment of the quality of life. Long-lasting pain has drastic consequences for body and mind. People lose their appetite, lose weight, lose their drive or become aggressive and the danger of suicide grows.

Pain assessment

In order to be able to treat pain, it must be recognised in a timely manner and precisely diagnosed in a pain assessment. A comprehensive evaluation of pain requires compliance with numerous criteria: how does the pain manifest, where it is localised, when does it occur, how long does it last, how intense is it, what is the quality of the pain and which symptoms accompany the pain. The use of well-tested scales, with which the persons affected can better gauge their sensation of pain, are helpful. Assessing pain in nursing home residents with severe dementia is difficult because of limited communication possibilities. The danger that their suffering is not adequately assessed, but is trivialised, is significant. Persons with advanced dementia can no longer express their pain adequately. The increasing loss of independence and self-determination leads to a high degree of dependence on nursing staff. The nursing staff has the responsibility to keep their eye on possible pain in the most literal sense of the word. The basis for assessing pain by a third party is continuing and systematic observation of changes in behaviour, such as facial expression, language or physical movements during all nursing

tasks. As is the case in self-assessment, scales can be helpful in an assessment by a third party as well. In this area most particularly, a cooperative partnership between attending physicians, nurses and relatives is especially important.

Unfortunately, pain assessments are not seamlessly customary in retirement and nursing homes. During their visits, the commissions have found repeatedly that pain assessments are either not yet customary or that the documentation of pain perception and of the corresponding medication-based or non-medication-based measures is very deficient. If pain in the elderly would be routinely evaluated with the same priority as blood pressure, pulse, breathing and temperature, a significant amount of unnecessary suffering, stress and fear could be avoided.

Pain prevention is inadequate

In the opinion of the NPM, more training of nursing staff with regard to assessment of pain and impact on pain intensity in cognitively impaired persons is urgently necessary, and the commissions have often called for this to occur.

Residents, and sometimes their relatives who happened to be present, have indicated to the commissions that pain management is inadequate. The commissions have occasionally criticised that letting residents sit without movement for several hours in folding wheelchairs that are of limited suitability for this, missing headrests and a lack of attention with regard to beginning or advanced contractures (muscle shortening) due to pain-relieving postures, etc. promote pain and also the occurrence of decubitus.

Retirement and nursing homes which do not recognise or neglect the problem of pain management deny the residents the quality of care that should be guaranteed.

- It is necessary to recognise and assess the pain felt by residents on a regular basis and to counter this by way of measures to alleviate pain.
- Professional treatment of pain requires cooperation between nursing staff and doctors, including the persons affected and their relatives.
- Training of the entire nursing staff with regard to recognition and assessment of pain in cognitively impaired persons is absolutely necessary.

Danger of strangulation when improper restraint in a wheelchair is used

During an unannounced visit in a retirement and nursing home, Commission 4 noticed the improper use of the belt of a robe to restrain a person requiring care in a wheelchair. The husband of the woman who was present confirmed that this was not the first time this had happened. At the concluding meeting, neither the head of the nursing staff nor the manager of the facility indicated that they were informed about this. It was explained to them in detail that this form of restraint is not only prohibited, but that it can be life-threatening.

Questionable use of restraints using straps

In most retirement and nursing homes and in hospitals, the use of medical products that restrict the individual freedom of movement of elderly and/or mentally ill persons who usually have dementia is still an integral component of everyday care. Restraints with straps are used primarily for persons with increased risk of falls, motor restlessness, agitation, intention to self-harm and danger of suicide.

Ensuring freedom of movement

Therefore, all efforts must be directed towards enabling the natural need for movement to the greatest extent possible. Restraints using straps, in particular straps around the chest, the stomach or the pelvis, are not just accompanied by the loss of freedom and autonomy. They also cause stress and have adverse consequences for health. The regular and long-lasting use of strap systems can result in muscular atrophy. As a result, the ability to stand and walk deteriorates after a phase of restraint. Forced immobility promotes complications such as decubitus, deep-vein thrombosis in the legs and pneumonia.

Improper and unprofessional use, such as restraint using belts, etc., can result in injuries like skin abrasions, haematoma, soft-tissue bruising, nerve damage and fractures; in a worst-case scenario, it can even result in death through suffocation.

- Doctors and professional nursing staff must always try to recognise the causes for restlessness, tendencies to run away and potential risks of falls and to remedy them without restraints if possible.
- Restraints using straps may only be used with medical products approved for this use.

2.2 Hospitals and psychiatric institutions and facilities

2.2.1 Introduction

In the year under review, the commissions visited 30 hospitals, including 19 psychiatric and 11 somatic clinics/wards.

The expansion of visits by the NPM to hospital wards with a different specialisation than psychiatric illnesses is due to the circumstance that elderly persons with dementia and multi-morbidity increasingly require treatment in hospitals. Hospitals have to be prepared with regard to safeguarding their rights to freedom. They are also subject to the regulations of the Nursing and Residential Homes Residence Act for the particular protection of this group of persons.

In the course of these visits, commissions found repeatedly that more lenient solutions to avoid measures that restrict freedom such as low profile beds or sensor floor mats are not available or only available to an insufficient extent. This means that the equipment in hospitals has more deficits than in retirement and nursing homes. Furthermore, the commissions identified deficits in information and training for personnel in the areas of de-escalation, aggression management and handling measures that restrict freedom.

Deficits in equipment and training

As a reaction to these observations by Commission 5, the *Land* Lower Austria assured the NPM that it will increase its investment in such alternatives. In 2015 and also continuing in 2016, some of the focal points in training offerings for hospital personnel in Lower Austria were/will be victim protection and prevention of violence, application of the Nursing and Residential Homes Residence Act in hospitals, de-escalation, self-defence and self-protection. For the first time, courses will be offered to train “trainers for de-escalation and safety management”.

Commission 4 observed that elderly patients in Vienna remain hospitalised for a lengthy period of time even though this may not be medically necessary, as they could not be discharged without subsequent care being ensured. The organisation of adequate care at home or placement in short- or long-term care facilities requires time and – above all – the support of third parties. It is not a rare occurrence for legal guardians to be appointed during this phase and this extends hospital stays even further.

Hospitalisation

Health complications can occur in such situations. Hospitalisation can namely promote the occurrence of delirium, especially in the case of elderly patients. In a hospital setting, their psychosocial needs cannot be met and non-pharmacological, therapeutic occupational offerings cannot be adequately provided. The Municipality of Vienna has reacted to this problem area insofar as a simplified application and approval process for subsidies for short- and long-term care is being tested within the scope of a pilot project.

In psychiatry, there is an underlying conflict between coercive measures and therapeutic objectives, as they also have a role in preserving order. This regulatory obligation is frequently used as a reason for restricting the freedom of patients if they are a danger to

Psychiatry

themselves or others. Coercive measures are necessary under the standardised conditions set out in the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*), which are a prerequisite for admissibility. International studies show, however, that the use of measures that restrict freedom in psychiatric wards varies a great deal and cannot be explained using objective criteria. It can be assumed that a targeted preventive strategy can reduce the frequency of measures that restrict freedom. It is and remains a core responsibility of the NPM to initiate and promote such strategy.

Scientifically substantial
risk factors

As far as the question is concerned how best to avoid restrictions of freedom, one must begin with the risk factors. It is scientifically substantiated that there is a strong correlation between measures that restrict freedom and aggressive behaviour. An effective prevention strategy must therefore include measures that are suitable for the prevention of violence and aggression and that can have a de-escalating effect in already existing violent situations. As violence and aggression are also always consequences of social interaction, the propensity for violence on the part of patients is significantly influenced by how relationships are managed and by the attitude of the clinic management in this regard. The institutional conditions are also relevant to the prevention of violence. These include spatial circumstances (appropriate occupancy, distribution of patients with a higher potential for violence), as well as organisational processes. Clear and transparent structures result in a lower occurrence of aggressive incidents; when restrictions increase, however, the level of aggression rises as well.

Alternatives after
prohibition of net beds

In accordance with the recommendation of the NPM, the Federal Ministry of Health prohibited the use of psychiatric intensive beds (net beds) as well as other “cage-like beds” by way of a decree in July 2014. Owners and operators of hospitals and nursing homes were given a one-year transition period until 1 July 2015 (see NPM Report 2014, p. 43 et seq.).

During their visits, Commissions 3 and 4 found that this decree to end the use of net beds was implemented by the responsible owners and operators in a timely manner.

Intensive preparation in the
Otto Wagner Hospital

During a visit in Otto Wagner Hospital, Commission 4 observed that due to intensive ward-internal preparations and working groups, a number of alternatives to forced placement in net beds had been implemented. The hospital is trying to act proactively to de-escalate situations and to offer patients more opportunities for dialogue. Nursing staff is increasingly called in when drip infusions are administered. According to concurring statements, the flexible cooperation of the care teams with the doctors is working. However, in several wards, the requested equipment (e.g. motion-sensitive floor mats, low-profile beds) had not yet been completely delivered one month after the decree prohibiting net beds became effective. Despite the occasionally noticeable scepticism about being able to deal with the new challenges, a setting has been created under difficult framework conditions and existing space constraints that could prevent an increase of measures that restrict freedom and sustainably improve patient care. This must be recognised as an achievement and a success of an organisation that opposed the prohibition of net beds for so many years.

The NPM has suggested that additional Standard Operating Procedures (SOP) be developed for dealing with confinement in locked rooms and that qualification and training measures – in particular with regard to situation-appropriate selection of milder measures and how they are deployed – be continued. However, Commission 4 emphasised concerns regarding human rights because one of the wards has constant video monitoring in all rooms, including the communal areas and outdoors. This is a disproportionate restriction of privacy and furthermore, could be counter-productive when delusional disorders are present, because this could increase the latent perception of defencelessness and helplessness.

Figures were requested which would show the quantitative and qualitative development of measures that restrict freedom in Otto Wagner Hospital. They will be analysed and follow-up visits are planned for 2016.

In 2014, the NPM took a decisive stance against having private security company employees assisting in carrying out measures that restrict freedom and occasionally also assisting in nursing and care tasks. Subsequently, the Supreme Court also did not approve of these practices. Private security companies are neither entitled nor authorised to participate in attaching restraints, even on the orders of the attending hospital staff. The Supreme Court also qualified all measures requiring close body contact to patients, for example, holding them in order to prevent them from leaving the ward, as prohibited.

Caution in the deployment of security services

Upper Austria and Vienna have provided the NPM with written assurances that case law will be taken into account; they have also taken the necessary measures. The Standard Operating Procedure in Otto Wagner Hospital has also been revised in this regard. Commission 4 was informed that this hospital is considering setting up a specially trained, in-house nursing care crisis team to replace private security company services. This would further reduce the necessity of deploying private security personnel in the wards. This model is favoured by the employees of the psychiatric hospital; it was explicitly endorsed by the NPM in advance of the decision-making process.

After a visit over several days in fall 2014, the European Committee for the Prevention of Torture (CPT) gave recommendations in the field of psychiatry in its report to the Federal Government (CPT/Inf [2015] 34) – as it had done already in 2009. The NPM does not only support these recommendations, but considers them absolutely essential. It believes that there are still reservations and opposition to these recommendations due to the associated additional costs.

CPT recommendations 2015

For example, the CPT repeated that restrained patients must be continuously and directly supervised in the form of a permanent and direct supervision by a member of the medical staff. The direct interpersonal contact with patients is intended to calm them down and to reduce feelings of fear. Such assistance can consist of, for example, accompanying patients to the toilet or helping them drink or eat despite being restrained. In the opinion of the CPT, it is therefore not sufficient to depend exclusively on monitoring cameras.

Permanent and direct supervision when patients are restrained

The commissions found that this recommendation by the CPT is largely not being followed and that insufficient personnel resources are given as the reason. The NPM cannot accept the non-compliance with the protection of human dignity in a coercive context that is required in accordance with human rights.

Beds in the hallways and visible restraints

In this respect it must be emphasised that the practice observed by the commissions of caring for patients in beds set up in hallways and the visibility of means of restraint are a glaring violation of human rights standards and not acceptable. It is intolerable for patients that they can be observed by an uninvolved third-party while they are restrained, which de facto cannot be avoided, specifically when beds are placed in hallways. Underlying capacity constraints are also a clear violation of Section 1 (1) of the Hospitalisation of Mentally Ill Persons Act, which states that the human dignity of persons with mental illnesses must be protected and maintained in all circumstances. The NPM calls for compliance with this obligation that is also an explicit standard in Austria.

Register for measures that restrict freedom

The CPT has recently emphasised that a central register to record measures that restrict freedom is a prerequisite to and an integral component of an effective and systematic prevention strategy to reduce measures that restrict freedom, the results of which can then be measured and compared better by the clinics. The entries in such registers should contain the following information: the beginning and the end of the measure, the circumstances of the case, why the measure was used, the name of the doctor who ordered or approved it, the staff members who were involved in implementing the measure and a description of any injuries that the patient or the staff incurred.

The set-up of a central register with the information requested in the CPT report is not provided for in the Hospitalisation Act. During their visits, the commissions observed that such central registers have, for the most part, not been set up in hospitals despite the efforts made by the NPM and others. The reasons provided for this are privacy and data protection concerns but also additional IT costs. For the NPM it is of course beyond dispute that these data would be anonymised and recorded in a way that cannot be traced back to or identified with the actual persons involved. The Federal Ministry of Health has announced additional discussions with all hospital owners/operators.

If the “deadlock” continues, it should be contemplated to compel the hospitals by way of a legislative amendment of the Hospitalisation Act to set up an appropriate register within a reasonable period of time.

Child and adolescent psychiatry

The NPM already critically addressed the unsatisfactory situation of child and adolescent psychiatry in Austria in the Annual Report 2014 (see NPM report 2014, p. 46 et seq.). The commissions determined furthermore that, due to the existing lack of medical specialists and insufficient capacity, children and adolescents are being treated and placed in adult psychiatric wards. This is a violation of preventive human rights and professional standards both with regard to case law and in the opinion of the CPT.

Accordingly, the CPT has strongly demanded in its current report that alternative solutions are necessary in order to avoid housing juvenile psychiatric patients together with adult patients in psychiatric facilities across Austria.

The already existing lack of medical specialists is being additionally aggravated by the necessity of implementing the new regulations on working hours for doctors in hospitals. This results in more and more bottlenecks in psychiatric care, which is well demonstrated for example in Vienna by the fact that sometimes no doctor is on call during night shifts in psychiatric wards, or doctors are “borrowed” from amongst office-based physicians.

In the opinion of the NPM, it is therefore urgently necessary that training opportunities for specialists be increased, particularly in the field of child and adolescent psychiatry. This could be reached by applying the Regulation on Education and Training for Medical Practitioners (*Ärzte-Ausbildungsordnung*) of 2015 with regard to “inadequately filled speciality fields”. Additionally, the adequate psychiatric care has to be ensured by way of structural and organisational measures.

- Elimination of net beds has been implemented.
- Correct deployment of private security companies is targeted.
- CPT recommendations from 2015 regarding permanent and direct supervision when patients are being restrained, beds in hallways and the introduction of central registers in psychiatric facilities must be implemented.

2.2.2 System-related problem areas

Sexual harassment vis-à-vis female patients by staff

In March 2015 the NPM learned via an anonymous letter that a physical therapist working in the psychiatric ward of a hospital has allegedly continuously committed sexual assaults against three women since summer 2014. It began rather harmlessly by exceeding the length of therapy sessions, shifting sessions to the afternoon and initiating a unilateral relationship that included invitations to dinner. Later it progressed to verbally intimate behaviour and then to unwelcomed touching. The anonymous letter stated that women felt themselves to be helpless. Relevant notifications to the clinic, however, were apparently not taken seriously and the victims were not adequately supported.

Behaviour by physical therapist violates personal boundaries

During a visit to this ward, Commission 3 found that in October 2014 allegations of this kind had been raised by a female patient. The head physician of the ward addressed these allegations, conducted meetings and ordered that Mr XY be temporarily removed from individual care of women in the ward, but that he would continue to be deployed in group therapy settings. The man denied the allegations vehemently, but he did not seem capable of reflecting upon his own behaviour. After the anonymous letter was received,

which was also sent to the hospital in March 2015, the physical therapist was transferred, because he had not undergone the recommended supervision and counselling.

In June 2015, there was another allegation of a sexual assault against a female patient in the same ward, this time by a male nurse. In this case, the clinic filed a criminal complaint.

Violence against women The NPM is giving this topic great importance, because the protection of women and girls against exploitation, violence and abuse in psychiatric facilities must be ensured in accordance with international and national human rights regulations. As the anonymous letter makes clear, psychiatric wards must be safe places in order to be able to get back on a steady footing by means of medical and therapeutic assistance after acute crises. In all areas of life, women and girls are vulnerable to sexual violations of their personal boundaries and are disproportionately impacted by such occurrences. In the context of an enforced treatment in hospital, they are more or less defenceless against the staff that works there due to their (chronic) illnesses. The majority of the allegations refer to a severe inability to keep the distance, which has no place in the daily routine of a hospital and which possibly violates the boundaries drawn by criminal law. When someone progresses to the use of the informal form of address (and this is not welcome), wishes to create pseudo-intimacies, makes salacious remarks about intimacy, stares at female patients (“undresses them with his eyes”), shifts therapy sessions in order to be able to persuade them more easily after the end of working hours to accept private invitations, the NPM considers this to be sexual harassment (violence against women). In this context, questions arise regarding the responsibility of the organisation and the protection of the victims.

State obligation The definition of Article 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes gender-based violence. According to CEDAW gender-based violence is defined as violence that is directed against a woman because of the fact that she is a woman or as violence that affects women disproportionately.

Article 16 of the UN Convention on the Rights of Persons with Disabilities (CRPD) also stipulates the right to freedom from exploitation, violence and abuse taking gender-specific aspects into consideration.

The Istanbul Convention recognises the “structural character” of violence against women as sex-specific violence, as well as the fact that violence against women is one of the most significant social mechanisms through which women are forced into a subordinate position vis-à-vis men.

According to Article 40 of the Istanbul Convention, Austria is obligated to punish with criminal or other legal sanctions any form of unwelcome verbal, non-verbal or physical behaviour of a sexual nature that has the purpose or consequence of violating a person’s dignity.

Article 3 lit. a of the Convention defines violence against women in greater detail and it identifies as a human rights violation “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women,

including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

Standardised processes and guidelines to clinics regarding how allegations of sexual assault by hospital personnel should be dealt with do not seem to exist. The question of how victims, especially women and girls, can be better protected preventively still requires fundamental discussion.

Analyses are necessary

The NPM will deal with this in greater depth before concrete recommendations are issued. It has also requested the assistance of the Human Rights Advisory Council in this matter. A working group under the auspices of representatives from the Federal Ministry of Health has already been established.

- Protection of women and girls against exploitation, violence and abuse must be comprehensively guaranteed in accordance with the provisions of international law and Austrian regulations.
- Competent professional support for alleged victims must be guaranteed, while suspicions are being investigated, but additionally when allegations are made against hospital staff.

Application of the Istanbul Protocol in Austrian hospitals

There were media reports regarding the case of a Viennese woman who filed a complaint stating that on New Year's Eve 2014 she was thrown to the ground at a petrol station by intervening law enforcement officers for no good reason. She further alleged that subsequently she had been handcuffed and her feet had been shackled and that she had also been kicked in the back. She was then held for several hours at a police station.

Complaint regarding alleged police brutality

After this incident, criminal and administrative penalty proceedings were initiated against this woman, without, however, concurrently pursuing her allegations of abuse efficiently, e.g. by questioning police officers in this regard, seeking witnesses or securing medical evidence to support her allegations.

The party affected also expressed her criticism that, as a victim of police brutality, she had not received the level of support from the hospital where she went immediately after being released from police custody that she had expected as an alleged victim of violence.

Documentation of injuries in hospital

Enquiries in this regard by Commission 4 at the Vienna General Hospital showed that the woman's statements about the sequence of events were not credible. Rather, the following entry can be found in the emergency care report of the Vienna General Hospital in this regard:

“According to the EMS record: patient was arrested by the police after she had physically attacked them; patient sustained injuries of the ankles and wrists when she was being restrained with handcuffs and foot shackles.

Third-party negligence: questionable / type of accident: recreational accident / beginning of outpatient treatment 1.1.2015/9:59 a.m.”

With regard to the diagnosis, the woman indicated that, despite her condition, the way she was treated was characterised by antipathy, although she was still in shock, under a mental strain and in pain from the events of the past night. While it is true that a possible coccyx fracture was confirmed and a photo documentation of the injuries was made, she was given to understand that they wanted to conclude the examination and diagnosis quickly.

When she insisted that the record be changed regarding the size of the haematoma, because it had not been measured and covered a wider surface than indicated, she was simply referred to the photo documentation.

The facts gathered in this case by Commission 4 are exemplary for the problems that affected parties can experience with regard to the necessary immediate collection of evidence for signs of abuse directly after being in police custody.

Involvement of
Ministry of Health

The NPM therefore confronted the Federal Ministry of Health with these facts and circumstances and emphasised, referring to international human rights standards, that hospitals and the doctors working there have a decisive role in the clarification of alleged police brutality.

In this context, the impression must in any case be avoided that civil servants are never prosecuted under criminal law anyway and cannot be obligated to pay compensation for damages.

Provisions of
international law

Articles 12 and 13 of the UN Convention against Torture (CAT) and Article 3 of ECHR obligate all member states to investigate every believably alleged or suspected violation of the prohibition of torture and inhuman or degrading treatment by civil servants as quickly and as efficiently as possible by an independent, impartial authority.

It can be derived clearly from Article 3 of ECHR, Article 13 of CAT and the CPT standards that an independent investigation of abuse possibly suffered while in state custody must be such so as to enable a decision to be reached about whether violence or other methods that were used were justified or not under the prevailing circumstances. The state’s obligation to undertake a detailed investigation is not directed towards a certain result, but towards the means deployed. It requires that all reasonable and possible steps be undertaken to collect evidence regarding the incident, including identifying and interviewing the alleged victims, suspects and eyewitnesses and to gather and secure any traces of the abuse quickly and comprehensively.

Istanbul Protocol

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), which was first published in 2001, is the standard of the United Nations for the assessment of

persons who allege torture or ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.

It provides guidelines and suggestions for doctors, lawyers and psychologists on how to effectively investigate torture and abuse allegations, and especially how to document and properly secure evidence. This manual has three annexes that are addressed specifically to physicians, many of whom are, however, not aware of the existence of the Istanbul Protocol.

At the recommendation of the NPM, in September 2015 the Federal Ministry of Health informed all owners and operators of hospitals in Austria about the Istanbul Protocol and requested that they ensure its implementation.

Ministry supports implementation

- The implementation of the Istanbul Protocol in hospitals must be supported by way of education and training.
- The preservation of evidence by physicians in hospitals must be carried out comprehensively and sensitively vis-à-vis the victim.

Medication-based measures that restrict freedom in psychiatric hospitals

Calming down patients by way of medication in the psychiatric context is subject to the regulations of Section 35 of the Hospitalisation of Mentally Ill Persons Act regarding medical treatments. These regulations trigger the judicial protection of patients who are affected by such treatments. After visits in psychiatric hospitals, the commissions have additionally raised the question to what extent sedation within the area of application of the Hospitalisation Act should be considered as medication-based restriction of freedom, must be separately documented and must be reported in accordance with Section 33 of the Hospitalisation Act. In actual practice this does not occur. Patient advocates are only notified when restraints are used and can then access medical histories in this regard.

Physicians in psychiatric wards and clinic managers are of the opinion that medication-based interventions, even against the will of the persons affected, are fundamentally not restrictions of freedom, but are a necessary part of psychiatric treatment. They state that this is why the Hospitalisation Act provides for special regulations for medical treatment including special curative treatment.

Physicians consider it part of treatment

In contrast, the CPT again explicitly confirms in its current report that it does not share this rationale. The CPT emphasises that excited or violent patients, who are subjected to a medication-based measure, should in principle enjoy the same protective measures as patients who are subjected to other forms of restriction of freedom. Therefore, the CPT has recommended that medication-based restrictions of freedom in psychiatric hospitals be recorded in central registers for such measures and that patient advocates should be notified.

CPT recommends same level of protection

Pharmacological
intervention as restrictions
of freedom

Even if the provisions of Section 33 of the Hospitalisation Act refer primarily to mechanical/physical or electronic measures that restrict freedom, some legal teachings uphold the legal opinion that under certain circumstances a restriction of the freedom of movement can be assumed in the event of pharmacological interventions. In a decision from 1997, the Supreme Court also set out that “in the event of massive restrictions of the freedom of movement” it does not matter whether the restriction of freedom occurs by way of physical coercive measures or by way of pharmacological interventions. Therefore, in accordance with the prevailing legal situation, medication-based restraint against the patients’ will can sometimes be considered as a restriction of the freedom of movement within the meaning of Sections 2 and 33 of the Hospitalisation Act.

These considerations show how important it would be to take the recommendations of the CPT from 2009 and 2015 into account.

Ministry sees need
for action

In the meantime, the Ministry of Health has admitted to the NPM that after open questions in the area of application of the Hospitalisation Act have been clarified, there will be a need for action in light of Supreme Court case law as well.

The creation of an Austria-wide guideline “for alternatives to net beds” was discussed during a meeting of the Advisory Council for Mental Health. At this meeting, the representatives of the Austrian Society for Psychiatry and Psychotherapy and the Austrian Society for Child and Adolescent Psychiatry stated they were prepared to jointly develop such guidelines. These guidelines will also address and regulate medication-based restrictions of freedom.

- Medication-based restrictions of freedom can also occur within the scope of medical treatment in psychiatric hospitals.
- Austria-wide guidelines must be developed in accordance with the recommendations of the CPT by the Societies for Psychiatry and Psychotherapy and for Child and Adolescent Psychiatry.

***De facto* compulsory admission by locking door of ward**

During a visit to the Department for Neurology and Psychiatry of Children and Adolescents of the Clinic Klagenfurt, Commission 3 found that the door of the ward was locked when an adolescent was admitted and this resulted in a *de facto* compulsory admission of all other adolescents. If they wish to leave the ward, they must ask the staff to unlock the door and they are asked repeatedly why they want to go out.

Case law

In legal proceedings on comparable cases, it was already clarified that locking ward doors must always be considered a restriction of freedom. The possibility of asking staff for help doesn’t change that fact. Constant dependence on the will of third parties when wishing to change one’s whereabouts is a not insignificant intervention in the right to personal freedom.

The grounds set out in case law are that all forms of restrictions (of freedom) mentioned in Section 33 of the Hospitalisation Act also result in the presence of an admission within the meaning of Section 2 of the Hospitalisation Act, whereby no particular materiality threshold with regard to duration and extent of the restrictions is provided for. The Hospitalisation Act does not provide any basis for voluntary confinement or care of a patient in a closed ward of a facility without admission within the meaning of Section 2 of the Hospitalisation Act. This is necessary in light of international law and constitutional law with regard to the right to personal freedom and also in order to maintain human dignity.

In this context, the facility argued vis-à-vis Commission 3 that at the time of admission to the ward all of the adolescents and their legal guardians were asked in written form to provide their consent to have the door to the ward locked.

Declaration of consent is not sufficient

Declarations of consent, which are intended to legitimise an unlawful situation, are deemed invalid and unenforceable by the NPM. Besides, in the declaration of consent available to the NPM reference is made only to an occasional locking of the entry door to the ward. This creates the impression that the ward is only locked in exceptional cases, although this can in actuality be continuous for lengthy periods.

From a professional standpoint, the hospital justifies this practice with the reasoning that complete isolation of individual minors must be avoided in order to prevent stigmatisation and marginalisation. Furthermore, such measures are met with a complete lack of understanding on the part of the adolescents who are being treated voluntarily and who have a strong sense of solidarity as a peer group.

Problematic care concept

A concept that is intended to promote seamless interaction between those minor patients who are here under the Hospitalisation Act and those who have been admitted voluntarily, as they are in need of treatment, also involves risks. The unintended result, which is difficult to foresee in advance, is that both groups can become overwhelmed and thus create the potential risk of re-traumatisation. Frequent confrontations between adolescents, who are highly aggressive due to their illness and the other patients can increase fear depending on the dynamics of the group.

For example, Commission 3 observed a massive outburst of aggression by an adolescent, and could see for itself that his behaviour, but also the experience of how the acute incident was dealt with, was experienced as threatening by female patients.

The clinic is planning to develop an electronic notification system when someone leaves the ward as an alternative to locking the door to the ward, thus providing the scope of freedom that does not prevent a permitted, intentional change of venue. In the opinion of the NPM, this will require accompanying measures in order to truly exclude potential risks that could spread. The NPM believes that – even for alternative solutions – an eye must be kept on overwhelming scenarios for minors resulting from the joint care situation in the form of a concomitant evaluation.

Alternative to locking ward door is being planned

- Locking ward doors must be considered a measure that restricts freedom and must not result in an inadmissible “de facto compulsory admission” of uninvolved minors.
- Potentially overwhelming situations that can result from joint care of adolescents, some of whom are being treated under the Hospitalisation of Mentally Ill Persons Act and some of whom are being treated voluntarily, must be minimised.

Deficits in psychiatric care in Carinthia

Insufficient capacity in Regional Hospital Villach

During visits to the Department for Psychiatry and Psychotherapeutical Medicine at the Regional Hospital Villach, Commission 3 found that space is extremely limited. Some patients are being cared for in rooms with six beds. Furthermore, the Regional Hospital Villach does not have the capacity required for the territory covered by the hospital to ensure the care of patients placed in a protected area.

Transfer to Regional Hospital Klagenfurt necessary

These inadequate framework conditions result in the fact that many patients, who are admitted under the Hospitalisation Act, are being brought to the Department of Psychiatry at the Regional Hospital Klagenfurt by ambulance after their initial examination.

These transfers of patients in acute danger of self-harm or of harming others are frequently carried out without a physician and sometimes carried out without a police escort.

This kind of practice is highly questionable. These patients often cannot be given medication because, from a medical viewpoint, the transfer is associated with the risk of respiratory arrest or circulatory collapse. The Network for Patient Advocacy (*Vertretungsnetz-Patientenadvokatur*) has also stated that mechanical or medication-based restraint during such a transfer can never be “standard practice” when the relevant provisions of the Hospitalisation Act are taken into consideration.

Up to two hours can elapse between the arrival of the on-call psychiatrist in the Regional Hospital Villach and further treatment at the Regional Hospital Klagenfurt. Due to the health hazards associated with the transfer and the delayed treatment, the care deficits are extremely alarming both from a human rights perspective and with regard to questions of legal liability.

The resulting stress for the affected patients can be prevented only if the patients, who are supposed to be placed in the Regional Hospital Villach in accordance with the Hospitalisation Act, can be treated there as well.

No adequate care in Regional Hospital Klagenfurt

These transfers also result in significant problems at the Regional Hospital Klagenfurt. Commission 3 found that this hospital also does not have the structural requirements for patient care in accordance with current standards. Due to the outdated building structure, rooms with five beds, which do not have a shower, must be used. Overcrowding results

in beds with mechanical restraints being set up in hallways. Privacy by using screens is possible only to a limited extent because the patients must be monitored.

The already strained staff situation at the Regional Hospital Klagenfurt is exacerbated to a significant degree by the transfers initiated by the Regional Hospital Villach and by the implementation of working hour restrictions amongst medical staff that conform to EU regulations.

As a result of the structural problems, the percentage of patients admitted to the ward under the Hospitalisation Act is comparatively high at 43%, which promotes increased use of measures that restrict freedom. The Network for Patient Advocacy has also criticised the frequency of mechanical restraints in this ward and pointed out that it is only higher in the Otto Wagner Hospital in Vienna, i.e. in the metropolitan area of a major city.

High percentage of patients placed under Hospitalisation Act

These deficits have for the most part been conceded in the existing statements of the *Land* Carinthia and the prospect of a complete renovation or a new construction of both hospitals concerned is in prospect. These projects, however, can only be implemented in a number of years.

New construction planned

Due to the massive structural deficits, an improvement of the care situation of psychiatric patients must be urgently undertaken during this transition period. For this purpose – taking the fundamental international human rights standards into consideration – it would be necessary to increase staff and to generally relieve the psychiatric ward in the Regional Hospital Klagenfurt, specifically by increasing capacity in the Regional Hospital Villach.

- New construction and/or renovation of wards in the Regional Hospital Klagenfurt and in the Regional Hospital Villach must be tackled without further delay in order to ensure psychiatric care in Carinthia that corresponds to current standards.
- Additionally, it is urgent that all possibilities be exhausted to increase staff capacity in both hospitals.

Gerontopsychiatric care

During a visit to Otto Wagner Hospital (Vienna), Commission 4 observed that individual patients with psychiatric diagnoses are being cared for over longer periods of time than is medically necessary, because there are too few adequate non-residential care possibilities.

Within its own area of responsibility, the hospital is in any case making every effort to ensure that hospital stays for this patient group is as appropriate as possible and as long as necessary, whilst taking the well-being of the patients into consideration. The Vienna Association of Hospitals has no control over the availability of non-residential care facilities and residential homes.

Therefore, measures should be taken to improve non-residential gerontopsychiatric care in order to avoid extending inpatient hospital stays beyond the duration that is medically indicated.

- Non-residential facilities for gerontopsychiatric patients must be increased in order to avoid hospital stays that are no longer medically indicated.

2.3 Child and youth welfare facilities

2.3.1 Introduction

Increasing demand for special places

In 2015, the commissions visited 78 shared accommodations and residential homes for children and adolescents who cannot live with their families. Since 2013 a cooperation agreement exists between the NPM and the children and youth advocacy organisations of the nine *Laender*. The NPM therefore invited representatives of these organisations to Vienna in 2015 to participate in discussion sessions. In particular, the joint discussions focused on how to provide increased protection for unaccompanied minor refugees. This cooperation proves fruitful: due to agreed and coordinated cooperation, participants are succeeding in raising consciousness about children's rights.

As has been the case during the first three years of the commissions' activities, there are still too few special places for children and adolescents with mental illnesses. At shared accommodations or residential homes with socio-pedagogical programmes where staffing numbers are low and there are few employees with special training, it is impossible to meet the special needs of these children and adolescents. Scientifically-based child and youth welfare and protection plans which were drawn up in Lower Austria in 2014 also drew attention to the fact that there are increasing numbers of children with major behavioural problems and psychiatric disorders, serious attachment disorders, post-traumatic stress disorders and highly problematic social behaviour disorders who cannot cope with social or group situations and whose aggressive outbursts tend to traumatise other children. Moreover, there is growing demand for care for children and adolescents with intellectual disabilities and additional psychiatric disorders.

At socio-pedagogical institutions and facilities, the commissions frequently encountered children and adolescents who urgently needed special care in small groups or even individual care, since they were able to interact in a group to a limited extent and were completely overwhelmed by prevailing conditions. The sense of psychosocial overload which they were experiencing was transferred to the staff, who was sometimes exposed to serious physical attacks. Physical encroachment upon other minors cannot be completely prevented. Anxious fellow residents and destroyed furniture and fittings have a clear story to tell. On the one hand, these are children or adolescents for whom psychiatric

problems do not set in until a later stage and for whom suitable facilities cannot be found quickly enough. On the other, because of the lack of special places children and adolescents are housed by child and youth welfare and protection authorities in facilities where the lack of preparations and shortage of staff are evident from the outset.

At two crisis centres from the city of Vienna, staff complained about the lack of adequate socio-therapeutic residential places for children and adolescents with mental health problems and aggressive behaviour patterns. It was reported that instead of six weeks as stipulated, children had to spend some months in crisis centres until a suitable facility could be found, even though the evaluation phase had long since ended. Commission 4 was told about several adolescents in particular who were instructed to go home after several months (in one case after eight months) due to the lack of care places suitable for their needs. Excessive waiting times and further threats to the child's welfare in the family of origin because of the lack of alternatives constitute a disregard of the duty to protect which the competent authorities for child and youth welfare and protection are supposed to fulfil for minors with poor prognoses for development.

Children and adolescents continue to live in crisis centres after the end of the evaluation phase

Although additional socio-therapeutic places have been created over the past few years – in Vienna and several of the *Laender* at last – supply still does not meet demand.

A process of decentralisation, involving a shift of emphasis away from large-scale homes towards smaller divested shared accommodations, has already begun in several *Laender* and has already achieved visible successes. Vienna completed a process of home reform in 2000 and is the pacesetter in that regard. Lower Austria has now begun a restructuring process, as a response to recommendations in scientifically-based child and youth welfare and protection plans. The regional government of Tyrol has stated that it is aware of the need to decentralise child and youth welfare and protection facilities, and intends to act on the NPM's suggestions as part of a fairly long term process. The other *Laender* are expected to follow suit.

Process of decentralisation has already proved successful

During follow-up visits to several institutions and facilities, the commissions noticed marked improvements in participation. Institutions and facilities are making an increased effort to ensure that the wishes and suggestions of children and adolescents are taken into account by creating children's teams and "house parliaments", as well as with regard to decisions on specific cases. This is particularly welcome in light of Article 12 of the UN Convention on the Rights of the Child and Article 4 of the Federal Constitutional Act on the Rights of Children, which state that the opinions of children must be taken into account. It is important to children and adolescents, particularly to those in out-of-home care, that channels and options for active participation are set up in areas of life relevant to them; moreover, this is a significant aspect of ensuring that human rights are upheld.

Noticeable improvements

The NPM received positive feedback regarding initiatives aimed at ensuring that the right to a private sphere is upheld for minors in out-of-home care. Small changes often lead to substantial progress and can help prevent conflicts and disputes between children and adolescents. During visits it was often noticed that there was a lack of lockable storage lockers for personal items. It is much easier to encourage minors to respect other people's property as an independent asset if they can themselves protect items which

belong to them and are particularly important to them (toys, mobile phones, etc.) against being tampered with or damaged. The NPM is therefore of the opinion that lockable storage lockers should be part of minimum provision. The institutions and facilities and competent authorities gave their assurance that shortcomings would soon be rectified. If the door to a child's room is not lockable from the inside and the room can be entered at any time, the child is unable to withdraw into his/her private sphere as part of self-determination. During final discussions, a number of institutions and facilities told the commissions that they intended to install rotary knobs to ensure rooms are lockable from the inside, though it must also be possible to open doors also at any time by staff if required. This approach ensures compliance with Article 8 of the European Convention on Human Rights, which sets forth the right to a private life, and Article 16 of the UN Convention on the Rights of the Child. The commissions made various criticisms regarding the lack of channels for making complaints and the lack of information regarding current children and youth advocates; this problem was addressed by setting up complaints boxes and putting up posters.

Improved data protection At one assisted living and housing facility, the commission drew attention to potential problems relating to data protection, as staff were preparing and saving documentation on their own private PCs. This problem was resolved by restructuring the office facilities, renting a new main office and creating local data storage space for documentation. Whenever staff of small-scale shared accommodations of the city of Vienna ensured that the doors of individual rooms remained locked throughout the night, this was problematic in terms of the interplay of personal freedom and the obligation to provide escape routes and emergency exits. It is permitted for the doors of individual rooms to be locked on a short-term basis as a precautionary measure if this is the only way to check on persons coming in and out, keep out unwanted guests or prevent children from being exposed to danger. The competent authorities gave their assurance that this would be explained to the socio-pedagogic staff.

Most of the buildings in which child and youth welfare and protection facilities are located still do not ensure barrier-free accessibility. Several *Laender* have since stated that they will bear this in mind, at least in the case of new construction or when they rent new facilities.

- Needs assessments must be carried out regularly to ensure that capacity for children and adolescents with mental illnesses is increased as necessary.
- Improvements are needed regarding the right to a private sphere and channels and options for active participation. Lockable storage lockers should be part of minimum provision.
- Comprehensive barrier-free accessibility must be implemented.

2.3.2 System-related problem areas

Monitoring priority: prevention of sexual violence

Article 8 of the ECHR upholds the right to family life and the right to private life. This includes the right to self-determination regarding one's own body and protection of physical integrity. Accordingly, the Member States are obligated to protect children and adolescents against all forms of violence, in particular sexual violence. Furthermore, under Article 19 of the UN Convention on the Rights of the Child, suitable preventive measures must be taken to protect minors against sexual abuse. It is therefore important to determine whether there are preventive measures in place at institutions and facilities to protect against sexual violence, and whether they are effective. The interaction between victims, abusive minors and fellow residents and how they are treated is also very important.

Raising awareness among staff

Sexual education concepts should be used to prevent dynamics which can lead to violation of personal boundaries; the goal is to ensure that social pedagogues can correctly interpret and counteract any attempts on abuse or manipulation. The purpose of these concepts is to provide social pedagogues with instructions on how to spot such dynamics early and take the necessary action. By establishing binding rules on interaction and how to handle proximity and distance. These topics can be anchored in the organisation to provide transparency and can be evaluated on an ongoing basis. This raises consciousness regarding this form of violence. Many institutions and facilities do not have any concepts of this nature at all. Instances where personal boundaries have been violated are often the trigger for preparing sexual education concepts with the help of relevant experts.

Lack of sexual education concepts

The NPM considers it important to help drive this process of developing such concepts at institutions and facilities before cases of violation of personal boundaries actually occur. Among other things, commissions observed that staff was well aware of the topic. However, there were no clear strategies or assignment of responsibilities for preventing sexual encroachment. There is a risk that although experienced social pedagogues may well have their own action plans, those plans may not be shared with colleagues and therefore not applied by the whole team. Plans need to be prepared with the involvement of the entire socio-pedagogic staff. New employees need to receive training and support for implementation and application.

When visiting one facility, a commission observed that one adolescent, who had already been involved in a case regarding sexual abuse at another shared accommodation, was accepted despite serious doubts among the team, who were insufficiently prepared. He subsequently forced children and adolescents to engage in sexual activities and ultimately had to once again be expelled from the shared accommodation. Only then was a working group set up to prepare a sexual education concept, and mandatory further training courses in sexual awareness were arranged. In addition, the minor himself was offered a psychological assessment and the opportunity to participate in sexual education workshops. In the NPM's opinion, these measures should have been taken earlier at the

Inadequate preventive measures

time when the adolescent was accepted, in order to provide effective protection for the children and adolescents.

The regulations issued pursuant to the Vienna Act on Children's and Youth Services, which was promulgated in July 2015, state *inter alia* that concepts regarding prevention of violence and raising of sexual awareness must be part of any socio-pedagogical plan, which has to be prepared based on current social studies methodology regarding sexual awareness. The other *Laender* should follow this excellent example and issue appropriate requirements for competent authorities.

Basic conditions may create opportunities for sexual violence

Content regarding prevention and handling of sexual violence among children and adolescents should be an ongoing component of further training courses. In addition, it will be important to make changes to basic structural conditions which create opportunities for sexual violence. Thus, for example, building layouts, particularly room layouts, may be a root cause of cases where staff fails to spot violations of boundaries. Low staffing ratio or insufficient staff may also create potential for risky situations.

- Sexual education concepts need to be prepared at all child and youth welfare and protection facilities.
- Changes need to be made to basic conditions of children and adolescents' environment which create opportunities for sexual violence.
- As a preventive measure, further training for staff and workshops for children and adolescents must be provided.

Prevention of violence

Development and implementation of concepts

Unfortunately, it is still the case that not all child and youth welfare and protection facilities have violence prevention concepts. At numerous facilities, the commissions had to proactively suggest that violence prevention concepts be prepared and implemented during the concluding meetings. The commissions also visited shared accommodations where, despite the fact that violence prevention documentation had been prepared, staff questioned was not aware of them. Even the best prepared concepts cannot be put into practice as guidelines for action if they are left in a drawer and only brought out when there is a monitoring visit. Socio-pedagogic staff must receive training and instruction on how to implement and apply the concepts. The Vienna authority for child and youth welfare and protection has set up a working group focusing on the prevention of violence; however, the results have not yet been made available.

Commissions 4 and 5 encountered a specific problem in connection with violence prevention at the crisis centres of the City of Vienna. These crisis centres are not oriented to the increased care needs of children and adolescents with psychiatric diagnoses, and there are no immediate strategies for how to handle self-endangerment or endangerment of others. At the crisis centres, minors and staff described how it was impossible to protect (themselves) against attacks in the event of violent outbursts. In

light of Article 2 (2) of the Federal Constitutional Act on the Rights of Children and Article 8 of the European Convention on Human Rights, this situation is a cause for serious concern. The NPM has therefore requested that structural changes are to be made in order to reflect population growth. This will require at least the setting up of a special crisis centre similar to a socio-therapeutic or socio-psychiatric shared accommodation. Staff at such a crisis centre would have to receive special training and have relevant professional experience in dealing with children and adolescents with psychiatric diagnoses. In addition, the staffing ratio would have to be increased.

- Violence prevention concepts need to be developed and implemented at all child and youth welfare and protection facilities.
- Special crisis centres for children and adolescents with psychiatric diagnoses need to be set up.

Medications

As indicated last year (see NPM Report 2014, p. 57), on numerous occasions commissions found the handling and administering of medications at child and youth welfare and protection facilities unsatisfactory. The NPM therefore once again contacted the Federal Ministry of Health, which confirmed that care staff at child and youth welfare and protection facilities must guarantee that children and adolescents receive appropriate care and that the necessary checks and treatment by physicians are carried out. This includes administering of painkillers and antipyretics, and the disinfection and dressing of wounds. This obligation arises because they have been entrusted with the care and education by a court or the parents. In addition, on a case-by-case basis activities such as administering of medications may be transferred to the care staff by the treating physician. However, the care staff must be given appropriate instructions and training. Particularly in the case of psychiatric drugs where there is significant potential for addiction. In such cases appropriate diagnosis by a specialist physician and an initial prescription are required. The progress and success of treatment must be evaluated on a regular basis by specialist physician, since specialist medical knowledge is required for this.

Transferring activities of physician is permitted

In all instances, there must be clear and comprehensive documentation of all administering of medications. This is an area where there are major deficits at some facilities. In many cases there is no documentation regarding medical measures, assessments or medications administered. Moreover, physicians' prescriptions are not up to date and there are inadequate plans regarding check-ups. Medications are stored in unlocked medicine cabinets or even left out in unlocked offices. Sometimes medicine cabinets are locked but the keys can easily be found by children.

Key distinctions regarding prescriptions for medications administered on an as-needed basis

In the case of non-prescription medications, prescriptions for use on an as-needed basis are basically permitted. However, in numerous cases the commissions also found prescriptions for psychiatric drugs for use on an as-necessary basis where no concrete instructions for use had been issued, even though the medication in question is subject to strict requirements concerning use. It is not the responsibility of a social pedagogue to be the sole decision-maker regarding physicians' prescriptions for psychiatric drugs without parameters for use on an as-needed basis or dosage having been clearly established in advance. Efforts should be made to ensure that in an institutional context staff without appropriate medical qualifications do not handle tasks requiring appropriate specialist medical knowledge. Administering of psychiatric drugs on an as-needed basis always requires knowledge of side-effects, interactions or undesired effects. Socio-pedagogic staff must therefore make sure they obtain concrete instructions and prescriptions from physicians.

If a member from the team of social pedagogues leaves, his/her successor must verifiably receive appropriate concrete instructions from physicians concerning prescribed medications. Full documentation is particularly important when psychiatric drugs are administered. Such documentation must be very precise to allow rapid diagnosis of any side effects or interactions and to ensure that the correct medications are administered in the correct dosages. The NPM is of the opinion that strict compliance is necessary here.

- Documentation regarding administering of medications must be clear and comprehensive.
- Physicians must provide concrete instructions and prescriptions.
- When administering prescription medications such as psychiatric drugs, close attention must be paid to side-effects and interactions.

Impermissible pedagogical measures

Problematic approach to handling violations of rules

During their visits, the commissions observed numerous instances of problematic approaches in the area of sanctions. The main task of socio-pedagogic and socio-therapeutic facilities is to create a healing environment for young people with developmental problems and to provide them with professional support and opportunities for development. They need to be able to experience acceptance and recognition as a person, along with safety, stability and a predictable environment. It is important to convey to them the feeling that they are understood and supported. They are entitled to be involved in their own educational processes and to build on their own resources, potential and behaviour with a view to developing a more positive self-image and increased personal responsibility. Children and adolescents need to be able to experience continuity in relationships, so that they can build positive, sustainable relationships themselves. As part of pedagogical work, prohibitions and punishments

should therefore only be used after careful consideration in individual cases, since this is a highly sensitive area.

Rule violations require an individual approach and must always be viewed in context. This means there should be a direct connection between the improper behaviour and the pedagogical consequences. Moreover, the consequences should not be arbitrary depending on the care worker in question, and undesirable conduct should not be handled in an obviously routine manner. Responses to rule violations must be transparent, as this is the only way to achieve positive pedagogical effects associated with the fact that the consequences are predictable, leading to a learning process. There should be a direct connection with the improper behaviour, particularly chronologically.

The NPM was impressed by the models for redress used at various institutions and facilities, which have been established through joint efforts. The goal of these models is to initiate a conversation when a child or adolescent has behaved improperly, and to reach agreement on how to make amends based on the nature of the rule violation, either for the community as a whole or for the individual in question.

Often, when rigid sanctions systems are imposed, this is a reflection of the fact that staff is overwhelmed. The commissions noticed improvements regarding institutions and facilities where the care staff had previously used prohibitions and punishments and where further training enabled them to develop alternative approaches. At one large facility in Lower Austria, a concept entitled “New Authority”, under which the use of punishment is generally avoided, has had considerable success within a short space of time. The City of Vienna has also taken up the NPM’s suggestion that it should offer further training courses on this topic.

Alternative approaches
for staff

During their visits the commissions became aware of punishments which involved inhuman and degrading treatment as defined in Article 3 of the European Convention on Human Rights. Thus, for example, one child who had defecated in bed during the night and then refused to change the sheets had been made to remain virtually naked in the rain for a period of time as punishment. Such serious interference with the personal integrity of a child or adolescent is never justifiable as a response to challenging behaviour. Approaches of this kind can contribute to stigmatisation of individuals within the group of minors and may have additional negative consequences.

Degrading and inhuman
treatment

At another shared accommodation, a child who had deliberately poured shower gel into his brother’s bed had been made to spend the entire night in the gel-soaked bed to demonstrate how it feels. One commission reported on a shared accommodation where, as a sanction in response to undesirable behaviour, children were placed in isolation in the driveway, courtyard or unheated conservatory, including when it was dark or cold. At one home, the children had to sit on a chair and remain there in silence for a long period. Such punishments are not only inappropriate, but also show that not all facilities are abreast of current standards in social pedagogy. From the standpoint of children’s rights this is unacceptable.

- Degrading punishments are impermissible.
- Responses to undesirable behaviour must be chronologically directly connected to the behaviour and must be discussed with the minors in question.
- Rule violations must be handled individually.
- Models for redress need to be established, as an alternative to sanction systems.

Unaccompanied minor refugees

Focus on unaccompanied
minor refugees

Starting in January 2015, when there were already 400 unaccompanied minor refugees at the Traiskirchen Initial Reception Centre waiting for transfer to *Laender* accommodations which fulfil the reception conditions under the Basic Provision Agreement, the NPM paid special attention to this group of asylum seekers. One of the consequences was a press conference at which the AOB, the Head of Commission 6, children and youth advocates, representatives of NGOs and the mayor of Traiskirchen laid emphasis on how damaging mass accommodation can be from a children's welfare standpoint. At that point no one could foresee the scale of the problem, as it only became apparent during the course of the year.

In 2015 Commission 6, which is responsible for Traiskirchen Initial Reception Centre, carried out six visits to the facility, which is designed to accommodate 1,800 people and which in January of this year housed 1,100 unaccompanied minor refugees alone. Although reliable figures are not available, the overall goal is to provide adequate accommodation for 8,000 unaccompanied minor refugees. The commissions focusing on unaccompanied minor refugees also visited the federal support facilities in Reichenau an der Rax (Lower Austria), Erdberg (Vienna), Thalham (Upper Austria) and Leoben (Styria).

Homeless minors

The situation at the Traiskirchen Initial Reception Centre was particularly critical from July to September 2015. In August, a delegation consisting of the commission members and the AOB spoke to unaccompanied minor refugees who were living as homeless persons and subsequently in tents on the grounds of the Traiskirchen Initial Reception Centre. Also affected were children and adolescents who had not even been registered and who were sleeping out in the vineyards or on the ground directly adjacent to the grounds of the Traiskirchen Initial Reception Centre, or spending days with helpful citizens of Traiskirchen. There were various reports of encroachments on these children and adolescents. Had it not been for the assistance of private individuals and civil society, they would have had to spend high summer without food and water, wearing the clothes they had worn throughout their period of flight.

All unaccompanied minor refugees, to whom sleeping space could not be assigned in a building, were in a position of serious endangerment in terms of children's welfare. This included 14-year-olds and children and adolescents who urgently required medical or therapeutic care. It was thanks to the city of Vienna that during a period of urgent need, all young unaccompanied minor refugees, along with several older girls, were transferred from the Traiskirchen Initial Reception Centre to an accommodation which fulfils the reception conditions under the Basic Provision Agreement. During this phase, Commission 6 and civil society provided lists of names, made contact with the regional government of Lower Austria as the locally responsible authority for child and youth welfare and protection, and cross-checked them against lists held by the district authority of the city of Baden. For all cases known to the NPM by name, the district authority took action on the grounds that delay would involve risk and accepted these children and adolescents into Lower Austrian accommodation which fulfils the reception conditions. In most cases, places were made available in newly established institutions and facilities. The others were given at least a bed within the Traiskirchen Initial Reception Centre. Several minor refugees for whom individual solutions were being sought could no longer be found at the Traiskirchen Initial Reception Centre by the competent authorities for child and youth welfare and protection, as they had fled onward in a state of despair. In some cases, it was possible to complete registration for them in Germany and Sweden.

Help provided on case-by-case basis where endangerment exists

In November 2015, Commission 3 visited the federal support facility in Leoben, which has been set up in what was originally a large building supplies store. In this facility 400 people were being accommodated, of whom around 300 were unaccompanied minor refugees. The conditions there were completely unsuitable for unaccompanied children and adolescents. Minors reported that they had gone on hunger strike after being attacked by other people. Families with small children and also women were worried that they too might be attacked. Commission 3 had already warned the head of the facility that fighting might become a problem, and shortly thereafter a large-scale brawl did occur. Immediately thereafter, all unaccompanied minor refugees and families with small children were transferred out of this camp by the Federal Ministry of the Interior.

The NPM continues to oppose the accommodation of unaccompanied minor refugees at mass facilities of this kind. For minors to spend months in unsuitable, overfull Initial Reception Centres without supervision or care and schooling or daily structure contravenes all principles with regard to specialist and socio-pedagogical aspects and children's rights and humane treatment. For that reason, mass facilities for unaccompanied minor refugees as part of the federal support system would never be authorised as child and youth welfare and protection facilities under *Land* law. However, the *Laender* as the competent authorities for child and youth welfare and protection do not take custody until the individuals in question have been transferred to the reception conditions of the respective *Land*.

Laender not taking custody

Custody covers the areas of care and education, management of assets and legal representation. At federal initial reception centres, care and education for unaccompanied minor refugees is completely neglected. Moreover, too much time passes before someone takes appropriately skilled pedagogical responsibility for the unaccompanied

minor refugees. As part of its monitoring activities, the NPM in its recommendations to the Federal Government and the *Laender*, pressed for solutions to these problems. In addition, the NPM has asked the *Laender* to immediately create enough places based on the numbers of unaccompanied minor refugees allocable to them.

Commissions also visited
Land facility

In addition to visiting federal initial reception centres, the commissions also visited facilities in the *Laender* that provide reception conditions under the Basic Provision Agreement. In many cases the commissions were impressed by the efforts of staff to provide the best possible care for the children and adolescents. However, the heads of these facilities themselves reported that the daily rates currently paid do not allow them to provide optimum care. They pointed out that if the daily rate for shared accommodations with a 1:10 staffing ratio were to be raised from 77 to 95 euros, they would to some extent be able to maintain their current level of services, which hitherto has only been financeable with the help of donated funds. Nevertheless, they would still not be able to afford leisure activities or double staffing, even where pedagogically necessary. The situation is even more difficult for facilities with a staffing ratio of 1:15, since the daily rates for such facilities have only been increased by 1.50 euros.

The teams of interpreters made available are not large enough to allow them to be used for pedagogic activities. Good communication is essential when carrying out educational work. Further to a request by the NPM, the City of Vienna announced that interpreting services would be augmented, and a video interpreting system is currently being tested. There is a similar situation with the budget for learning written and spoken German. The budget is insufficient. Depending on the needs, situation and age of the individuals in question, the budget is supposed to cover initial literacy, language courses and also courses leading to school-leaving qualifications.

No follow-up care

Institutions and facilities which provide reception conditions consider it particularly problematic that there is a lack of follow-up care for their clients once they are of full legal age. As a general rule, there are no options for continuing to provide care to adolescents after they have turned 18. Some supporting organisations can offer assisted living at least for a short transitional phase. In many cases, pedagogic staff's efforts to integrate the individuals in question and to ensure that they successfully complete any training they have embarked upon are thus thwarted. Furthermore, assistance for young adults is not provided to refugees if the competent authorities for child and youth welfare and protection have custody.

Improvements following
commission's visit

Several examinations took place at a facility for unaccompanied minor refugees in Tyrol. During the first visit, the commission felt there was a prevailing atmosphere of fear and mistrust, for which the head of the facility was to blame. After a new head arrived, various staff members commented that there was scope for changes. During a follow-up visit it was already evident that such changes had been made. In particular, a pedagogical plan had been prepared, and the four-bed rooms had been split up into double rooms, which resulted in significant improvements for the adolescents.

In the communal kitchens and bathroom facilities at a facility for unaccompanied minor refugees in Styria there were various shortcomings, which prompted the *Land* to carry

out a supervisory visit. During that visit it became evident that the shortcomings found by the commission had already been rectified.

Commission 4 conducted two visits to a facility for unaccompanied minor refugees with behavioural problems or mental illnesses; during these visits, complaints were made that there were discrepancies between the impressive written concept and the actual structuring of pedagogical work, due to the lack of consultant psychiatric services. The supervisory authority contacted by the NPM confirmed these findings and reported that it had issued instructions to rectify shortcomings and make improvements.

- Mass accommodation is unsuitable for unaccompanied minor refugees and asylum seekers.
- The process of taking custody of all unaccompanied minor refugees at federal support facilities and transferring them to *Land* accommodation which fulfils the reception conditions under the Basic Provision Agreement must not be delayed.
- Follow-up care for young adults to ensure success in training courses is needed once the unaccompanied minor refugee has turned 18.

2.3.3 Positive observations

The working group *Arbeitskreis NOAH* at the Association for Social Pedagogy and Adolescent Therapy (*Verein für Sozialpädagogik und Jugendtherapie*) has developed a concept for handling delinquent behaviour patterns among juveniles (fraternising with criminals, lack of self-control, truancy, use of drugs or alcohol). At a shared accommodation in Lower Austria, a wide range of pedagogical interventions and activities geared towards providing support for adolescents with delinquent behaviour patterns are aimed at keeping them from becoming further entrenched in criminality or embarking on criminality. Young people who have already been in prison will be offered a reliable ongoing support system which provides a space in which they can successfully structure their lives in a responsible manner, achieve success in school and training and reach goals through participation. Commission 6 was very impressed by this.

Concept for delinquent juveniles

Commission 1 observed a best practice example at one facility in Tyrol. Children regularly receive biographical letters from their primary carers containing reports on changes in their families of origin, with exchanges of information about home visits. These letters contain information about the outlook for the future and feedback on development and progress achieved by the minors in care. This creates a sense of security and a feeling of self-efficacy.

Best practice

In assisted living, Commission 1 noted that one facility was doing outstanding work in handling crises thanks to its pedagogical concept, which is very well founded in terms of social science methodology and is fitted to individual needs. The pedagogical measures are tailor-made, de-escalating and inclusive.

Positive example in assisted living

2.4 Institutions and facilities for persons with disabilities

2.4.1 Introduction

UN CRPD as basis for assessment

During the year under review, the commissions visited 93 institutions and facilities dedicated exclusively to persons with disabilities (homes, group homes and workshops). The UN Convention on the Rights of Persons with Disabilities (CRPD) proved a suitable and consistently applicable basis for assessment. The detailed guarantees set forth in the CRPD can be used as the basis for determining whether risk factors for torture or other inhuman or degrading treatment are present. This holds true independently of the fact that under Austrian constitutional law the NPM has been granted a mandate pursuant to Article 16 (3) CRPD, in addition to the OPCAT mandate. The CRPD also puts normative emphasis on freedom versus safety and security.

Lack of self-determination as a risk factor

The UN Special Rapporteur on Torture has rightly pointed out that self-determination and the scope to make one's own decisions are essential to the prevention of torture. Lack of self-determination makes persons with disabilities especially vulnerable to degrading treatment or worse. The NPM observed this on numerous occasions. Freedom rights of persons with disabilities, particularly those with major physical or intellectual impairments, can only be effective if the persons are supported to lead a self-determined life. One of the NPM's key concerns is to overcome or at least reduce conditions involving unilateral dependency, and to increase user perspectives. Reference systems which impede personal development and the process of becoming independent may maximise supposed safety and security but are not conducive to freedom.

Broad range of very different organisational cultures

Against this background, the range within which facilities and institutions operate in concrete terms is very broad. There is certainly an awareness of having to confront major challenges in and involving one's own organisation. It is important to stress that although the NPM may take a critical stance, in numerous cases excellent work is done.

Dialogue aimed at improving legal protection for minors

As the NPM pointed out in last year's report (see NPM Report 2014, p. 71), at present the legal protection relating to restriction of freedom of minors with disabilities living in institutions and facilities, which is inappropriate for their age, is by no means uniform. It largely depends on the authority responsible for the institution or facility in question. Homes and other institutions and facilities which provide care to minors and are under the supervision of the competent authorities for child and youth welfare and protection are explicitly excluded from the scope of applicability of the Nursing and Residential Homes Residence Act. Assuming one applies the human rights approach stringently, and in light of the current basic conditions under constitutional law (Federal Constitution, Federal Constitutional Law on the Protection of Personal Freedom, European Convention on Human Rights, Federal Constitutional Act on the Rights of Children) and the relevant provisions under European and international law (in particular, the Charter of Fundamental Rights of the European Union, UN CRPD, UN Convention on the Rights of the Child, etc.), this is unacceptable. Minors with disabilities who receive ongoing care and support at such facilities are in some cases exposed to serious restriction of freedom.

This was demonstrated and criticised last year in light of the NPM’s observations. In an in-depth assessment, the Human Rights Advisory Council shared the NPM’s concerns and voiced its support for a legislative amendment. On this topic, which is a core concern of the NPM and OPCAT and also of the mandate of the AOB and its commissions pursuant to Article 16 (3) UN CRPD, a productive dialogue has arisen with the Federal Ministries responsible for implementation of the Nursing and Residential Homes Residence Act (i.e. the Federal Ministry of Health and the Federal Ministry of Justice). This may well lead to a legislative amendment.

In their respective areas of responsibility the Federal Government and the *Laender* are obligated to take legislative, administrative and other measures to implement the rights upheld in the CRPD. In this connection, the NPM has once again drawn attention to the comments made by the UN Committee on the Rights of Persons with Disabilities during the most recent official state review of Austria in 2013 (CRPD/C/AUT/CO/1). In light of Austria’s federal structure, the UN Committee made it clear that, considering upcoming tasks and implementation of the CRPD, the worlds of politics and administration will not be able to remain entrenched in the status quo. Changes to the forms in which persons with disabilities receive help in a manner that respects human rights must be achieved. This must be done in a way that reflects political will and control, and that must culminate in binding target agreements between the Federal Government and the *Laender*, which are closely linked to the financial resources required. However, despite the NPM’s recommendations to legislative bodies, human rights policy has so far lacked the necessary vigour to accomplish this.

Key recommendations to legislative bodies not yet implemented

In several *Laender*, it is still impossible or only feasible under exceptional circumstances for persons with extensive needs to be able to live in their own house or apartment with personal assistance. This option is only being offered to around 1,000 individuals. Over 13,000 persons with disabilities have no alternative but to live in the special protective world of an institution. The National Action Plan on Disability 2012-2020 and the current 2013-2018 Governmental Programme announced that a plan for expanding personal assistance for individuals with physical and intellectual impairments is to be developed nation-wide and that further deinstitutionalisation efforts are to be made to ensure more acceptable options. However, so far no major progress has been made in disabilities policy, aside from a reform of the law regarding legal guardianship announced for 2016.

Personal assistance and deinstitutionalisation

There is a similar situation in the unsatisfactory area of “work”. In 2015, the NPM drew particular attention to the situation at daily workshops. It provided a detailed account of how the payment of minimal pocket money instead of an appropriate wage, the lack of proper employment terms under social insurance law, and the lack of encouragement to seek a normal job constituted a violation of human rights. Here too there have been no commitments from politicians indicating that they wish to achieve change. This is the case despite recent pioneering plans and studies which the Federal Government, in its 2013-2018 Work Programme, explicitly acknowledged to be the solution to all these issues.

Pocket money instead of wages and security

No special measures aimed at raising consciousness	There have been no initiatives in conjunction with self-representation organisations aimed at increased public awareness and consciousness about the importance and objectives of inclusion. In the field of protection against violence, there is no overall framework and in geographical terms too few contact points focus on the vulnerability of children, girls and women, persons with learning difficulties, individuals with mental (psychiatric) illnesses, individuals with hearing impairments, the partially sighted, etc.
Termination of grounds of complaints?	The case of a young woman from Salzburg with serious disabilities, whose further care is currently at stake, provides an example of how persons with disabilities are not taken seriously as self-determining, independent individuals. The situation was not caused by the care recipient herself. It was the provocative behaviour of her mother, who is also her legal guardian. The mother's criticisms and assertions became a burden for the facility, and this constituted the grounds for contractual termination. According to the observations of Commission 2, although the client evidently felt comfortable in the residential home and the care staff spoke positively about her, the operator organisation carried out termination against the mother's explicit wishes. The NPM was unable to reach an agreement out of court, and the <i>Land</i> government was unable to act as a mediator. Court proceedings are currently pending. Whether the legal challenge to the termination will be successful will become evident in due course. At any rate, it is a cause for concern that where there is a reaction to complaints (whether they are objectively justified or not), persons with disabilities may lose their residential care at a facility and if necessary may have to reorient themselves.
Thinking regarding care, safety and security	Goodwill and benevolence are not enough to guarantee that obligations relating to human rights will be upheld. At many facilities, the NPM encountered committed, hard-working staff, yet also identified risk factors for measures which restrict freedom and infringements of autonomy and self-determination. In many instances, work is governed by out-of-date structures, scant resources, rigid organisational rules, organisational culture and/or care and safety considerations, and not enough individually applied empowerment principles. Such approaches can lead to secondary disabilities and acquired helplessness. It is therefore important for the commissions to bring up the question of daily routines, desires and needs during confidential conversations with residents. By proceeding in this manner, the NPM has initiated positive changes; nevertheless, additional effort is needed to protect vulnerable individuals.
Ongoing isolation	Austria's largest facility for persons with disabilities has a history that goes back centuries; around 540 individuals receive care at this facility. The central area of the structure has very old rooms with large care wards, which create an atmosphere similar to that of a long-term psychiatric facility, are not conducive to care that would meet current standards for persons with disabilities. The physicians and care staff in charge are currently implementing changes "on a step-by-step basis"; recently they have separated off two residential groups from the main group, while continuing to ensure that intensive assistance is provided. The facility has also completed the transition from what was previously a purely care-oriented approach to a therapeutic and pedagogical approach. In contrast to what was observed in 2014, during an unannounced visit in February 2015 Commission 3 observed that all individuals with very serious multiple impairments

are now given the option of visual, tactile and acoustic stimulation. Many other clear improvements have been made. Since 2015, net beds are no longer in use. The number of instances of restraint using side elements, use of straps or putting the individual in a time-out area has fallen steadily related to previous years. Nevertheless, the NPM is still very concerned. 77 individuals are still living in the “protected”, i.e. largely closed off parts of the wards. They should receive staff-intensive 1:1 care, but for cost reasons are not. There are no alternative residential options for the individuals in question. In the NPM’s opinion, ongoing spatial isolation without appropriate therapeutic justification in social facilities subject to the Nursing and Residential Homes Residence Act is impermissible within Austria. In 2013, Juan E. Mendéz, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, delivered a scathing criticism of such practices in his report UN Doc. A/HRC/22/53. Moreover, the UN Committee on the Rights of Persons with Disabilities subsequently made an explicit reference to that report in connection with Austria.

Based on the NPM’s observations, not all facilities respect the concept that persons with disabilities are experts on their own affairs, and in some cases adopt essentially the opposite approach. Commission 3 conducted observations at a long-term psychosocial facility for women where a very rigidly organised daily schedule was imposed on the residents. Residents had to wake up at specified times, clean and vacuum rooms, wash their hands and engage in preassigned activities. Use of mobile phones was strictly regimented, TV sets were completely prohibited in the residents’ rooms, and switching on the sole TV set in the communal room required permission from staff. Residents were not allowed to lock their rooms, and after they returned from visits home they were only allowed to unpack their bags with the help of a care worker. They were instructed to always ask when they wanted something or wished to do something. During the interviews conducted by the commission, they were not able to explain why these rules existed, and through non-verbal communication expressed the view that they did not understand the rules. Encouragingly, with the help of external support this facility has since reviewed all its principles for action (operations plan, sexual education plan and concept of “fully assisted living”), drawn up new house rules with the residents’ assistance, and developed a self-representation model. Furthermore, the regional government of Styria has announced that in the near future it will assess the implementation of these measures.

NPM instigated changes

A further indicator of lack of self-determination is the approach to sexuality at institutions and facilities. At numerous residential homes, the commissions found there were deficits in this regard. Many institutions and facilities lack pedagogical concepts regarding sexual education. It cannot be taken for granted that support will be provided regarding exploration/experience of sexuality and issues surrounding masturbation, relationships, contraception and parenthood. In an institutional context it is vital that persons with disabilities not be viewed as asexual or treated as such. Failure to acknowledge sexuality prevents development of positive feelings about the body. It is much more difficult to categorise sexual excitement or the need for closeness or distance if during bath time or when getting dressed/undressed one has to rely on others or is accustomed to other people having control over one’s body. It is important to be able to discuss issues such

Sexuality must not be a taboo subject

as what should be considered normal care, how sexual desire should be handled, how satisfaction can be achieved, respect for other peoples' boundaries, and awareness of what behaviour constitutes sexual encroachment, without these subjects being taboo. A failure to handle issues surrounding sexual self-determination makes individuals susceptible to violence and abuse.

Restrictions of mobility due to inadequate structural accessibility infringe human rights

The commissions often observed the detrimental effects of a lack of structural accessibility in institutions and facilities. The NPM considers it an infringement of human rights when state-authorised institutions and facilities, at which in many cases the cost of care is borne by the state, restrict mobility and autonomy of persons with disabilities by failing to provide adequate accessibility in a manner that could be avoided. In numerous cases, the NPM has persuaded the institution in question to eliminate these shortcomings. Moreover, at older institutions and facilities the *Laender* as the operator organisations for providing assistance for persons with disabilities tolerate enormous deficits. It is true that long transition periods for ensuring full barrier-free accessibility and amendment of official permits may involve conflicts; however, this should not rule out the possibility of establishing positive incentive systems for taking proactive measures voluntarily at an earlier stage. The deficits at institutions and facilities are incomprehensible, especially as the Federal Act on the Equal Treatment of Persons with Disabilities, pursuant to which accessibility for persons with disabilities is a requirement for example at privately operated restaurants or shops, entered fully into force on 1st January 2016.

2.4.2 System-related problem areas

Are systems for protection against inhuman or degrading treatment effective?

State obligation to provide protection

Article 2 and Article 16 of the UN Convention against Torture (CAT), Article 15 of the UN Convention on the Rights of Persons with Disabilities (CRPD) and Article 3 of the European Convention on Human Rights set forth absolute prohibitions upon the state relating to torture and any form of inhuman or degrading treatment or punishment. These provisions also include positive obligations of states regarding protection. These become relevant if a person's physical well-being and integrity depend on state activities, regardless of whether the endangerment is caused by the state or a private entity.

The UN CRPD is based on the assumption that in exercising self-determination all individuals, regardless of the seriousness of their illness or disability, are capable to take legally relevant action and participate in working life provided they receive appropriate support. For this reason, the acknowledgement of the legal ability to take action in Article 12 (2) CRPD is not tied to specific capabilities or other conditions. By contrast, under Austrian civil law various forms of decision are basically made by legal guardians as representatives. Inter alia, persons with disabilities cannot freely choose or even end their stay at an institution or facility.

It is a cause for concern that in individual cases a person's mental and physical integrity may suffer neglect or damage without authorities, courts or court-appointed legal guardians being able to intervene. The following two examples highlight the nature of the problem:

Case 1:

Commission 2 visited two buildings of an association in Upper Austria which offers care and residential care. The care is provided by Ms and Mr XY. Neither of them has had the relevant training. They provide round-the-clock care for 15 individuals aged between 45 and 55, some of whom are highly in need of care. They use the revenue received to cover all expenditures and pay their own wages.

The buildings are small in scale and structured in a makeshift manner, they do not have adequate barrier-free accessibility and are minimally equipped, and they do not provide sufficient living space during the day or at night. There are serious ongoing infringements upon the privacy rights of men and women with disabilities. There are no separate toilets and there is no visual protection at all when a person goes to the toilet or takes a shower. On the day of the visit, the hygiene situation was disastrous, not just in the toilets and bathrooms. For example, the commission was unable to discern any toiletry items that were assignable to a specific resident. The commission encountered among others a deaf man with spastic paralysis who was wrapped in a dirty woollen blanket up to his face and "placed" on a small sofa. No care documentation was being maintained, which the responsible couple even admitted. No individual needs plans, documentation regarding diagnoses, doctor's reports or doctor's letters were available at the facility.

Degrading living conditions

According to the married couple, they never go out, are never sick, and never need a holiday or leisure time. All of this is allegedly intended as the basis for maintaining a "residential family" for people who otherwise no-one would take care of. Most of the residents have previously undergone treatment in psychiatric facilities. Their contact with other people is limited to rare visits by family members and general practitioner visits. For most of the individuals receiving care, the courts have assigned legal guardianship to lawyers. These lawyers have drawn up "rental agreements" with the association and handle all financial matters. According to the married couple, the lawyers never visit their clients at the facility.

Complete isolation and dependence

The psychiatrist of Commission 2 established contact with a general practitioner who is providing treatment and found that the general practitioner's documentation contained approaches which were not always comprehensible. In some cases, treatment with medications was described with the appropriate precision; however, in other cases there was an overall lack of clarity concerning the residents' psychiatric diagnoses and required medications. Most of the residents are treated with high doses of psychiatric drugs, mood stabilisers or antiepileptic substances. It was not possible to demonstrate for all of them that they have had regular psychiatric consultations. As a result, in the commission's opinion there may in some instances be dangerous interactions between the various medications. In some cases, the treatment with medications does not appear appropriate to the diagnosis.

Doubts over medications

Authorities took view that there is no need and ground for intervention

In its statement to the NPM, the regional government of Upper Austria responded that the nature of the care being provided definitely did not meet current standards and that sponsorship for and official recognition of the facility under *Land* law had been refused years before. It pointed out that from 1999 on, there had been repeated complaints and suggestions for reassessing the living situation at the association's premises; it also alleged that the official grounds for an intervention had undergone assessment. However, the regional government of Upper Austria took the view that in family-type living arrangements such as this, those grounds were not fulfilled for persons under legal guardianship who in legal terms are not the decision-makers regarding the location of their residence. In the opinion of the operators of facilities for persons with disabilities, in cases where the choice of a legal guardian about the place of residence is deemed contrary to the individual's interests, the only remaining option is to submit a petition to the relevant court requesting that a new legal guardian be appointed.

Human Rights Advisory Council consulted

This response prompted the NPM to consult the Human Rights Advisory Council, and concrete recommendations were able afterwards. In light of this case, the question of how to allocate responsibilities within Austria in order to fulfil the duty to protect human rights and prevent degrading and inhuman treatment of and violence against persons with disabilities needs to undergo in-depth analysis. Various federal and *Land* regulations apply to aspects of whether such care settings are permissible and to sanctions in the event of infringements. This may be one of the reasons why there has been diffusion of responsibilities.

Case 2:

In Salzburg, Commission 2 visited an officially approved facility where 35 persons with disabilities – aged between 14 and 52 and requiring a high level of care – have been divided into five residential groups. Some of these individuals have been receiving care for a long time. On the day of the visit, the NPM observed how warmly the care staff treated the residents, even though the basic conditions and prerequisites under which the work had to be performed ultimately seemed unacceptable to the NPM.

Inhuman and degrading conditions

The building, which does not ensure barrier-free accessibility for persons with disabilities, is not equipped for providing care to so many people. Due to a shortage of space, nine people live not in rooms but rather simply occupy beds situated in communal rooms, corridors or passageways. Furthermore, the privacy of children, women and men is infringed in an inhuman and degrading manner. None of the residents' toilets is situated in a closed-off location; all the toilets are in an open setting adjacent to showers or baths. None of the bathrooms contains visual protection. Toilets are used while other residents are being washed within a confined space. There is no gender segregation when going to the toilet or attending to bodily hygiene. Gender-specific care as a component of violence prevention has not even been considered.

The commission had serious doubts particularly regarding the efficiency of authorities' supervision and the standards and quality requirements which the facility has had to meet in the past.

The facility was unable to show the commission any developmental level assessments, current needs plans or individual care plans. It does not prepare or implement any plans based on current therapeutic approaches. Unfortunately for the residents, there are essentially not enough staff with appropriate qualifications in care and therapeutic methods. In the opinion of the commission, fundamental communication and fundamental stimulation, in particular, are not sufficiently provided.

No needs plans or care plans, not enough staff

Many of the residents respond to the lack of communication options and the lack of activities with a highly aggressive behaviour and with behavioural abnormalities. Staff responds to such behaviour by taking measures which restrict freedom rather than by offering more specific care or the opportunity to pursue activities. Commission 2 performed random checks regarding reports to the residents' representatives under the Nursing and Residential Homes Residence Act and in some cases found infringements, due to the fact that milder measures or alternatives to measures which restrict freedom were not discussed at all. The facility had failed to address various criticisms in several court-ordered expert opinions, which had been prepared as part of proceedings under the Nursing and Residential Homes Residence Act aimed at avoiding restrictions on freedom, in which attention was drawn to failures to meet therapeutic standards that would have needed additional staff.

Impermissible restrictions of freedom

A number of residents drew attention to in some cases very serious contractures in their arms, hands and legs. The commission examined the available documentation. It did not appear that skilled contracture prophylaxis or professional positioning techniques were being used.

Deficits in provision of care

The NPM made it clear to the supervisory authority that minor changes at the facility definitely would not be enough to satisfy requirements regarding the prohibition of torture and violence. All processes will need to be modified so as to comply with UN CRPD, and new building(s) will have to be added.

- Protection against inhuman or degrading treatment needs to be swiftly implemented in a comprehensive and effective manner.
- Responsibility for the state's duty to protect must not be shifted to private entities or institutions.
- The concept of legal guardianship as such and the associated right to determine an individual's place of residence conflict with Article 12 UN CRPD.

Linking the „living and working environment“ without offering alternatives is impermissible

For most of us, work plays an important role in life, as it is a means of earning a living. But work also involves challenging oneself, proving oneself, making new contacts and friendships, and many other things. It is a fact that people with disabilities face discrimination when accessing the regular labour market. But when it comes to programmes designed to help persons with learning difficulties and/or disabilities to enter or re-enter the professional world, there are additional barriers, especially for those who are not considered “severely disabled”. This is because they may need more time and/or specific support to be able to make an equivalent contribution.

The situation is particularly difficult for persons with learning disabilities or chronic psychiatric illnesses who are already living in an institutional environment and, in the realm of work, have been integrated into the world of occupational therapy workshops. One of the programmatically defined objectives is to help individuals transition from this protected world into the regular labour market or the intermediate labour market (occupational projects, integrative operations). Nevertheless, in practice those objectives are not achieved often enough. There are various causes. One is that residential arrangements and arrangements regarding working in sheltered workshops are often handled by the same entity, which means that the two areas are very closely intertwined.

Residential places and day workshops often closely interlinked

In all of the *Laender*, during visits the commissions observed that residential places in facilities and sheltered workshops attended by clients are often closely interlinked. In many cases, residential homes and day workshops are operated by the same operator organisation; in some cases, both types of facility are actually in the same building or directly adjacent.

Even though the organisations which support residential structures and those which support work structures exclusively for persons with disabilities are not identical, there are many regions in Austria where *de facto* there is only one residential home and one day structure available. There are no options or freedom of choice.

If residential places are usually interlinked with having to perform work at a shelter workshop operated by the same organisation, it is fair to assume that there is at least implicit pressure to attend that workshop. This is true especially because in many cases residential facilities are unstaffed or staffed with reduced personnel during the day.

Individuals living within closed system

Commissions frequently observed that clients often lack social contact with the outside world and move in closed social circles. If an operator organisation offers a residential place as well as a day structure, the individual in question *de facto* lives within a very narrow control system. Within this closed system, power relations and unilateral dependencies are pre-programmed, even though the goal should be to prepare clients for the regular or intermediate labour market and therefore ultimately see them depart. In light of the CRPD requirements, the *Laender* (which largely bear the costs) and the provider organisations themselves need to acknowledge their obligations and be willing to break up organisational links between residential structures and work structures.

These are structural problems which exist independently of concrete situations. Persons with disabilities are often very satisfied with their circumstances, though in view of their socialisation they may not be familiar with any other type of experience. In the NPM's opinion, the fact that the realm of work and the residential realm are closely interlinked both spatially and in terms of the operator organisation is no longer appropriate to today's conditions, and should – also from the standpoint of the CRPD - undergo scrutiny.

In its statement to the NPM, the Federal Ministry of Labour, Social Affairs and Consumer Protection agreed that persons with disabilities who are residents of assisted living and housing facilities should not be dependent on simultaneously attending a particular day structure.

Ministry agrees with NPM

- Arrangements whereby living and working environments are interlinked tend to make dependencies more entrenched.
- The individuals involved find themselves in a closed system which may hinder personal development and the exploring of potential.
- Persons with disabilities in old age also need to be able to live self-determined lives. However, strict requirements regarding attendance at day workshops are an obstacle to this.

Right to self-determined life - also in old age

During their visits to various day centres and day workshops for persons with disabilities, the commissions were alerted to the particular problems of elderly people at these facilities.

Several heads of such facilities spontaneously commented that they were confronted with the situation of having to offer day programmes specifically for elderly persons with disabilities which would be suitable to age-related physical changes. After years in which the individuals involved had successfully found their roles in the work process, the goal now was to gently introduce changes and open up new perspectives appropriate to their needs. This was presenting difficulties and required additional resources. As a consequence – unless the increased needs for care could be met - elderly people with disabilities would have to leave their current places of residence and be transferred to retirement and nursing homes. At any rate, attending a day structure on an ongoing basis takes a great deal of effort. In conversations with commissions, older users of occupational therapy workshops explicitly expressed the wish to “start their retirement”, i.e. sleep longer in the mornings or stay in the residential home during the day and remarked that it was important for them not to feel (subliminally) “pressurised” in any way.

Statutory regulations and strict requirements in funding guidelines are to blame for the fact that elderly persons with disabilities do not have the option of making their day structure more flexible in accordance with their wishes. Thus, for example, in the case of fully-assisted living and housing facilities in Vienna, according to the Vienna Social Fund's

Strict requirements regarding number of hours of attendance are inadequate

funding guidelines an individual must attend a day workshop all day and 5 days per week. A maximum of 50 days of absence (including holidays and sick days) are permitted.

The Vienna Social Fund assured the NPM that in Vienna so far no one has lost a residential place and had to transfer to a nursing home due to age. It pointed out that considerable effort is made to meet the needs of elderly persons with disabilities, for example by hiring more trained staff or acquiring nursing beds, wheelchairs, etc. It also stated that there are various individual solutions available to elderly persons with disabilities who no longer wish to stay at the work structure for the entire day, e.g. late start, early end, leave of absence.

However, individual solutions do not alter the basic fact that elderly persons with disabilities often feel pressured. Rigid requirements concerning the number of hours of attendance combined with pressure to comply with these requirements so as to avoid losing a place in an assisted living and housing facility, are considered a huge constraint.

The NPM is of the following opinion:

Today persons with or without disabilities are living longer, which means the requirements relating to support for persons with disabilities are changing. This trend presents new opportunities, but at the same time the viewpoint of persons with disabilities must be sensitively taken into account. Much greater attention must be paid to their wishes concerning the location, type and scheduling of day programmes.

The NPM is supportive of the idea that elderly persons with disabilities should be able to live as long as possible in the place where they have lived for decades and made their home.

In particular when it comes to providing assistance for persons with disabilities, provision of care and medication for individuals who need help is part of an accompanying process. However, in contrast with the situation in acute care, it is not the focus of concerns. Thus, it is not feasible or permissible to exclusively or mainly use fully trained, specialised nursing staff. Care staff for persons with disabilities provides support in the persons everyday life. At day homes, occupational therapy workshops, residential homes, shared accommodation and leisure facilities, they assist them in the structuring of their everyday life and carry out therapeutic and instructional interventions. When long-term clients get older, residential facilities will inevitably also face the limits in terms of legal matters, specialist expertise and structural requirements. In light of the ongoing aging of users, these challenges need to be overcome.

Federal government and
Laender face challenge

As a result, the basic legal framework will have to undergo review. Planning and control of material resources, which is currently tied to specific segments of provision, will also have to undergo reassessment.

- The life expectancy of persons with disabilities has risen over the past few decades and is essentially on a par with average life expectancy among the general population.
- New, more flexible structures for elderly persons with disabilities will therefore be needed, particularly in terms of residential, occupational and leisure needs.

Inclusive access to medical care must be improved

The UN CRPD takes a very clear position on what essentially should go without saying: persons with disabilities are entitled to achieve the very highest level of health. Austria is therefore firmly committed to obtaining suitable measures to ensure this. However, the NPM unfortunately found that this entitlement is not yet a reality.

Right to very high level of health

The commissions observed on many occasions that the provision of medical care at institutions and facilities is inadequate. Thus, in many cases persons with disabilities had gone for years without having a consultation with a specialist psychiatrist, and psychiatric drugs were being taken or administered without ongoing evaluation and monitoring by a physician. In one case, the persons involved had gone five years without undergoing any assessment. The problem is exacerbated by the fact that staff without appropriate training categorise and administer medications in many cases, after having removed them from blister packs and placed them in medication containers. Persons with dual diagnoses are particularly at risk.

Medications administered for years without evaluation by physician

Shortcomings in terms of medical care were particularly evident in psychiatric services; there are also problems with de facto undersupply in other fields of medical services, for example, dentistry and women's health.

Lack of available specialist physicians

There are various reasons for this: in principle, persons with disabilities, like everyone else, are entitled to freely choose their physician and are also medically insured. However, especially in rural areas consultant positions for institutions and facilities are hard to find. In particular, specialist physicians who treat statutorily insured patients are often unavailable. Not all practices of physicians who treat statutorily insured patients ensure barrier-free accessibility for persons with disabilities. In some cases, local professionals may be insensitive when handling persons with disabilities and their behaviour patterns, prior to or during treatment. Physicians freely chosen by the individual are not contacted due to cost constraints.

Inadequacies when it comes to inclusive medical care

There are some interesting initiatives for making medical care more inclusive, though these initiatives are only being carried out in certain regions. For example, in Lower Austria doctor-patient interaction guidelines have been developed for *Land* clinics and institutions and facilities for persons with disabilities. They are available as a free brochure and are written in clear, easily comprehensible language. They are useful when preparing for appointments to treat persons with disabilities.

New technologies are being developed

Also helpful are various new technologies such as apps for doctor’s appointments conducted in sign language, or the so called “Video Interpreting in Healthcare” project, which was launched in 2013 at healthcare and other facilities and which, has received specialist support. During the pilot phase it was set up for persons with hearing and speech impairment, among others. In 2015 a further project for enabling sign language functionalities on smartphones, tablets and laptops was launched. This project, entitled “Sign Language Interpreter on Your Display”, is to ensure that persons with hearing impairment in Vienna have barrier-free communicative access at doctors’ practices, to which they are entitled under UN CRPD.

Notwithstanding the commitment and effort of various individual entities, the Austria-wide inadequacies in medical provision for persons with disabilities are a structural problem. This needs to be acknowledged and suitable strategies for solutions need to be developed.

- Persons with disabilities are entitled to the very highest level of health.
- Inclusive medical care needs to be available Austria-wide.
- Further developments in assistive technologies would be very useful; they should be made available Austria-wide.

Living with mental illness

Dehospitalisation undisputed as important objective

The reforms in psychiatry that have taken place over the past few decades have been aimed at creating new care structures for persons with mental illnesses after long stays in psychiatric hospitals. Criticism of conditions in psychiatric hospitals has mainly been directed at social isolation, the widespread lack of self-determination, therapeutic nihilism, lack of space, meaningless daily routine, tranquillisation by medication and objectifying treatment. The goal of such de-hospitalisation is to ensure (institutionally) safe living spaces are available outside of psychiatric hospitals for persons with highly individualised behaviour patterns. Nowadays, in psychiatric medicine it is undisputed that de- hospitalisation for individuals with chronic mental illness is an important objective; nevertheless, there is a major deficit in terms of comprehensive provision of inclusive options for living and working.

This group of persons tends to stand out through their social behaviour. Persons with mental illnesses or disabilities continue to be particularly affected by marginalisation, discrimination, stigmatisation and homelessness. Even where there are institutional structures of assistance, more efforts need to be made to promote and ensure equal opportunities.

No rehabilitation

In Carinthia, Commission 3 observed many serious deficits in this regard. In remote and allegedly specialised residential facilities for persons with psychiatric diagnoses and addictions there is little attempt at psychosocial support and rehabilitation. Care

staff with appropriate qualifications is not available. Most institutions do not assist in the individual's objectives planning, care plans or individual needs plans. Individuals are not encouraged to participate in the structure of everyday activities, or only to a very rudimentary extent. There are hardly any leisure activities. Only a very few clients are involved in external day structures. There is no structuring of social space. Residents are basically isolated and become increasingly isolated as a result. To date no home agreements with clients have been drawn up.

At all these facilities, costs paid from public funds are contractually stipulated and significantly lower than at other facilities providing assistance to persons with disabilities in Carinthia. Under these basic conditions, social reintegration is impossible. The suggestion that the *Land* of Carinthia is thereby infringing fundamental obligations to uphold human rights was rejected, and it was drawn to the NPM's attention that there is a lack of resources.

The commissions revealed provisional deficits to the detriment of this group of persons in other *Laender* as well. Undoubtedly there are operator organisations which are doing good work. Long waiting lists for free places in fully and partially assisted residential homes are an indication of widespread unmet needs regarding support for people undergoing psychiatric crisis after acute treatment at hospitals and in need of help to be able to return to an independent life in a step-by-step manner.

- Persons with mental illnesses still experience marginalisation and stigmatisation.
- Adequate resources for rehabilitation (provision of assistance for persons with disabilities) are needed.
- There is an urgent need to promote equal opportunities for persons with mental illnesses.

Persons with disabilities among refugees

Photos and reports from or about refugees who have entered Austria as a destination or transit country after a long and arduous journey tend to obscure the fact that there are also persons with disabilities seeking asylum. The increase in the number of refugees over the past two years has also resulted in a significant increase in the number of refugees who are particularly in need of protection. This includes chronically ill individuals, traumatised persons, pregnant women, (unaccompanied) minors, elderly people and persons with disabilities. Within this group, persons with serious or very serious multiple disabilities who seek protection are in a particularly precarious situation, as the question of reception and care revolves around specific needs. In practice, there are many problems associated with the provision of appropriate medical and social care and provision of necessary resources. These problems may require specific and often individual solutions.

Effective as of 1 July 2015, EU Directive 2013/33 (as amended) sets forth requirements regarding provision of services for persons with special needs. Section 19.2 thereof states: “Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed”. Under Section 22, member states must ensure that the support provided to applicants with special reception needs takes into account their special reception needs throughout the duration of the asylum procedure. This means that persons with disabilities must be provided with care appropriate to their disability and prophylactic treatment or treatment which compensates for the disability not only during initial reception but also as part of the provision of residential space appropriate to their basic care.

In 2015, in light of the capacities available for housing and caring for refugees, these requirements could not be met. Unfortunately, this was observed on many occasions during visits conducted by Commission 6 to the completely overburdened Traiskirchen Initial Reception Centre and during visits by Commission 4 to emergency accommodations, where the goal is simply to fend off homelessness.

No accessibility for persons with disabilities at Traiskirchen

Thus, for example, at the Traiskirchen Initial Reception Centre there is Building 4, which is specifically for persons with disabilities. During its visits, Commission 6 observed that accessibility for persons with disabilities merely takes the form of ground-level access. A 16-year-old Iraqi, who has had both legs amputated from the lower thigh down, following a bomb attack, showed the commission his washroom facilities, which were too small and inadequate for his needs. Washing, showering and performing sterile care on his wounds became torturous for him and his mother during their 9-month stay. Moreover, he could not participate in German language courses due to lack of accessibility for persons with disabilities. During his initial contact with the commission, he complained that all the other healthy persons of his age with whom he had come to Traiskirchen had already been moved, while he and his mother were put off repeatedly.

Contrary to recommendations, a dialysis patient was housed in a tent

At the Traiskirchen Initial Reception Centre a dialysis patient in a wheelchair and his family who initially lived outdoors as homeless persons, were subsequently housed in a tent. In a physician’s assessment which the dialysis patient showed to the commission, an Upper Austrian hospital had advised against spending nights in the open. He explained that he had shown the physician’s assessment to employees of the service provider in charge of the administration of the Initial Reception Centre (ORS GmbH) several weeks earlier, to no avail and without receiving a response.

Blind asylum seeker with no companions on whom to rely

Shortly after reception at the Traiskirchen Initial Reception Centre was halted, a blind Syrian asylum seeker with no companions was being housed in Tent Camp 2, where provisioning was even more precarious than in other parts of the site. At the height of summer, over 1,000 people were barely able to wash themselves and could only use the six available showers in the police college sports centre. Without help the asylum seeker was unable to reach the food distribution points and mobile toilets which had been set up. He was completely reliant on support from his fellow countrymen who were being housed with him in the tent. He described to the commission that he was worried

that his fellow countrymen might be moved before he was, leaving him defenceless and reliant on completely unknown people.

In these and other individual cases, medical experts of Commission 6 determined that any delay would involve significant risk and issued recommendations that the individuals in question urgently needed to be moved. In view of the huge challenges involved in managing the flow of refugees, the Vienna Social Fund and the regional government of Lower Austria in particular are to thank for the fact that after the NPM made contact, accommodation that fulfilled the Basic Provision Agreement requirements was arranged, without having to separate families.

In late autumn 2015, the Federal Ministry of the Interior set up a special care facility for persons with disabilities in Upper Austria. Whether this was enough and will continue to be enough is unclear, as data are not yet available regarding how many refugees with disabilities in need of care were present in Austria temporarily or on an ongoing basis in 2015. So far, the only criticism of this facility is that emergency plans for protecting persons with disabilities which are required in humanitarian emergencies pursuant to Article 11 of UN CRPD have still not been drawn up.

- Emergency plans for refugees with disabilities which are required pursuant to the UN CRPD have not yet been drawn up.

2.4.3 Positive observations

Commission 4 visited a facility in Vienna which offers a day structure for persons with the highest levels of care and nursing allowance (levels 6 and 7). At this facility, daily assistance and basic stimulation are designated “working on yourself”. Support is given for every independent activity that can be accomplished and for every initiated action that functions as a response or results in mutual interaction. Supported communication also plays a major role. Thanks to this approach, even apparently completely inactive individuals can be encouraged to engage in activities involving play, curiosity and exploration. Numerous expeditions are organised, including activities such as boat trips or visits to the public aquarium. The commission admired the staff’s professional, supportive approach to the clients, the resources tailored to clients’ needs, and the wide range of assistance plans, which were implemented in an individualised way. As part of the basic stimulation plan, the goal is to create an environment which helps persons with serious disabilities to experience successful development.

Best practice

2.5 Correctional institutions

2.5.1 Introduction

The following chapters give an overview of the activities of the NPM in Austrian facilities of the penitentiary system and facilities for the detention of mentally ill offenders during the reporting year. In total, 47 visits were made to correctional institutions and three visits to forensic departments of psychiatries. The results of this preventive human rights work are divided into 10 chapters. The further subdivision is primarily based on the anchor points of the NPM's visit reports.

At the outset, the results in connection with the major topic of health care in detention (1) and the related topic of health examinations upon arrival will be presented. The knowledge gained and the recommendations made on the key issue of "women in prison" will be discussed in the two chapters on work and employment opportunities (3) and right to privacy (6). The remaining chapters on living conditions (2), contact with the outside (4), infrastructural fixtures and fittings (5), access to information (7), complaint management (8) and personnel (9) will provide exemplary observations and recommendations from the past year regarding individual correctional institutions. The last chapter is dedicated to two selected examples of "best practice" (10).

2.5.2 System-related problem areas

Provision of health care

HEALTH CARE AND ITS REQUIREMENTS

Inadequate health care is a violation of human rights

The observations of the commissions and the individual complaints of prisoners make it clear that the area of health care in detention remains a key issue and the health care provided in detention presents a challenge in terms of the provision of health care. Since inadequate health care can lead to situations involving inhuman and degrading treatment, there must be a focus on preventive work in health care. It must be guaranteed that the medical care of detainees is on the same level as that of persons who are at liberty. Therefore, the NPM also addressed this issue in 2015 and treated it as a focal point.

Caring for vulnerable groups in conformity with their fundamental rights

Moreover, the depressing case of the neglect of a prisoner detained in the Stein correctional institution in 2014 resulted in the initiation of systematic monitoring of nursing care in the penitentiary system and in the detention of mentally ill offenders (see NPM Report 2014, p. 86). The focus was on the question of how to ensure the care of particularly vulnerable groups of persons – such as nursing care for older prisoners with lengthy sentences – in conformity with their fundamental rights. The purpose was to determine what type of monitoring, early warning and screening systems should be implemented for prisoners and mentally ill offenders, to avoid physical and psychological neglect in the future.

<p>It was demanded that the care and nursing provided to detainees in Austrian correctional institutions who needed increased care due to their age or mental condition be guaranteed to the same extent as to patients in hospitals and nursing homes.</p>	<p>The NPM's requirements catalogue</p>
<p>With reference to the NPM's recommendation to implement the office of a medical superintendent into law (see NPM Report 2014, p. 91), it can be reported that the Federal Ministry of Justice has complied with this recommendation. The office of the medical superintendent, which plays an important role in ensuring the quality of the health care provided in detention, has now been incorporated into Section 13 of the Penitentiary System Act.</p>	<p>NPM's recommendation implemented</p>
<p>The office of the medical superintendent will monitor the provision of health care. It is integrated into the general directorate (for the penitentiary system and for the detention of mentally ill offenders). The office of the medical superintendent develops basic concepts for dealing with patients. These concepts are developed with respect to key issues and are to be implemented in all institutions after an appropriate test phase.</p>	<p>Office of the medical superintendent</p>
<p>For example, based on the NPM's demand, the establishment of minimum standards in the area of hygiene has been advanced. On the positive side, it should be highlighted that appropriate minimum standards are beginning to be introduced in some areas and the necessary training measures have been taken with respect to the 2014 Hygiene Regulation and PROHYG 2.0. (Guidelines for the Organisation and Strategy for Hospital Hygiene).</p>	<p>Minimum standards in the area of hygiene</p>
<p>Participation in continuing educational sessions three times a year is now mandatory for infirmary employees. There will be additional training sessions as part of regular professional conferences for infirmaries and examining departments at correctional institutions. Moreover, hygiene managers have been utilised at the Stein, Wilhelmshöhe and Vienna-Josefstadt special medical facilities. In the future, such employees will be found in every correctional institution.</p>	<p>Hygiene manager</p>
<p>According to the Federal Ministry of Justice, an evaluation of all the correctional institutions with respect to the measures to be taken to ensure minimum standards of hygiene has not yet been completed. The NPM advocates that this be accelerated and that the implementation of these measures be ensured thereafter. In addition, the NPM will monitor the development of additional basic concepts with respect to key issues on an ongoing basis.</p>	
<p>The medical superintendent has been endowed with far-reaching authority. This includes visits to correctional institutions, which can be made as needed or routinely, without advance notice. Such visits will be made to about two correctional institutions per month and at least once a year. Likewise, the medical superintendent can visit correctional institutions to ensure adequate dental treatment and flawless hygienic conditions at treatment facilities.</p>	<p>Medical visits to the correctional institution</p>
<p>In addition to the visits to every correctional institution to be conducted by the office of the medical superintendent at least once a year, the Federal Ministry of Justice has given its assurance that the institution's physician will visit all the departments of the</p>	<p>Monitoring and screening system</p>

particular correctional institution once per month. The purpose of this is, in particular, to prevent mental or physical deterioration, as has been the case with the inmate of the Stein correctional institution, which amounted to mistreatment in terms of its severity.

As part of these visits, the institution's physician will visit detainees in their cells on a random basis to verify the hygiene in the inmate cells, etc. Additionally an automatic control visit every twelve months will also guarantee that every detainee is examined by the institution's physician at least once a year.

Preventive control systems	The aim of such preventive control systems is to detect impending mental or physical deterioration of persons in government custody and to initiate targeted counter measures in due time.
Record of prisoners in need of nursing care	The NPM's concern about establishing a central record of prisoners in need of nursing care was not shared by the Federal Ministry of Justice. The Federal Ministry of Justice pointed out that the Austria-wide MED Module (Medical Data) of the integrated prison administration also records chronic illnesses. According to the Ministry, adequate control of the implementation of nursing measures is guaranteed by the fact that the medical superintendent regularly controls the integrated prison administration's MED Module and by the medical superintendent's visits to correctional institutions.
Electronic record of nursing care	In addition, the Federal Ministry of Justice has stated that the IT-provider for Federal Departments in Austria (<i>Bundesrechenzentrum GmbH</i>) has been hired to create an electronic record of nursing care and that this is in the development phase. The NPM considers the establishment of an electronic record of nursing care to be indispensable. The ability to trace the individual instances of treatment and care will already ensure increased diligence in dealing with prisoners in need of nursing care.
Focus on health examination upon arrival	A special focus was put on the topic of health examinations upon arrival during the reporting year. The enquiries regarding this key issue were not yet completed as of the reporting date. Important considerations are at which point the health examination upon arrival should be carried out and what it does – and what it should – entail. The CPT has determined that every prisoner should be properly questioned and physically examined by a physician as soon as possible after his/her arrival at the correctional institution [CPT/Inf/E (2002) 1 – Rev. 2010, p. 32].
Timing of health examination upon arrival	According to the Federal Ministry of Justice, health examination upon arrival is conducted in accordance with a standardised procedure. Under that procedure, inmates brought in by the police or transferred by a correctional institution are immediately presented to a physician for an initial examination if the correctional institution has its own special medical facility. If a correctional institution does not have its own special medical facility, it can take a maximum of up to four days (including Saturdays, Sundays and holidays) for an initial examination to be conducted. If an inmate complains of acute symptoms, an examination will be carried out immediately at the closest hospital.
Scope of examination	According to the Federal Ministry of Justice, the examination consists of a full body examination with or without simple instruments. In the course of the health examination upon arrival, an overview of the patient's health is obtained based on the medical history,

checking the blood pressure and weight, and assessing the patient's vital signs. This does not include cases with specific symptoms. The blood concentration is only checked if there is a medical need – and at regular intervals of once a year (laboratory testing) in accordance with the usual procedure of equivalent care.

In the view of the Federal Ministry of Justice the medical history, which is an extremely important part of every examination, provides every patient with the opportunity – and the right – to list all of his/her illnesses in order to ensure that he/she will undergo further examinations, if necessary.

The services of a psychiatrist will only be utilised during examinations if there have been complaints of mental problems or if specialists or other prison employees have reported anomalies.

Psychiatrist

The existence of health problems, particularly contagious diseases, is established with the aid of a simple procedure utilising epidemiological data. The NPM considers it positive that all inmates are given an information packet called "Take Care" with regard to the prevention of HIV/AIDS and Hepatitis B/C in the course of the health examination. Condoms for men and women are also made available anonymously.

Prophylactic measures -
„take care" information
package

Adequate health care starts by prophylactically preventing the possible transmission of diseases and by informing people about how to deal with risky situations in a safe and hygienic manner. The distribution of condoms serves to ensure health, particularly with respect to HIV, syphilis and hepatitis.

According to the Federal Ministry of Justice, every new admission must undergo a chest X-ray to screen for tuberculosis within 14 days to prevent lung diseases in correctional institutions. Persons who are visibly in poor overall condition and persons from international risk areas with multi-resistant tuberculosis are examined within five days.

Tuberculosis infections

In accordance with a decree issued by the prison administration in 2014, female inmates must have a gynaecological exam within two weeks after the first review of the detention order. Any such inmate must be presented to a gynaecologist immediately if the health examination upon arrival reveals an urgent need for treatment by a gynaecologist. A urological examination is offered to men over the age of 50.

Gynaecological and
urological examination

The NPM is currently scrutinising whether the standards for health examinations upon arrival described by the Federal Ministry of Justice are actually met in all Austrian correctional institutions and whether they are adequate.

Standards for health
examination upon arrival

The topic of the presence of prison guards during the medical treatment of detainees is closely linked to the question of the necessary scope of a health examination upon arrival. The AOB has already addressed the tension between security interests and the protection of intimacy and confidentiality with respect to the presence of prison guards at medical examinations of detainees in the previous year's report.

Presence of prison guards
during treatment

It was demanded that, if it was absolutely necessary to have a prison guard present during the examination of a detainee, he or she should be a person of the same gender. Under which circumstances it is absolutely necessary to have a guard present during a

Same-sex prison guards
required

medical treatment (in the room at the correctional institution provided for this purpose) is still left open.

Order of the Ministry regarding presence of prison employees

According to the Federal Ministry of Justice, a decree was to be issued in January 2014 to clarify the required procedure with respect to the presence of prison employees at consultations with physicians based in the facility. However, the decree issued in January 2014 did not reach the NPM until March 2015, because it could not be finalised and formally approved for about a year after preparation due to negotiations with staff representatives.

The NPM does not deny that security concerns can require the presence of a same-sex prison guard. However, it stresses that the presence of a prison guard at such an examination constitutes an interference with the detainee's right to privacy. Therefore, even a same-sex prison guard should only be present if there is a verifiable need.

Out of hearing range and line of sight of prison personnel

In this regard, particular attention should be paid to CPT standards, which state that any medical examination of a prisoner (whether at admission or at a later date) should be conducted out of the hearing range and – unless otherwise requested by the attending physician – out of the line of sight of prison personnel. Likewise, maintenance of patient records should be the responsibility of the physician [CPT/Inf/E (2002) 1 – Rev. 2010 p. 36].

It is expected that a definitive assessment of the content of the aforementioned decree will not be possible until the next report of the NPM.

- Detainees have the same right to care and nursing as patients in hospitals and nursing homes.
- Regular checks on the physical and mental condition of detainees are an important part of health care.
- The maintenance of an electronic record of nursing care is indispensable. The ability to trace the individual instances of treatment and care, standing alone, will ensure increased care in dealing with prisoners in need of nursing care.
- If it is absolutely necessary to have a prison guard present at the examination of a detainee, this should only be a person of the same gender.
- The NPM welcomes the implementation of its recommendation to give the office of the medical superintendent a statutory basis.

DETENTION OF MENTALLY ILL OFFENDERS

Law on the detention of prisoners with mental health care needs to be developed

The Federal Ministry of Justice has announced comprehensive reforms regarding the detention of mentally ill offenders (see NPM Report 2014, p. 87 et seq.). Many proposals made by the working group require legislative measures. According to the Federal Ministry of Justice, a draft of the Detention of Mentally Ill Offenders Act (*Maßnahmenvollzugsgesetz*) can be expected in spring 2016.

The first organisational measures have already been taken or are being implemented. Thus, a “competence centre for the detention of mentally ill offenders” and a “clearing centre for mentally ill offenders” in accordance with Section 21 (2) of the Austrian Penal Code have been created in the general directorate for prisons, established within the Federal Ministry of Justice since 1 July 2015. The competence centre will coordinate the necessary therapeutic measures for detainees through a case-management system. Among other things. The clearing centre will develop a binding care and treatment concept and assign detainees to a suitable facility.

Competency centre and clearing centre established

“Therapeutic centres” will be established over the long term. The development of the Asten Centre for Forensic Science will commence in 2016. To quickly improve the detention of mentally ill offenders in accordance with Section 21 (2) of the Austrian Penal Code, so-called “departments” were established in the correctional institutions Garsten, Graz-Karlau and Stein on 1 January 2016 as part of a pilot project. They report directly to the management of the correctional institution. An interdisciplinary pool of personnel will ensure continuity of care.

Development of therapeutic centres

The visits of the NPM commissions will show whether the intended improvements in the detention of mentally ill offenders actually materialise.

SALIVA TESTS TO CONTROL ADDICTIVE DRUGS

In the report of the previous year (see NPM Report 2014, pp. 97 et seq.), the NPM pointed out that the implementation of controls against the abuse of addictive drugs and the manner in which they are carried out through urine tests are particularly sensitive in terms of human rights (whether done randomly or based on suspicion). Providing a urine sample while under observation constitutes an interference with one's right to privacy in itself.

Urine tests are sensitive from a human rights perspective

The NPM supports the “saliva test” pilot project ordered by the Federal Ministry of Justice in the correctional institutions of Vienna-Simmering, Hirtenberg and Vienna-Favoriten to mitigate the problem. Since taking oral fluids is a less invasive measure, which also interferes less on the privacy of the affected person, the NPM advocated a nationwide shift from urine tests to saliva tests.

The Federal Ministry of Justice is generally in agreement that taking saliva with a pad is not an encroachment on privacy. Moreover, the test can be administered by any prison employee regardless of the gender of the person being tested. Despite this advantage, a closely regulated coexistence of both testing procedures is favoured in everyday prison life.

Coexistence of both testing procedures in everyday prison life

With respect to this strategy, the NPM believes that the implementation of toxicological analyses of saliva is to be preferred from a human rights perspective. However, thus far, the results have not been comparable in terms of validity and specificity with the – also forensically established – results of urine toxicology. Nevertheless, it is requested that

the process of providing a urine sample should generally be monitored through the use of mirrors.

Detection period of substances

In the view of the Federal Ministry of Justice, the matter of the detection periods of the substances being tested for cannot be omitted from the perspective of practicability or the degree of interference of the “saliva analysis” model. In this regard, reference is made to the statement of the institute involved with conducting the tests (www.drogentest-wien.at), i.e. “with the exception of cannabis, the detection periods in saliva are on average about 30% shorter than in urine. The detection period of cannabis in saliva ranges from one to three days after one-time or regular consumption. There is still insufficient data regarding the detection period after chronic consumption. However, the assumption is that the detection period is no longer than one week.”

In contrast, cannabis can be detected in urine samples for several weeks to three months. For this reason, the Federal Ministry of Justice considers testing by the two different test methods – whose areas of use may be supplemented – to be necessary in terms of (cost-) efficient use. It should not be ignored that saliva samples have not proven to be absolutely secure against manipulation, since the quantity of saliva on the pad can be influenced.

In addition, the Federal Ministry of Justice noted that the results of urine testing using a strip only raise a qualified suspicion, and the affected person is free to demand a gas chromatographic review.

Ministry’s evaluation not yet completed

In view of the not only positive results of the saliva analysis model further investigation has been promised within the framework of a comprehensive, unbiased examination of all aspects (corrections practice, legal, economic and technical/toxicological).

The NPM awaits the results of this investigation and has noted that the Federal Ministry of Justice will send a report in this regard.

Use of random testing programme

It is viewed positively that – in conformity with the decree of the prison administration, which took effect at the beginning of March 2015 – an IT programme will be used, which selects detainees who will be subjected to random testing from the entirety of the detainees in a correctional institution. This is to ensure an objective procedure based on randomness. This analysis is to be made once a week.

Registry of random samples

Since traceable documentation is not only an important control instrument, but also makes an important contribution to quality assurance, a standardised form will be used for purposes of documentation. In addition, every correctional institution must maintain its own internal electronic documentation of the controls implemented in suitable form. Thus, the NPM’s demand that a standardised procedure for the control of random samples in accordance with Section 102a of the Penitentiary System Act was met by the maintenance of a registry of random samples.

- The NPM welcomes the introduction of a registry of random samples taken from detainees who are subjected to random testing, as was demanded in the last annual report.

THE CHALLENGE OF LANGUAGE DIVERSITY - VIDEO INTERPRETATION PILOT PROJECT AT VIENNA JOSEFSTADT CORRECTIONAL INSTITUTION

Language diversity in correctional institutions doubtlessly presents a special challenge to prison administration. This is apparent, in particular, in correctional institutions such as Vienna-Josefstadt, in which more than 70% of the detainees are not Austrian citizens. The need for strategic solutions is therefore all the more urgent to eliminate communication problems.

Language diversity as special challenge

The visits of the NPM in the past year have shown that sworn in interpreters are rarely called in when there are language problems with prisoners. The commissions observed cases in numerous facilities that indicate a lack of awareness that a qualified translator must be brought in, if needed. Many detainees from non-German-speaking countries complained that they had to rely on fellow prisoners to obtain information.

No communication possible

For example, neither the Stein correctional institution nor the Vienna-Josefstadt correctional institution call for interpreters if there are communication difficulties during medical interventions or during the discussions of medical results. Moreover, trained interpreters are not available at administrative penalty proceedings or in matters of social support.

The NPM stresses that language barriers may not be the reason for failure to provide medical information and health care. It advocates the introduction of video interpretation services. Likewise, trained interpreters should be used in administrative penalty proceedings to avoid any dependence on translation by fellow detainees or other complaints by detainees or by other third parties.

NPM demands video interpretation services

The NPM's criticism was partially taken into account by the "video interpreting in correctional institutions" pilot project launched in November 2014. The project is an important step in dealing with language diversity. The goal was to simplify and professionalise communication with detainees who speak little or no German, especially in conversations with physicians.

Pilot project of „video interpreting in correctional institutions“

During the six-month trial, interpreters for the most commonly spoken languages (Russian, Arabic, Turkish, Bosnian, Serbian, Croatian, English and sign language) were available to the medical personnel of the Vienna-Josefstadt correctional institution from 7:00 a.m. to 6:00 p.m. on working days within 120 seconds (without prior notice) – if the detainee consented.

Online contact within two minutes

The final evaluation of the pilot phase showed 92% satisfaction with the video interpreting services on the part of the employees of the Vienna-Josefstadt correctional institution. The feedback from the detainees was also positive and showed that video interpreters can bring clarity to medical treatment.

Positive feedback

Expansion to the areas of admission, the administrative penalty unit and other specialised areas in the Vienna-Josefstadt correctional institution was promised in response to a request from the NPM. The use of video interpreters would also provide relief in admissions and in the specialised services (psychological and social services).

Expanding area of application

Introduction advocated nationwide

In November 2015, initial discussions were held between the NPM and the Federal Ministry of Justice. In response to the recommendation of the NPM that video interpreting should be introduced in all correctional institutions operated by Austrian police departments and facilities for the detention of mentally ill offenders, the Ministry stated that video interpreting would be introduced into some correctional institutions. A nationwide invitation to tender is planned for 2016. After completion of the tender process, a company will be hired to offer translation services to all correctional institutions in the future.

- The NPM hopes that video interpreting will be introduced into all facilities operated by Austrian police departments and facilities for the detention of mentally ill offenders in the course of 2016.

CLARIFICATION OF ALLEGATIONS OF MISTREATMENT

The question of a standardised procedure when there is an allegation of mistreatment is closely linked to the monitoring focal point regarding the provision of health care. The NPM initially advocated that, in case of examinations (based on allegations of mistreatment) that are conducted in outside hospitals, not only the diagnosis sheet but also the medical history sheet should be requested from the management of the institution.

Is confidentiality ensured?

The Federal Ministry of Justice adopted this recommendation of the NPM. However, thereafter the NPM had concerns regarding the physician's duty of confidentiality under Section 54 (4) of the Act on the Medical Profession (*Ärztegesetz*).

The NPM initially assumed that the transfer of the data from the medical history sheet to the Electronic Patient Record Module is in the interest of the detained person. Thus, a physician outside of the prison administration would have collected information that would otherwise have to be clarified within the correctional institution.

Prosecutor makes dispositions regarding data

However, if one considers that it is the responsibility of the public prosecutor to determine who will make the assessment and at what location, this approach is not viable.

When viewed in this light, the data for the assessment of an alleged mistreatment – regardless of where and by whom it was collected – may not be accepted into the Electronic Patient Record Module because it does not relate to “health care” within the meaning of Section 66 of the Penitentiary System Act. Only law enforcement authorities are entitled to dispose of the data.

Therefore, the NPM had to reopen discussions on the procedure it had recommended. It should be kept in mind that the person who is examined in the individual case can be asked for permission (Section 54 (2) (3) of the Act on the Medical Profession).

The Federal Ministry of Justice pointed out that effective collaboration among members of the health care professions necessitates a free exchange of information on the state of the patient's health. When a patient is treated by a team, implied consent is considered to be the justification for the exchange of information. However, this form of consent presupposes that the patient has consented to be treated by a team.

Exchange of information is useful

The statements of the Federal Ministry of Justice are correct but beside the point: since the detainee himself cannot decide who will examine him/her to clear up an allegation of mistreatment, this approach goes nowhere.

The remaining option is to ask the affected person for his or her explicit consent. However, the Federal Ministry of Justice also realises that the introduction of a provision that is ultimately dependent on the consent of the affected person in the individual case is of little value.

Solution must be lawful and practicable

The NPM brought the problem to the attention of the Federal Ministry of Justice. If after a weighing of interests, it is decided that data relating to the state of the patient's health should be included in the Electronic Patient Record Module – irrespective of whether or not the person being examined consents – this requires a clarification of the law.

- The investigation of an alleged mistreatment does not constitute a provision of "health care". Therefore, the data must be stored separately.
- If this data is to be included in the Electronic Patient Record Module, there must be a statutory basis for doing so.

INADQUATE CARE IN SPECIAL MEDICAL FACILITY AT STEIN CORRECTIONAL INSTITUTION

In the report of the previous year (see NPM Report 2014, p. 103 et seq.), serious accusations were made with respect to the medical and therapeutic care in the special medical facility and out-patient clinic of Stein correctional institution. The NPM also demanded it be ensured that health care is provided in conformity with fundamental rights.

Inadequate nursing measures

Several reviews by the NPM focusing on nursing care measures and medical and therapeutic care resulted in numerous criticisms and proposals for improvement in the reporting year.

The commissions gained the impression that a lack of basic nursing and therapeutic care still exists and that the nursing staff at the special medical facility at the Stein correctional institution did not actively attend to the detainees who were in need of nursing care. In general, the patients said that the nursing staff was not interested in the state of their health and their nursing needs.

Disinterest among the nursing staff

One inmate, who could only move about in a wheelchair, said he was in great pain because his buttocks and groin were open. However, his wounds had not been examined

by a physician for a long time. When he used the intercom of the cell to report his pain, the nursing staff did not give him any painkillers, but merely replied: “We can’t do anything about that”.

20 to 30 minutes without assistance Another affected person stated that the nursing staff pushed him and his wheelchair into the shower every two days and left him there to take care of himself. He was often in pain. Once he fell out of his wheelchair in the sanitary facilities and lay on the floor for 20 to 30 minutes before someone came to his assistance.

The commission gained the impression that patients who utilise the intercom available in the cell to report pain or make complaints are often labelled as complainers and met with defensive statements from the nursing staff.

„Placebo injections“ The commission pinpointed another deficiency in care, i.e. that the employees of the Stein special medical facility, who were questioned, believed that many patients were merely pretending to be in pain. The nursing staff came to this conclusion because many detainees kept asking for additional and different painkillers. One such person was given a placebo injection when he complained of pain. He felt better after that. The nursing staff saw this as “proof” that the patient was pretending to be in pain.

Sick inmates cared for by fellow prisoners Another criticism was that only two nurses are present to care for 40 patients at times. As already reported last year, detainees stated that they themselves take care of seriously ill fellow prisoners and monitor their bodily care.

No visits The NPM finds it worrying that there are no regular reviews of the state of patient health in the special medical facility by visiting physicians. Rather, the detainees being held there must actively request to be seen by a physician. The attitude of the medical and nursing staff observed by the commission has led to the conclusion that – in the NPM’s opinion – they have a highly dubious understanding of what nursing entails.

Working group confirms NPM’s concerns Regarding the criticism of the nursing measures and the medical and therapeutic care, the Federal Ministry of Justice referred the final report of the working group on “reorganisation of the special medical facility”, which was deployed in December 2014 and led by the (former) prison administration. The final report submitted in mid-2015 confirms the need for action and improvement with respect to the medical, nursing and hygienic conditions of the special medical facility as had been reported by the NPM. Based on this information, the Federal Ministry of Justice is currently deciding whether the Stein special medical facility should retain its license under the law governing special medical facilities.

Ministry reacts to NPM’s criticism In the meantime, personnel changes were labelled as emergency measures. The heads of the medical and nursing services were replaced. A hygiene manager was appointed. It is gratifying that two additional physicians (11 to 14 and 8 hours per week) will provide service in the out-patient clinic and the special medical facility of the Stein correctional institution.

Daily physician’s visits Moreover, a strict separation between daytime and night-time physicians ensured a more efficient allocation of responsibilities. Under the new duty roster, a third nurse is

now available in the ward area of the special medical facility. In addition, according to the Ministry, physicians now carried out daily visits in the special medical facility and in some departments with closed detention. A reorganisation of the nursing service has also been promised.

The Federal Ministry of Justice did not agree with the observations of the commission with respect to the individual cases described. It pointed out that patients are generally offered assistance by the nursing staff. They attempt to avoid hospitalisation and to maintain and foster independence.

The NPM sees the emergency measures taken and the additional measures promised as positive development. However, the current improvements are still inadequate. It would be desirable to implement additional measures as quickly as possible in order to bring the special medical facility at the Stein correctional institution up to standard and guarantee adequate medical care.

Demands remain in force

Moreover, the NPM emphasises that placebo medication can only be tolerated if the patient is informed.

The final and agreed-upon results of the assessment by the working group on the “reorganisation of the Stein special medical facility” were still outstanding on the reporting date.

- The NPM recommends that a quick decision be made on whether the special medical facility can be continued in this form.
- Placebo medication is only tolerable if the patient is informed and gives his/her consent.

The delegation also criticises that, for the most part, the Stein special medical facility has no height-adjustable beds or showers in the inmate cells. Moreover, it appeared that many beds did not have functioning call bells.

Lack of furnishings and equipment

In the opinion of the NPM, the furnishings and equipment in the special medical facility do not meet the standards for a medical facility. To guarantee adequate medical care to patients in the special medical facility, an open ward is absolutely necessary.

Open ward necessary

The Federal Ministry of Justice has met some of the demands of the NPM. It ensured that cells are to be equipped with beds that meet the standards for hospital beds. These beds are now in use. Moreover, a refrigerator, needed to store medications, was acquired and a digital dental X-ray machine and a fire engine have been ordered. In addition, the Ministry strongly reminded the management of the Stein correctional institution that defective telephone stations and emergency call buttons must be replaced.

Certain improvements

Unfortunately, the current state of construction does not permit all infirmary detention cells to be equipped with showers, except for the detention cell built for persons with disabilities. However, the working group on the reorganisation of the special medical

facility has addressed the recommendation for an open ward and the related questions for a structural adaptation (including in the area of sanitary facilities).

However, before implementing the expansion and renovation of the special medical facility (which has been approved by the building authorities), it is necessary to await a decision on whether the special medical facility will continue to be used as such in the future.

Even if the argument is understandable to the NPM, the earliest possible decision is needed in order to adapt the structure of the special medical facility in a way that it will meet the standards for a medical facility as quickly as possible and to guarantee adequate medical care to patients in an open ward.

- The structure of the special medical facility at the Stein correctional institutions must meet the standards for a medical facility.
- To guarantee adequate medical care to patients, the special medical facility at the Stein correctional institution must be converted into an open ward.
- Defective cell intercom equipment and emergency call bells in the special medical facility at the Stein correctional institution must be replaced immediately.

Too little time for patients There continues to be a lack of personnel not only at the special medical facility but also at the out-patient clinic of the Stein correctional institution – particularly with respect to psychiatric care. The commissions observed that the current consultation schedule for psychiatrists, i.e. 40 patients in five hours, is very tight. This inevitably results in an average treatment time of seven and a half minutes per patient.

In the opinion of the NPM, it is not possible to give reasonable attention to the patient and to make a serious exploration of the patient’s condition within this period of time.

Efforts to hire a third psychiatrist The Federal Ministry of Justice reports that it is making serious efforts to hire another psychiatrist. Unfortunately, the initially promising contact with a potential third psychiatrist was not successfully finalised. In light of the current salary, hiring a psychiatrist will be difficult to manage. However, the Ministry promises to continue an intensive search for a psychiatrist.

- The NPM considers it necessary to hire additional medical personnel, particularly for the purpose of psychiatric care in the out-patient clinic of the Stein correctional institution.

LOCK-UP INSTEAD OF MEDICATION - FLORIDSDORF SATELLITE FACILITY OF MITTERSTEIG CORRECTIONAL INSTITUTION

During their visit to the Floridsdorf correctional institution, the delegation perceived a note posted on the door to the cell of an inmate with relaxed sentence. The note read: "Lock-up until further notice: Monday to Thursday 2:30 p.m., Friday 12:30 p.m., Saturday, weekend, holiday 11:30 a.m."

Lengthy lock-up

When questioned, the prison warden stated that the inmate is overweight and is always hungry and has already eaten discarded food from the trash bin. He is in danger of poisoning himself.

Food cravings

The NPM requested information. In particular, it asked whether the institution's physician had addressed the inmate's suffering, what alternatives had been considered before choosing the aforementioned restrictions on the inmate's freedom and why they were rejected.

The Federal Ministry of Justice replied that the reason for restricting the inmate's freedom of movement was to protect him from contaminating himself with germs from the organic waste bin from which he pathologically takes discarded food. Due to the reduction in personnel at the beginning of the night shift, there was no guarantee that guards would be present at all times and that the inmate's conduct could (still) be monitored.

Supposed self-protection

The institution's physician is familiar with the eating disorder. To deal with this disease, the inmate is accompanied when he makes purchases in the correctional institution and instructed to eat healthy food. The plan of the institution's physician to move the inmate to the Wilhelmshöhe satellite facility could not yet be implemented since the therapeutic/dietetic intervention should not be interrupted by a trial residence in light of the inmate's possible conditional release. Therefore, the correctional institution's psychiatrist changed the inmate's mood-stabilising medication to an appetite-suppressant for the time being.

NPM arranges consultation with physician

Even though a suitable after-care facility was found for the inmate, the NPM can only assume that solutions to prevent the aforementioned restrictions of freedom were not considered until the prison administration was confronted with the facts. Therefore, the principle of proportionality was violated.

Principle of proportionality has been violated

- Additional lock-up time is not a proper means of protecting an inmate suffering from an eating disorder.

Living conditions

OVERCROWDING - DOUBLE OCCUPANCY OF SINGLE CELLS IN THE WIENER NEUSTADT, KLAGENFURT AND VIENNA-SIMMERING CORRECTIONAL INSTITUTIONS

Deterioration of the quality of life due to lack of space

From a physical perspective overcrowding of correctional institutions can be inhumane or degrading per se. If it is necessary to care for more detainees than originally planned, there is an adverse effect on all of the services and activities in a correctional institution. The entire quality of life in the facility may deteriorate to a significant extent. Adequate occupancy of inmate cells is an important factor of the prison climate for the detainees themselves and in their interactions with prison guards.

The occupancy figures for the correctional institutions are worrisome. During its visits to the Wiener Neustadt, Klagenfurt and Vienna-Simmering correctional institutions the NPM observed that the occupancy of inmate cells exceeded the intended capacity.

Utilisation rate of up to 180.77%

According to the Federal Ministry of Justice, the utilisation rate for Austrian correctional institutions (97%) temporarily experienced a sharp increase in the reporting year. The correctional institutions in the eastern part of Austria and in Upper Austria, in particular, reported utilisation rates far exceeding 100%. In September 2015, for example, the Eisenstadt correctional institution was at 180.77% of capacity. The Vienna-Josefstadt correctional institution was at 114.65% of capacity and the Wiener Neustadt correctional institution was at 111.85% of capacity. This is not least of all attributable to increased criminal activities in connection with human trafficking.

Double occupancy of single cells

A visit to the Wiener Neustadt correctional institution showed that single cells were occupied by two detainees, although they were not of sufficient size for double occupancy. The available space was reduced by bunk beds, lockers and tables.

In one cell, the commission observed that there was insufficient space between the furnishings and the cell wall. It was impossible to walk and one inmate had to lie on the bed (or sit on the toilet) so that the other inmate could walk back and forth a few steps between the cell door and the window wall. In the Klagenfurt correctional institution, a nine square meters single cell was occupied by two inmates.

Crowded detention conditions must be avoided

The CPT has established a basic area of seven square meters as a guideline for inmate cells intended for single occupancy for more than a few hours [CPT/Inf/E (2002) 1 – Rev. 2010, p. 8]. Cells that measure less than six square meters should not be used to house prisoners. For the NPM, compliance with the minimum size of inmate cells recommended by the CPT is mandatory in light of Article 3 of the European Convention on Human Rights (ECHR). Crowded detention conditions must be avoided and minimum cell sizes must be complied with.

With respect to the cramped inmate cells at the Vienna-Simmering correctional institution, the Federal Ministry of Justice points out that necessary structural renovation work has resulted in this tight occupancy situation.

High occupancy pressure

As far as the Wiener Neustadt correctional institution is concerned, the Federal Ministry of Justice confirms that the overcrowding has continued. This fact is attributed to the

high percentage of detainees on remand. Many of them are accused of human trafficking under Section 114 of the Aliens Police Act. The generally situation of overcrowded facilities and limited space also applies to the neighbouring correctional institutions.

The Federal Ministry of Justice pointed out that, in accordance with Section 183 of the Austrian Code of Criminal Procedure, accused persons are to be held in the correctional institution that falls within the jurisdiction of the court which decides whether to impose and continue pre-trial detention. Therefore, the prison administration's options for creating a balance are increasingly difficult. Finally, the Federal Ministry of Justice stated that ten inmate cells in the Hirtenberg satellite facility of the Eisenstadt correctional institution have been found for detainees of the Wiener Neustadt correctional institution. This should mitigate the situation of overcrowded facilities and limited space to some extent.

The NPM points out that, in evaluating the inmate cells, the square metres available are not the only factors to be taken into account. The overall picture of inmate cell conditions is essential. Overcrowding and the small size of inmate cells are especially concerning in light of the fact that most of the detainees have no employment and are confined in the inmate cells for 23 hours a day.

Long lock-up times

In the course of a contact meeting between the NPM and the Federal Ministry of Justice, which took place in September 2015, it was stated that the use of prefabricated construction (module construction) would have to be considered if the numbers of detainees continued to grow.

Expansion by prefabricated construction

- Overcrowding and the small size of inmate cells are particularly concerning in light of the fact that most of the detainees have no employment and are confined to their cells for 23 hours a day.

PRICES OF CONSUMER GOODS TOO HIGH IN PRISON COMMISSARIES - INNSBRUCK CORRECTIONAL INSTITUTION AND WILHELMSHÖHE SATELLITE FACILITY OF VIENNA-JOSEFSTADT CORRECTIONAL INSTITUTION

In both the Innsbruck correctional institution and the Wilhelmshöhe satellite facility of the Vienna-Josefstadt correctional institution the commissions were confronted by criticisms from detainees, who complained that the prices of consumer goods in the prison commissary are higher than in the surrounding supermarkets.

The NPM advocates that the prices of consumer goods should not be higher than those in the surrounding supermarkets. The Federal Ministry of Justice confirms that the prices should generally be based on the prices charged by comparable local suppliers.

Criticism of pricing policies was voiced in other correctional institutions as well. The Federal Ministry of Justice therefore commissioned a nationwide survey. Based on the results of this survey, it was decided that an invitation to tender via the federal procurement agency (*Bundesbeschaffung GmbH*) would make sense and be economical.

Nationwide competitive bidding procedure underway

Due to the high volume and level of complexity, the Ministry estimates that the duration of the competitive bidding procedure will be lengthy.

Additional offers starting in 2016

Moreover, the Wilhelmshöhe satellite facility plans to introduce special offers starting in 2016. Each will contain five food or luxury items.

- The prices of consumer goods in the Innsbruck correctional institution and the Wilhelmshöhe satellite facility of the Vienna-Josefstadt correctional institution may not be higher than in the surrounding supermarkets.

Work and occupational opportunities

RIGID LOCK-UP TIMES AND INSUFFICIENT EMPLOYMENT

Personnel shortages and their consequences

The personnel shortage continues to be a central problem in Austrian correctional institutions. In numerous correctional institutions (particularly Vienna-Josefstadt, Wiener Neustadt, St. Pölten, Garsten, Klagenfurt and Graz-Jakomini) the NPM continuously observed rigid lock-up times and unstructured daily routines due to limited employment opportunities and inadequate activity programmes for detainees (see also NPM Report 2014, p. 83 et seq.).

For example, the tight personnel situation continues to be the greatest structural barrier in the Vienna-Josefstadt correctional institution. The personnel shortage continues and has an adverse effect on the prison regime and on the employees of the correctional institution. The frustration in this regard could be clearly sensed by the visiting delegation.

It is particularly worth criticising that no improvements have been noted despite the fact that the NPM has repeatedly drawn attention to the problem of the tight personnel situation and the resulting negative effects on the detainees.

Rigid lock-up times

The NPM also heard complaints from detainees regarding the lengthy lock-up times and inadequate activities in the Wiener Neustadt correctional institution. Detainees, also those in the infirmary or on remand, have complained that they are confined to their cells for 23 hours per day. During a visit to the Garsten correctional institution, the NPM also reaffirmed its demand to reduce lock-up times.

Low employment rate

Although the workshops in the Klagenfurt correctional institution are at full capacity and are never closed for the day, the employment rate is only 55% to 60% at a maximum. The number of employed detainees cannot be increased due to the lack of space.

Juveniles are locked up early on weekends

The NPM also points out the early lock-up times on weekends for juveniles in the Innsbruck and Graz-Jakomini correctional institutions. On weekends (from Friday to Sunday), juvenile detainees are locked up at 3:00 p.m. This situation is very unsatisfactory. Moreover, few or no activities or employment programmes are offered on these days.

However, the Federal Ministry of Justice argued that there was a shortage of personnel and stated that the situation could only be overcome through shorter working hours and the temporary closing of business workshops. Nevertheless, the Federal Ministry of Justice gave its assurance that the prison administration is endeavouring to expand and improve the work and employment situation for detained persons in correctional institutions in question.

Moreover, the Federal Ministry of Justice replied that – in response to the deplorable incidents at the Vienna-Josefstadt correctional institution in 2013 – the weekend lock-up time in the juvenile sections had already been moved from 12:00 p.m. to 3:00 p.m. without additional resources. It was not possible to further move the lock-up time to 5:00 p.m. without additional personnel.

No further leeway without additional personnel

On 1 November 2015, a four-month-long test run of modified working hours began in order to relieve the tight staff situation at the Vienna-Josefstadt correctional institution. After evaluating the test run, a decision will be made on whether to introduce new working hours.

In this regard, it can also be reported that, according to the Federal Ministry of Justice, the pilot project to utilise employees of the craftsman service (see NPM Report 2014, pp. 85 et seq.) has led to a relaxation of the staff situation at the respective operation. Encouragingly, the inmate employment rate was also improved by the use of appropriately skilled personnel (craftsmen). They provide technical instructions to the detainees employed in business workshops and the best possible support to the management.

Results of pilot project using appropriately skilled personnel (craftsmen)

It can be very difficult to organise an appropriate programme of activities, particularly for correctional institutions with rapid turnover of detainees. Nevertheless, it must be emphasised that prisoners should not be confined in cells for 23 hours a day, regardless of whether they are inmates or detainees on remand. In the opinion of the NPM, they should be occupied with work, exercise and training.

Reduction of lock-up times demanded

Meaningful employment opportunities have an enormous influence on the quality of life in correctional institutions and are of great importance to the well-being of detainees. The lack of employment opportunities, together with other negative factors, can seriously deteriorate a detainee's living situation and culminate in inhumane and degrading detention conditions [CPT/Inf (92) 3, p. 17 et seq.]. This applies both to convicts and detainees awaiting trial.

A satisfactory employment programme should provide prisoners with an opportunity to spend a reasonable part of the day (eight hours or more) outside of the cell and to engage in various kinds of meaningful employment. Moreover, according to the Penitentiary System Act, it should be ensured that every prison inmate can perform useful work.

A reasonable part of the day must be spent outside the cell

The importance of having inmate cells open for long periods of time should be stressed in particular for juvenile detainees. Leaving detainees to their own devices in confined spaces is untenable. It leads to a build-up of aggression, which can be released against the weakest fellow inmate – as a tragic case in the report of the previous year illustrates.

Long lock-up times are accompanied by unstructured daily routines, and the danger of assault is particularly great during this time. To effectively prevent violent assaults between juveniles, a structured and balanced daily routine is needed with as little lock-up time as possible. Detention outside of cells and employment prevent conflict. Thus, assaults among prisoners can be stopped in this way [see also the CPT standards, CPT/Inf/E (2002) 1 – Rev. 2010, pp. 85 et seq.]. Personnel shortages may not have an adverse effect on detainees.

Pushing through specific measures

The NPM emphasises that it should be ensured that every inmate can perform useful work or engage in meaningful activities. Therefore, the NPM advocates pushing through specific measures to expand employment opportunities and to achieve a varied programme of activities. Changing working hours seems to be a suitable means of effectuating a positive change in the prison regime. The NPM is looking to the evaluation of the test run with anticipation.

- The employment rate and the activities programme must be increased in the Klagenfurt and Wiener Neustadt correctional institutions so that every prisoner can perform useful work or engage in meaningful activities.
- The workshop in the Klagenfurt correctional institution must be expanded as soon as possible.
- The NPM advocates that the cells of juvenile detainees remain open longer on the weekends in the Innsbruck and Graz-Jakomini correctional institutions. To avoid violent assaults between juvenile detainees, there must be a structured and balanced daily routine with the shortest possible lock-up times. Personnel shortages may not adversely affect juveniles.

DISCRIMINATION AGAINST WOMEN WITH RESPECT TO EMPLOYMENT OPPORTUNITIES

In-depth discussion

Discrimination against women has led the NPM to continue its focus on “women in prison”. Of particular note in this regard is the fact that women, as compared to male inmates, are treated less favourably with respect to employment opportunities.

Too few opportunities to work

This discrimination is particularly prevalent in court prisons. A women’s employment rate of about 20%, as is the case in the Klagenfurt correctional institution, is the highest employment rate for female detainees in Austria. It is also open to criticism that the activities of female prisoners are mainly restricted to cleaning services.

Criticism from the Court of Auditors

As the Austrian Court of Auditors stated in a report dated August 2015 (Report of the Court of Auditors 2015/12, p. 161), the conditions for women in court prisons are significantly less favourable than for men in terms of training and employment. The same holds true with respect to advanced training measures for female inmates. The NPM finds that the potential “has not been exhausted even with respect to short-term training”. Therefore, the NPM advocates an expansion of employment and training opportunities for female detainees.

It is true that a manufacturer of women's delicates has had its packaging work performed in the Wiener Neustadt correctional institution since December 2014, which created seven to ten jobs for female inmates held there. Apart from this improvement in an individual case, the Federal Ministry of Justice had to concede to the NPM that there was still a need for action with respect to the housing, employment opportunities and care needs of women in prison. Minimum standards should now be developed for women in prison.

Since the Ministry shares the opinion of the NPM that the requirement of separation pursuant to Section 8 (4) the Penitentiary System Act does not prevent men and women from working together, the NPM advocates an expansion of the employment opportunities available to male inmates to include women in light of the positive experiences in this area thus far.

Equal employment opportunities for women and men

- Employment opportunities for women must also be created in court prisons.
- Business workshops in correctional institutions should also be open to women; joint performance of work by women and men in private companies should be promoted.

Contact with the outside - right to family contact

UNREASONABLE VISITING HOURS - KLAGENFURT CORRECTIONAL INSTITUTION AND JUVENILE WARD OF INNSBRUCK CORRECTIONAL INSTITUTION

The NPM criticises the visiting hours at the Klagenfurt correctional institution and the juvenile ward of the Innsbruck correctional institution since they do not take the realities of working persons into account. This is particularly the case when travel times are taken into consideration.

The visiting hours are adapted solely to the duty shifts and night shifts already start in the afternoon. Therefore, there is no opportunity to visit on the weekend and insufficient opportunity to visit in the evening and late afternoon. Several detainees stressed that many visitors only had time on the weekend and that it would be desirable to receive weekend visits.

No visits on the weekend

With the current visiting hours, it is not possible to keep a social network intact. However, this is crucial for assisting former prisoners and for facilitating their re-socialisation. Visiting hours must be offered on evenings and weekends so that relationships can be maintained. This is particularly necessary to enable those who have regular jobs to come and visit. Therefore, the NPM recommends that visiting hours be changed and that calls via Skype be made possible at the Klagenfurt correctional institution.

Weekend visits and skype calls demanded

The Federal Ministry of Justice makes reference to Section 94 (1) of the Penitentiary System Act which provides that the prison warden shall establish visiting hours on four

Flexible visiting hours

weekdays, at least one of which shall be in the evening or on the weekend. It emphasises that correctional institutions do have an option to enable visits in the evening hours or on the weekend. A test run at the Klagenfurt correctional institution showed that an evening visit during the week was preferred over a visit on the weekend.

Guiding principles:
encourage contact with the
outside world

The NPM emphasises the importance of detainees having regular contact with the outside. The norm, which offers the alternatives of an evening visit or a visit on the weekend, is merely a statutory minimum standard in the opinion of the NPM. Therefore – with reference to the CPT standards – it should be emphasised that encouraging contacts with the outside should be the guiding principle. Detainees must be enabled to maintain relationships with their families and close friends and to have reasonable contact with the outside [CPT/Inf/E (2002) 1 – Rev. 2010, p. 18]. This is even more important for juveniles. The CPT standards emphasise that encouraging contact with the outside should be the guiding principle [CPT/Inf/E (2002) 1 – Rev. 2010, p. 87].

Particular flexibility is necessary when regulating visits and contacts for prisoners whose family members are far away. For example, such inmates could be allowed to accumulate visiting time and/or offered additional time for telephone contact with their families.

The Federal Ministry of Justice states that currently only the Graz-Karlau correctional institution offers the opportunity for Skype conversations. Contact via Skype includes video transmission and is recorded as a visit by the integrated prison administration.

It is encouraging that an expansion of the Skype test run to include other correctional institutions and a decree on the matter are being planned. The NPM asked to be informed of any arrangements in this area.

- Evening and weekend visits should be permitted in the juvenile ward of the Innsbruck correctional institution and in the Klagenfurt correctional institution.
- The opportunity to use Skype calls should be introduced nationwide as soon as possible.

Structural furnishings

CONDITIONS IN THE HOLDING CELLS - INNSBRUCK CORRECTIONAL INSTITUTIONS CALL FOR CRITICISM

No separate sanitary
facilities

During a visit to the holding cells of the Innsbruck correctional institution, which are located in the basement of the Innsbruck Regional Court, the commission observed that the toilet was not separated from the rest of the cell. Moreover, there was no privacy screen or odour barrier so that the toilet had to be used directly in the cell and immediately next to any fellow inmate if there was double occupancy. In addition, the toilet facility could be seen from outside through the tray slot.

Moreover, the commission observed that the artificial lighting could only be turned on and off from the outside. The detainees could not regulate the supply of fresh air, which is provided by a ventilation system. The old and worn-out furniture and the fact that smoking is permitted in all cells – and the smell of old smoke was detectable in these cells – are also worth criticising. The detainees particularly complained because the holding cells provided no opportunity to lie down and rest.

Unhealthy atmosphere in the cells

The Federal Ministry of Justice was confronted with these observations. It was also emphasised that the CPT recommends that cells have sufficient light for reading and permit the entry of daylight [see CPT/Inf/E /2002 1 – Rev. 2010, p. 26]. In addition, detainees should have a certain amount of control over lighting and ventilation. Inmates should be able to open windows and shutters and turn the lights on and off themselves.

Independent control of ventilation seems to be particularly important, as smoking is permitted in all holding cells and because the sanitary facilities are located in the cells as well. Moreover, it should be emphasised that the current lack of a partition around the toilets violates the requirement of respect for human dignity.

The Federal Ministry of Justice informed the NPM that spatial separation of the toilet area in the holding cell and changes to the electrical and ventilation installations were included in the budget request for 2016. The construction work to separate the toilet area from the rest of the holding cell will be performed before 1 January 2017 in any case. Inmate cells must have separate toilet facilities by this date at the latest in order to comply with the Penitentiary System Act. Replacement of the furniture was also promised for the 2016 budget year.

Spatial separation of the toilet area

The prison warden ordered that places for sitting and reclining be provided. One holding cell was expressly designated as a non-smoking area. If necessary, additional cells can be adapted to become non-smoking areas at any time. The Federal Ministry of Justice further states that, as a first step, it has been ordered that holding cells shall only be for single occupancy. Occupancy by more than one person will only be permitted in exceptional cases, e.g. when it is unavoidable because numerous persons will be brought before the judge, or single occupancy is out of the question due to the detainee's status according to the Viennese Instrument for Suicidality in Correctional Institutions.

Places for sitting and reclining were also installed

The NPM took positive note of the emergency measures and the measures announced for 2016. However, at the same time, it was emphasised that the work to spatially separate the toilet area must be carried out as soon as possible and without delay. Moreover, it was stressed that, in order to implement the measures, it must be ensured that the holding cells are only occupied by one person. Occupancy by multiple persons waiting to be brought before the judge must be avoided.

Only single occupancy until further notice

According to additional feedback from the Ministry, the relevant actors were urged to make an advance plan to prevent multiple occupancies in the holding cells until the adaptation measures have been implemented.

- When the holding cells at the Innsbruck correctional institution are occupied by more than one person, the lack of a partition around the toilets violates the requirement to protect human dignity.
- The NPM advocates that a privacy screen and an odour barrier separate the sanitary facilities from the rest of the cell in all holding cells at the Innsbruck correctional institution.
- Holding cells must also have sufficient light to read and permit the entry of daylight.

No furnishings in the specially secured inmate cell

In accordance with Section 103 (4) of the Penitentiary System Act, the Innsbruck correctional institution disposes of eleven regular holding cells and one specially secured cell in the basement of the Regional Court. The commission observed that this specially secured inmate cell has no proper toilet, but only a standing toilet integrated into the floor. Furthermore no furnishings are available to sit or recline. When an inmate cell (in accordance with Section 103 of the Penitentiary System Act) is used because the inmate is a danger to himself or others, no chair can be placed in the cell for safety reasons. As a result the person held there must sit on the floor.

However, the inmate cell is not free of potential hazards. The doorframe has a sharp and hard edge on which a prisoner could easily injure himself.

Places to sit and recline must be provided

The fact that the specially secured inmate cell has no place to sit or recline is not tolerable in terms of humane treatment. Therefore, the NPM recommended that places to sit and recline be provided, which could remain in the cell also if the inmate was a danger to himself or others. Moreover, the NPM recommended that the existing potential hazards be mitigated.

Order to create places to sit or recline

The Federal Ministry of Justice reports that the prison warden had ordered the creation of places to sit and recline. Moreover, the aforementioned potential hazard from the doorframe was eliminated.

- It is degrading when detainees, who are placed in a specially secured inmate cell because they are a danger to themselves or others, must sit or lie on the floor due to the lack of suitable furnishings.
- The NPM advocates that there be an appropriate place to sit and recline in the specially secured inmate cell at the Innsbruck correctional institution.
- The statement of the Federal Ministry of Justice that orders have already been given to create a place to sit or recline is encouraging.

DEFECTIVE FURNISHINGS IN INMATE CELLS - LEOBEN, VIENNA-SIMMERING AND WIENER NEUSTADT CORRECTIONAL INSTITUTIONS

In wards 13 and 14 of the Vienna-Simmering correctional institution, the commission was confronted with the poor condition of the beds in the inmate cells. The boards of the slatted frame were screwed on at large distances, which resulted in the mattress sagging. To avoid back pain from this, the detainees have used pads made of corrugated cardboard.

Defective slatted frames

During another visit to the Vienna-Simmering correctional institution, it was discovered that the drains in the bath in Section 10 were rusty, a mirror was broken, and the lockers in the inmate cells are too small, not divided into sections and cannot be locked. Personal items are stored in boxes under the bed or on self-made shelves and therefore frequently go missing.

In the women's section of the Leoben correctional institution, the commission was made aware of old, worn-out mattresses, that caused back pain – among other things. Due to their thickness of only eight to ten centimetres – in interaction with a wooden board as a base – the mattresses become worn-out very quickly. Moreover, some of the mattresses were very dirty, the headrests were very old and the filling was poor.

Worn-out mattresses

In the Wiener Neustadt correctional institution, the commission also noticed that the cells seemed much neglected, the mattresses were old and the wardrobes were outdated and shabby.

Hygienic deficiencies in the bedding are unacceptable in the opinion of the NPM. The CPT also emphasises the importance of hygiene (with respect to clothing and bedding) as a form of preventive medicine [CPT/Inf/E (2002) 1 – Rev. 2010, p. 37]. The NPM urges on hygienic grounds and for the purpose of preventive health care that the old and shabby mattresses and headrests be replaced.

Hygienic deficiencies

Moreover, as part of the state's duty of care, the correctional institutions must always eliminate deficiencies in furnishings that have an adverse effect on the living conditions of detainees and are potential sources of injury.

State's duty of care

The recommendations of the NPM were accepted. New mattresses were ordered. In the Leoben correctional institution, the mattresses are thicker and have washable covers. Of course, due to the statutory requirements of efficiency and cost-effectiveness, only those mattresses that need to be replaced for hygienic and health reasons or due to damage are being replaced. Moreover, a contract has been awarded to manufacture new slatted frames for the Vienna-Simmering correctional institution.

New mattresses and bed frames

It is noteworthy in this regard that many of the items of furnishings can be manufactured by companies that outsource parts of their production to prisons. Examples are the manufacture of 43 mattresses in the Stein correctional institution or the manufacture of bed frames in the metalworking shop of the Vienna-Simmering correctional institution.

With respect to the lockers, the Federal Ministry of Justice states that they have a storage compartment and a hanging flap and confirms that they are not lockable. The

Ministry agreed to examine the purchase of lockable boxes but indicated that security, organisational and budgetary aspects had to be taken into account. The Ministry also promised to examine the possibility of installing an additional storage compartment.

Demand for lockable lockers remains in effect

The NPM demands that the Ministry of Justice ensure that lockable lockers are purchased because detainees are unable to secure their personal items. This encourages assaults on other people’s property. It is necessary to provide lockable boxes, particularly where private property is especially endangered due to a high turnover of inmates [CPT/Inf/E (2002) 1 – Rev. 2010, p. 46].

- The furnishings of inmate cells must also be checked regularly at the Wiener Neustadt, Vienna-Simmering and Leoben correctional institutions. Defects that have an adverse impact on living conditions and constitute potential sources of injury must be eliminated immediately.
- It is encouraging that the replacement of damaged and unhygienic mattresses and the manufacture of new bed frames has been ordered at the Leoben, Wiener Neustadt and Vienna-Simmering correctional institutions.

Right to privacy

WOMEN IN PRISON

Order to fully undress for body searches

The monitoring focal point of “women in prison” showed among other things, that women are put at special risk during body searches. Many affected persons complained that they were required to fully undress during inspections.

Under Section 102 (2) the Penitentiary System Act states that a search should be conducted as considerately as possible. Moreover, under Principle 19 of the Bangkok Rules (“United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders”, Resolution 65/229 dated 21 December 2010), effective measures must be taken to protect the dignity and respect of female prisoners during examinations.

Accordingly, searches should be conducted in such a way that the person being searched is never fully undressed. It is proposed that the search be carried out in various stages, so that only the relevant part of the body needs to be uncovered.

New working document on searches being developed

In this regard, the NPM has been informed that the competent department of the Federal Ministry of Justice will evaluate search practices and prepare an appropriate training document, which takes human dignity into account. The first draft of such a “Handbook for Body Searches” will be provided to the NPM once it is completed.

- Requiring full disrobement during searches violates the principle that searches should be conducted in a considerate manner.

Access to information

INCOMPLETE HOUSE RULES - NO FOREIGN LANGUAGE VERSIONS

The house rules of the Klagenfurt correctional institution lacked any notice that detainees have the right to be outside or to exercise outdoors for one hour. The house rules merely read as follows: “The time outdoors will be provided in accordance with the relevant allocation. Time spent outdoors can be restricted on medical grounds”. Moreover, at the Vienna-Simmering correctional institution the house rules were posted neither in German nor any other language.

The Penitentiary System Act guarantees detainees the right to spend at least one hour a day outdoors, weather permitting, and taking the state of the detainee’s health into consideration. Concerning detainees who work outdoors this right only applies on their days off. Juvenile prisoners have the right to two hours of activities outdoors (pursuant to Section 43 of the Penitentiary System Act and Section 58 (3) of the Juvenile Courts Act).

Lack of information regarding the right to spend time outdoors

The purpose of spending time outdoors is to maintain the detainee’s physical and mental health and prevent illnesses. It is part of the pedagogic mission of the penitentiary system to motivate prison inmates to engage in healthful outdoor activities. All prisoners without exception should be given the opportunity to engage in daily activities in the fresh air. Installations used to exercise in the fresh air should be of a reasonable size and, if possible, provide protection against bad weather.

The NPM advocated that detainees should be informed of their right to spend time and engage in activities outdoors in the house rules of the Klagenfurt correctional institution. In addition, the NPM noted that persons held in custody can only comply with the rules of the correctional institution if they have access to the house rules in a language they understand.

NPM advocates access to house rules

The Federal Ministry of Justice accepted the recommendation of the NPM and stated that notice of the detainees’ subjective right to (minimum) daily time outdoors has been included in the special section of the house rules of the Klagenfurt correctional institution. Moreover, the supplemented house rules have been translated into ten foreign languages.

In response to the criticism of the NPM, the Vienna-Simmering correctional institution ordered a copy of the house rules – in electronic form – to be provided to all detainees in an understandable language during the admission procedure. This will ensure that detainees are aware of the house rules.

House rules to be handed out at admission

- The Klagenfurt correctional institution must inform detainees of their right to daily time outdoors in the house rules.
- Detainees must have access to the house rules in order to comply with the rules issued at the Vienna-Simmering correctional institution.
- The house rules must also be made available in foreign languages.
- These recommendations of the NPM have been accepted by the Klagenfurt and Vienna-Simmering correctional institutions.

Complaint management

NPM REITERATES DEMAND FOR ADEQUATE COMPLAINT MANAGEMENT - KLAGENFURT AND VIENNA-SIMMERING CORRECTIONAL INSTITUTIONS

No complaint register - no module in the integrated prison administration

During a visit to the Vienna-Simmering correctional institution, a representative of institution management informed the commission of the sharp increase in complaints (about tenfold) and administrative penalty proceedings. The persons in charge of the correctional institution attributed this increase to the crowded inmate cell situation due to restructuring caused by renovations. It was not possible to obtain objective documentation or an overview of the complaints received due to the absence of a centralised file or complaint register. In addition, a commission determined that the “complaint register” module had not yet been implemented in the integrated prison administration at the Klagenfurt correctional institution.

This problem was already described in the NPM’s reports to the National Council and the Federal Council in 2013 and 2014. The NPM advocated systematic recording and evaluation of complaints in light of the major inequalities in punishments for administrative offenses (see NPM Report 2014, p. 101 et seq.).

The Federal Ministry of Justice reiterated that there is still no technical means of implementing the “complaint register” module in the integrated prison administration. A “complaint book” similar to the appeals book cannot be reasonably maintained because complaints can be raised in the most diverse manner (internally and externally). However, for the NPM, the importance of complaint management as a source of information regarding deficiencies and opportunities for improvement is still undisputed.

First aid

It is positive that, since the end of 2014, petitions for administrative review and legal appeals at the Klagenfurt correctional institution which cannot be remedied within the institution’s own purview are provisionally being recorded in an index in the form of an Excel file.

The Federal Ministry of Justice also gave its assurance that the implementation of a complaint register at the Vienna-Simmering correctional institution has been accomplished at the beginning of 2015. All incoming complaints are now forwarded to the management, which registers the complaint with a consecutive number.

Analysis and planning of „complaint register“ by mid-2015 at earliest

With respect to the implementation of an appropriate module in the integrated prison administration, the Federal Ministry of Justice states that the available resources of the prison administration and the IT-provider for Federal Departments in Austria will likely be needed until the summer of 2015 for the nationwide expansion of the integrated prison administration module for administrative penalty proceedings. Consequently, the IT experts will not be available to analyse and plan the “complaint register” module until mid-2015 at the earliest.

The Federal Ministry of Justice was unable to estimate the scope of the project and the necessary implementation period. However, the Ministry predicted that it will not be

possible to place the “complaint register” module into operation in the integrated prison administration at the beginning of 2016.

The NPM emphasises that an effective complaint procedure is a basic precaution against mistreatment in prisons. In accordance with the CPT standard, prisoners should have channels for pursuing complaints. These channels should be open to them inside and outside of the prison system [CPT/Inf/E (2002) 1 – Rev. 2010, p. 19]. The NPM reiterates that implementation of the “complaint register” module in the integrated prison

- The systematic recording of complaints in a register is a prerequisite for the correctional institution to respond to deficiencies and make improvements.
- The structured recording and evaluation of complaints must be expanded continuously.

Personnel

CONFLICT INCREASES IN JUVENILE SECTION WHERE THERE IS CONTACT WITH EMPLOYEES FROM THE ADULT PRISON - INNSBRUCK CORRECTIONAL INSTITUTION

The NPM has found that there is a significant accumulation of complaints from juveniles when they come into contact with employees of adult prisons. Such contact generally occurs when juvenile detainees are escorted to court or to an interrogation.

The NPM emphasises that juveniles should ideally be escorted by employees who have training and experience in dealing with juveniles. Therefore, the NPM advocates ensuring that juveniles are escorted by “youth-friendly” officers. Escorting officers are “youth-friendly” when they have appropriate pedagogic training [see CPT/Inf/E (2002) 1 – Rev. 2010, p. 86].

Only escorted by trained personnel

The Federal Ministry of Justice argues that the staff situation at the Innsbruck correctional institution is tight. As a consequence, juvenile detainees cannot solely be escorted by employees who are experienced in dealing with juveniles at the moment.

However, in order to increase the number of prison guards who are experienced in dealing with juveniles, there is a plan to rotate five employees from the six night shift groups to the juvenile section in the future to give them appropriate training.

Time-conscious training

- The NPM recommends that only employees with pedagogic training escort juvenile detainees at the Innsbruck correctional institution.

2.5.3 Positive observations

Annexe to Asten Centre for Forensic Science

The annexe to the Therapeutic Centre in Asten breaks new ground. The centre is already fully dedicated to the care and therapy of inmates.

Modern floorplan The new construction optimises the already generous amount of space available. In the future, therapy rooms can be expanded into multi-purpose rooms when needed, due to movable walls. The inmates will be housed in one- and two-bed rooms. These will not have the usual massive cell doors, but regular, lockable room doors.

Welcoming rooms Every room will also have its own bathroom. The bathrooms will have generous dimensions. The shower area will be separated from the rest of the bathroom by a partition so that no water splashes into the rest of the bathroom. All of the windows in the room can be opened. Only if necessary, a blocker can be activated. There will be no barriers to reaching any room. The room for longer visits is also designed to be barrier-free. By its dimensions, it is designed for a visit not only by a single person but by a family as well.

In addition, four new shared accommodations are planned, each of which disposes of its own kitchen.

In the future inmates will take their medications themselves. Inmates will be given a mobile phone when they are allowed to go on outings. It will be given to them in the admission area before they leave and deposited into a storage box when they return.

The outdoor installations are also spacious. They consist of terraces, a vegetable garden and a fun court area. The annexe is embedded in a plot of land that is ten hectares large.

No locked area The new construction is being attached to the old construction. There will be no gate guards in the entrance area, but rather a reception desk. The presence of uniformed officers will be reduced to the extent possible. Prison guards will only be responsible for exterior security.

Grating tarnishes the overall impression The NPM visited the shell of the building to assure itself of the progress of the construction. Its design appears to have been well planned and to be well attuned to the needs of the users, who were involved in the planning process. However, the NPM could not understand the small-scale gratings over the windows. The prison warden assured the NPM that this was for protection against the sun, similar to shutters. Moreover, the gratings made it more difficult to see into the patient rooms from outside. This meant that the attachment of a privacy screen to the outside fence could be dispensed with.

The new construction is to be completed by the end of 2015. Thereafter, a total of 152 persons will be housed in the Asten Centre for Forensic Science, who will be inmates in the sense of Section 21 (1) and Section 21 (2) of the Austrian Criminal Code. Only persons who are suited to the setting will be admitted.

However, the NPM regrets that women will not be accepted into the Centre for Forensic Science in Asten in the future. Their housing in the Schwarzau correctional institution is inadequate, as repeatedly demonstrated by the commission. Juveniles are generally well cared for in the Gerasdorf correctional institution and should remain there. However, the living conditions of mentally ill offenders remain critical. About 40 women in Austria are currently affected.

Further discrimination against women

- The new construction at the Centre for Forensic Science in Asten will improve the spatial requirements for care and the preparation of mentally ill offenders for life after their release.
- In contrast, the conditions under which women in the Schwarzau correctional institution are held urgently need improvement. To afford equal treatment of women, the NPM advocates contemporary housing which meets appropriate standards.

New construction finished - Puch/Urstein Correctional Institution

“Use your values to shape the future” (*“Werte erhalten – Zukunft gestalten”*) – this is the subtitle of the 70-page project handbook for the new Salzburg correctional institution, which was handed out to representatives of the NPM during a visit one week before the new facility was occupied.

New pathway in the prison system

The new correctional institution cost about EUR 36 million and can house 227 inmates. The infirmary has 14 hospital beds, 30 inmate cells are intended for women, 25 for juveniles. The inmates are supervised and cared for by 83 law enforcement officers and 12 civilian employees.

Juveniles of both sexes with long sentences are also admitted. The geographic proximity to family and friends is intended to help maintain social contacts. Moreover, long-term inmates in pre-release programmes have their own section, which is new for a court prison.

Social contact encouraged

In addition to an in-house workshop, a carpentry workshop, a metalworking shop and a car repair workshop, there are two business workshops where external employers can outsource parts of their production. Besides, over 20 inmates can find employment in an art establishment and a waste disposal service. The correctional institution also has a laundry, which employs eight to ten persons and an employment opportunity for women which offers work to 10 to 15 female inmates.

Broad employment opportunities

Overall, an employment rate of between 77% and 91% is sought, depending on capacity. This number also includes employment for day release prisoners.

The NPM ascertained that the criticism expressed in the report of the previous year (see NPM Report 2014, p. 96) had been taken into consideration. The toilet facilities were adapted to the floor level in two of the three specially secured inmate cells. It was not

Defects eliminated in due time

possible to lower the toilet facilities in the inmate cell on the ground floor. However, the platform was structurally adapted so that the edge was rounded off, and the gap to the cell door was filled in with masonry so that the risk of injury was significantly mitigated.

Moreover, with respect to the lack of partitioning walls in the wet rooms, the NPM's concerns were taken into account and an architect was again put to work on this. The use of shower curtains is out of the question since they retain moisture and can lead to the more rapid formation of mould. The construction firm gave its assurance that the coatings on the sliding doors between the wet room and the inmate cell which are made of pressboard plates are water-resistant. However, as a test, the wet rooms in five inmate cells were each separated by a door made of safety glass. Further developments are awaited.

At the time of the visit, the correctional institution was ready for occupancy and was about to be placed in full operation. The prison guards and management seemed highly motivated. The inmates also indicated that they looked forward to resettling to the new correctional institution.

At least 20 minutes' driving time to the regional court

One challenge will be the logistics of the approximate 4,500 trips that are made each year to the Salzburg Regional Court and back. In order to limit the number of transports, as many interrogations as possible are to be conducted in the Puch/Urstein correctional institution itself. Moreover, transit and holding cells for detainees have been created in the former customs office building.

- The new construction of the Salzburg correctional institution offers all the infrastructural prerequisites for a modern penal system. The spacious rooms in the women's and juvenile sections are particularly gratifying.
- A handbook should also be created for other correctional institutions, which, in addition to objectives, should contain a mission statement for the penal system.

2.6 Police institutions and barracks

2.6.1 Introduction

In the year under review, the commissions conducted 69 visits to police institutions. Of these, 23 visits were to police detention centres, including detention centres and the Zinnergasse family shelter, and 46 visits were to police stations.

69 visits to police institutions

Significant results were also achieved at the regular meetings of the working groups in which representatives of the NPM and the Federal Ministry of the Interior participated. The Human Rights Advisory Council has also made valuable contributions towards resolving recurring questions. Mention should also be made of the statements of the Human Rights Advisory Council regarding supervision and counselling for law enforcement officers, the structural partitioning of toilet facilities in inmate cells and the mandate of the NPM to observe forced returns and removals of refugees by air.

One visit was made to a barracks.

One visit to barracks

2.6.2 System-related problem areas - police detention centres

Working group on conditions of detention in police detention centres

In the Annual Report 2014 (pp. 118 et seq.), the NPM reported on the deployment of a working group, which dedicates itself to the improvement of the living conditions and conditions of detention in police detention centres. The working group, whose members belong to the NPM and the Federal Ministry of the Interior, has been holding regular meetings since March 2014. The personal exchange with the Federal Ministry of the Interior proved useful, in particular with respect to topics that lacked a satisfactory resolution despite intensive correspondence with the Ministry.

Current results of the working group

In 2014, the working group established standards for detention in single cells, including specially secured inmate cells. Great importance was attached to the agreement by the working group that the general standard for detention pending forced return should be open detention. Accordingly, persons being detained pending forced return may only be held in closed detention if very precise exclusion criteria are met. In a decree dated 7 May 2015, the Federal Ministry of the Interior ensured nationwide implementation of the new standards. This took into account the CPT's criticism of detention pending forced return expressed during its visit to Austria in autumn 2014.

The lack of occupational training for law enforcement officers working in police detention centres has been a long-standing deficiency. Based on discussions within the working group, the Federal Ministry of the Interior has decided to implement a basic training course, which all law enforcement officers deployed to police detention centres

must complete in the future. Women-specific content will be included in training and continuing education modules.

In light of this proven *modus operandi* and the results already achieved, the Federal Ministry of the Interior agreed to continue the working group in 2015 – and thereafter, if necessary.

The NPM repeatedly criticised the restrictions on visiting opportunities at police detention centres. During its last visit to Austria in autumn 2014, the CPT also criticised the fact that persons being detained pending forced return are not permitted visits “under open conditions”. In this regard, the NPM advocated that the Federal Ministry of the Interior should remove the glass partitions from the visiting zone and enable more “table visits” in the future, which are now only permitted in exceptional circumstances. The Federal Ministry of the Interior initially rejected this, citing security concerns. A further proposal by the NPM called for a general extension of visiting hours in police detention centres. In the reporting year, the working group achieved encouraging results with respect to both matters.

More table visits permitted
soon

In general, a distinction is made between table visits and so-called security visits. In the future, table visits will be permitted for persons in open detention pending forced return and for hunger-striking persons being detained pending forced return who were only moved to a closed station to enable special care. Likewise, prisoners serving an administrative penalty and prisoners in administrative custody, i.e. persons detained provisionally and not under the Austrian Code of Criminal Procedure, can have table visits. Table visits can take place in berths with side walls (without partitions) or at free-standing tables to enable undisturbed conversations between detainees and visitors. Physical contact in the form of non-sexual touching is permitted (e.g. handshake, kiss on the cheek, embrace).

There are special rules governing visits by children under the age of 14. Such visits are also to be conducted as table visits. However, a separate room with free-standing tables is to be provided for visits by children in police detention centres. Close physical contact with children should also be permitted (e.g. placing the child on the lap).

Visiting rules

The visitors and the belongings they bring with them must be inspected for both, table and security visits. If necessary, an inspection of the visitors and/or the visited detainee can be conducted after the visit. Video surveillance of the visits is permissible.

Security visits

During security visits, detained persons are separated from visitors by a room-height glass wall. They communicate via an intercom system. In the future, security visits are contemplated for prisoners in court custody and for other prisoners under certain conditions (e.g. reasons of health or hygiene). In addition, security visits are contemplated when there are specific security concerns, if and as long as they militate against permitting table visits.

At least two visits per week

Currently, Section 21 of the Code of Conduct for Detention (*Anhalteordnung*) provides that every prisoner can receive visits once a week for a period of half an hour during the visiting hours established by the authorities. Endeavours should be made to increase the

frequency and duration of visiting opportunities for persons in detention pending forced return in the interests of maintaining familial and other personal bonds. The working group agreed that every prisoner may receive a half hour visit at least twice a week in the future. Visits must also be possible on Saturday or Sunday. Of course, these standards are to be regarded as minimum standards. Therefore, every police detention centre is free to be more generous with the duration and frequency of visits.

The former Human Rights Advisory Board at the Federal Ministry of the Interior has already criticised the inadequate occupation and leisure opportunities for persons detained in police detention centres. Nevertheless, numerous attempts to permanently improve the situation for detainees have failed. During its visit to Austria in autumn 2014, the CPT reiterated its recommendation that (in exceptional situations) persons being detained in closed detention pending forced return should be offered more activities outside of the inmate cell.

Occupational and leisure situation

The NPM has also complained for years that persons being detained pending forced return and prisoners serving an administrative penalty are unlikely to spend their time in custody in a meaningful way. The NPM specifically and repeatedly criticised that leisure and sports equipment (e.g. exercise bikes, table football tables, table tennis tables) were lacking or were not repaired. In many police detention centres there is a need for more reading materials, particularly for foreign-language newspapers, magazines and books. Board games are also not always available. In most police detention centres, there is only a poorly stocked library, televisions in the social rooms and bleak walking courts. The NPM hopes that the working group can finally bring about a solution to this important matter. As of the editorial deadline for this report, some key points had merely been agreed upon. In this regard, the working group formulated core statements and distinguished between minimum standards to be implemented in all cases and target standards, which are ideally to be achieved.

One core statement is that detainees should have access to current information about the outside world. This must be ensured by the use of the detainee's own approved radio and TV equipment in the inmate cell and by providing radio and TV equipment in the common areas. Moreover, the cells must each be equipped with an electrical outlet with multiple sockets, which is switchable from the outside. Detainees must also have the opportunity to purchase print media. The facilities should provide the prisoners with free newspapers. The establishment of controlled Internet access should be a target standard.

Information about the outside world

Detainees should have sufficient opportunity to move about the interior and exterior areas of the police detention centre. The space in both areas should be suitably equipped. Outside areas should be appropriately designed, shaded and provided with seating. As always, detainees should be given the opportunity to move about outdoors for at least one hour per day. If the weather does not permit this, physical movement should be ensured in some other way. In the future, the facilities should have table football sets, basketball hoops and balls, Thera bands, table tennis tables, badminton equipment and sports mats. The provision of fitness equipment is only intended to be a target standard.

Physical movement

Social contacts Social contacts between detainees should be actively supported. Therefore, prisoners should at least be able to use a social area or communal room. Board games should be available.

Externally supported leisure activities (e.g. physical education classes, artistic and cultural leisure activities) could result in improved conditions of detention. The working group will formulate additional standards with respect to the occupation and leisure opportunities in police detention centres next year.

In addition, the working group will address the following topics when it resumes its meetings: proposals by the NPM to amend the Code of Conduct for Detention, the detainees' contacts with the outside (contacts with family, telephone use, use of their own cell phones, access to the Internet and Skype, telephone rules for indigent prisoners); language barriers (interpreting, video interpreting, medical area, other areas); ensuring privacy in the restrooms; taking the special needs of LGBT (Lesbian, Gay, Bisexual and Transgender) persons and persons with disabilities into account.

Implementation of standards The standards thus far developed by the working group should be realised as quickly as possible in the form of decrees by the Federal Ministry of the Interior or amendments to the Code of Conduct for Detention and by implementing physical measures (e.g. structural adjustments).

Working group on suicide prevention

Suicide (attempts) at Innsbruck police detention centre Due to a suicide, a suicide attempt and several self-inflicted injuries, the competent commission conducted announced visits to the Innsbruck police detention centre.

According to a statistic provided by the Federal Ministry of the Interior, there were two suicides and 13 suicide attempts in police detention in 2014. In the first half of 2015, there were two suicides and five suicide attempts in police detention. Most of those involved were persons in administrative detention, i.e. persons who were detained on the order of the public security service or a judge in accordance with the rules of criminal procedure of the public security service and temporarily held in a police detention centre or a police station. The time between being brought in and the suicide (attempt) was very short in each case.

After examining the incidents in the Innsbruck police detention centre, the commission formulated several proposals on the topic of suicide prevention. In doing so, it made reference to the recommendations of the CPT on suicide prevention (see CPT standards, p. 38, margin nos. 57 et seq.).

Recommendations of the CPT regarding suicide prevention According to them, preventive health care in detention facilities should also include suicide prevention measures. In the opinion of the CPT, medical examinations upon arrival of the prisoner and the admission procedures play an important role in this regard. If they are properly conducted, they can at least identify some of the vulnerable prisoners. In addition, staff should be made aware of the signs of suicide risk – regardless

of their jobs. This implies that a training session on recognising such signs should be conducted.

A person who has been determined to be at risk for suicide should be kept under special surveillance for as long as necessary. Such prisoners should not have easy access to objects with which they could kill themselves (window grates, broken glass, belts or ties, etc.). Moreover, the responsible parties should take steps to ensure a functioning flow of information regarding persons recognised to be potentially suicidal. This applies both within a facility and between various facilities or their health services.

With respect to detention facilities for immigration detainees, the CPT advocates access to medical care and that particular attention be paid to the physical and mental condition of asylum seekers (see CPT standards, p. 64, margin no. 31). Of course, a good understanding of the language is necessary to assess this condition.

At present, there are no uniform nationwide guidelines for suicide prevention in police detention. The examinations by the commission revealed that, despite all of their efforts, the measures taken by the police detention centres were not sufficient to identify which prisoners were suicidal. The NPM recommended that the Federal Ministry of the Interior draft a decree to minimise the risk of suicide among prisoners.

Issuing uniform guidelines

The current statistics show that there is a particular and increased risk for prisoners in court custody. Detainees are especially vulnerable and in need of protection shortly after they are brought into police detention centres or police stations.

Therefore, measures should be specified to identify this risk as early as possible in the first hours of detention and to protect the affected persons against themselves. Particular attention should be paid to the construction of the inmate cell and to surveillance of the detainees by the guards. The presence of other prisoners and the opportunity to speak with them can also act as a preventive mechanism. Consideration should be given to equipping inmate cells for persons in administrative detention with technical devices (e.g. shatter-proof parabolic mirrors) so that the guards can see the entire cell from outside. Video surveillance of cells for persons in administrative detention can also make sense. All inmate cells should be designed so that it is difficult to mount instruments of strangulation. Detention in single cells should be the exception for persons in administrative detention and must always be justified on a case-by-case basis.

Persons in administrative detention are at special risk

In the opinion of the NPM, the initial examination of the detainee by police physicians is very important in identifying the risk of suicide at an early stage. Shortly after detention, but generally before being transferred to a police detention centre and the conduct of the medical examination upon admission, detainees fill out a medical history sheet (= health questionnaire). It is available in more than 40 languages and contains questions about the condition of the detainee's health. Therefore, this information is provided by the detainee himself and is an important aid in determining whether urgent measures may have to be taken.

Initial examination and medical history sheet

Language barriers in medical care

The NPM has already fully addressed verbal communication between detainees and physicians in the last reporting year and has recognised structural deficiencies (see NPM Report 2014, pp. 125 et seq.). Good communication is necessary to properly evaluate the state of the detainee’s health. An assessment of the mental state of a prisoner – including any danger to himself/herself or proneness to suicide – requires a precise verbal exchange with the prisoner being examined. However, this can only be conducted in a language that the examiner and the examinee have sufficiently mastered. Otherwise, an interpreter or a bilingual person must be called in.

The Federal Ministry of the Interior gave its assurance that – if necessary – physicians would be provided with interpreters when assessing whether a person is fit to undergo detention or other medical matters. Apart from calling in professional interpreters, fellow prisoners or bilingual return counsellors are also used for translation. However, in practice, there may still be communication problems between detainees and medical personnel. Certain improvements are expected from the use of a video interpreting service, which has already begun at the Vordernberg detention centre and is also planned in Vienna, Burgenland and Tirol starting in February 2016. However, in this area the decisive factor will ultimately be whether physicians make use of this opportunity or not. Therefore, the NPM will continue to have an in-depth discussion with the Federal Ministry of the Interior on dealing with language barriers in the medical area.

Ministry proposes working group

In the course of commenting on the proposals of the NPM, the Federal Ministry of the Interior proposed the use of an (additional) working group with experts from the NPM and the Ministry to engage in a joint dialogue on the topic of suicide prevention in police detention. The NPM accepted the invitation and nominated its representatives, most of which have medical or psychological expertise. Employees of the Federal Ministry of the Interior, the police departments of Vienna and Lower Austria, the medical head of the association *Verein Dialog* and outside experts take part in the working group on behalf of the Ministry. The composition of the group is interdisciplinary; the members are psychiatrists, neurologists, police (department) physicians, psychologists and attorneys.

Responsibility of the working group

The primary aim of the working group established in June 2015 is to jointly develop uniform guidelines for suicide prevention in police detention, which the Federal Ministry of the Interior can issue in the form of a decree. The topics are identification of suicidal tendencies at the initial examination and assessment of fitness to undergo detention as well as dealing with persons who are suicidal and caring for them during continued detention. This has led to numerous additional questions, e.g. relating to the design of the medical history sheet, the use of interpreters at medical examinations and consultations, medical documentation, structural preventive measures, the creation of a suicide-preventive environment, the furnishings in the inmate cells, the acceptance of dangerous items and detention in single cells. Regular training sessions for medical staff and law enforcement officers are of great importance to suicide prevention (e.g. recognition of warning signals and signs of potential suicide risk, ability to lead conversations).

As of the editorial deadline for this report, the working group has held three meetings and the first results have already been achieved. The working group examined the

completeness, comprehensibility and suitability of the medical history sheet and revised the questions regarding the state of the detainee's health. The participants agreed that the medical history sheet can only be one instrument to assist in assessing any risk for suicide. Direct communication with detainees – through an interpreter, if necessary – is the best and most important instrument for assessing the warning signals, apart from ongoing surveillance of inmates.

The discussions also included the topic of establishing suitable auxiliary structures. The members of the working group considered, for example, whether clinical psychologists or even crisis intervention teams can be systematically involved and, if so, how. This would have an advantage where there is a lack of psychiatrists – i.e. mainly outside of Vienna. Technically trained staff can jump in for necessary crisis interventions and support police physicians in police detention centres and police stations. As of the editorial deadline for this report, the form in which psychologists or crisis intervention teams could be used in a meaningful way for suicide prevention remained an open question.

Lack of psychiatrists

The police physician's scope of action depends on whether detainees show signs of acute risk for suicide or non-acute suicidal tendencies. Depending on the assessment of the state of the detainee's mental health at the time of the examination, police physicians can have the detainee forcibly committed to a psychiatric ward under the Hospitalisation of Mentally Ill Persons Act, determine that he/she is unfit to undergo detention or declare him/her fit to undergo detention under the condition that the detainee receives psychiatric or psychological care during further detention.

Closely connected to these questions of terminology is the assessment of fitness to undergo detention when there are mental symptoms. The term "fitness to undergo detention" is currently not explicitly covered by the Code of Conduct for Detention. In this regard, the NPM accepted the proposed definition of the former Human Rights Advisory Board at the Federal Ministry of the Interior, which was developed with the assistance of interdisciplinary expertise. The precise concept should now be clarified by the working group.

Term: „(un)fitness to undergo detention“

In practice, if a detainee presents a danger to himself/herself, this vulnerable person is often ordered to be placed into a specially secured cell. In 2012, the NPM made a proposal to the Federal Ministry of the Interior to make a thorough reconsideration of the placement of mentally ill persons and persons who are a danger to themselves as well as inebriated and substance-impaired persons into specially secured cells (see also NPM Report 2014, p. 122 et seq.).

Placement in security cells

Close observation in a specially secured cell, as recommended by one of the police physicians, cannot replace specialised diagnosis and treatment of the disease. Failure to provide medical care in these cases is problematic due to the fact that the state has a special duty of care when it deprives persons of their freedom. Moreover, in such cases, the principle of equivalent health care required by the CPT would be violated (see CPT standards, p. 31, margin no. 31, and p. 94, margin no. 32). The development of criteria for the medically necessary transfer of such persons to specialised clinics instead of their

placement in specially secured cells could minimise the risk of jeopardising the health of this particularly vulnerable group of persons by making a bad decision.

To coincide with the revision of the guideline for the police medical service and the Code of Conduct for Detention, the Federal Ministry of the Interior announced that it is developing a practice guideline which will adequately ensure provision of the necessary health care in the future. Unfortunately, the Federal Ministry of the Interior has not yet put its announcement into practice – despite a recommendation in this regard by the NPM (see NPM Report 2014, p. 122). In particular, mentally ill persons and persons who are a danger to themselves could, if placed in isolation in bare security cells without contact with the outside world or opportunities for diversion, cross the border into risk for suicide at any time without this being noticed. Therefore, the NPM hopes that this matter can also be resolved by the working group.

Monitoring priority: psychiatric care of detained persons

In the course of the commission’s activities with respect to police detention, it became clear from numerous observations that the psychiatric care provided to detained persons may be inadequate for various reasons. Therefore, even before the deployment of the working group on suicide prevention, the NPM established this topic as a monitoring priority for 2015. In this regard, the NPM addressed the following problems in particular.

Fitness to undergo
detention when there are
mental problems

As already mentioned elsewhere, the NPM called for the term “fitness to undergo detention” to be defined in the Code of Conduct for Detention. In the opinion of the NPM, one must proceed with great sensitivity in assessing whether a person is unfit to undergo detention due to mental impairment. The Federal Ministry of the Interior stated that the assessment of the fitness to undergo detention is made by police physicians during the examination of the detainee and based on the overall clinical picture. If necessary, police physicians will obtain a psychiatric opinion regarding the existence and degree of seriousness of a mental illness, the treatment during detention and regular follow-up examinations.

The Federal Ministry of the Interior named two principal criteria for possible release from detention due to mental complaints, i.e. if the illness is expected to get worse and/or there is no ability to provide care.

Medical documentation

In this regard, one commission showed that most prisoners were found to be unfit to undergo detention based on somatic findings during a hunger strike. By contrast, almost no persons were declared to be unfit to undergo detention on mental grounds. In this regard, the commission criticised the fact that the documentation system in police detention centres does not enable a systematic review of findings that a person is unfit to undergo detention. The office of the medical superintendent in the Federal Ministry of the Interior argued that the unfitness of a person to undergo detention is often based on both somatic and mental grounds. Therefore, a strict separation of the grounds for unfitness to undergo detention in the documentation is not useful. As a result, the NPM was unable to draw any suitable conclusions from the findings that detainees were unfit

to undergo detention, which it examined. In general, the NPM repeatedly criticised the quality of the medical documentation (comprehensibility, completeness, consistency) – including cases of mental problems.

In the opinion of the NPM, if there are clear indications of the existence of mental impairment on the medical history sheet or the detention log, police physicians should quickly obtain the opinion of a medical expert. The Federal Ministry of the Interior emphasised that, if there are symptoms on the medical history sheet that indicate a psychiatric disorder, a psychiatrist must be brought in, according to an instruction of the medical superintendent. Since, in practice, the necessary medical specialists are not available on short notice at some locations, the expertise of a clinical psychologist should be sought in such cases.

Deployment of psychiatrists

The review and consideration of (external) medical documents in connection with the evaluation of mental symptoms is also essential. The CPT has always emphasised that treatment by a medical specialist, if necessary, is part of standard medical care. However, it has become apparent that, despite the efforts of the Federal Ministry of the Interior, outside of Vienna, psychiatrists are not always available to care for detainees in police detention centres. If treatment by a medical specialist is not possible in a police detention centre, the Federal Ministry of the Interior must ensure that the detainee receives the necessary care of a medical specialist through out-patient models in psychiatric wards. The practice observed by the commissions – i.e. placing prisoners in specially secured cells and ordering their transfer to another police detention centre where psychiatric care is available – does not, in the opinion of the NPM, meet the requirements of prompt and appropriate medical care.

Access to treatment by medical specialists

Irrespective of the planned transfer of detained persons to other police detention centres, the placement of inebriated, substance-impaired, mentally ill persons and persons who are a danger to themselves into specially secured cells constitutes a potential risk to such persons (see Item 2.6.2.2 regarding the working group on suicide prevention). Therefore, within the framework of the working group on suicide prevention, experts of the NPM – together with the Federal Ministry of the Interior – should develop a practice guideline, which gives adequate consideration to the provision of health care to these persons, and criteria for their transfer to specialised clinics if medically necessary.

Security cells

The NPM concerned itself with the question of what happens to detainees who are found to be unfit to undergo detention due to severe somatic and/or mental problems. The former Human Rights Advisory Board at the Federal Ministry of the Interior has recommended “that a concept be developed which would include care facilities and hospitals, to ensure that persons found to be unfit to undergo detention are not released into the streets without care or held in continued custody due to a lack of alternatives, but can be provided with proper medical, psychiatric or social care on a case-by-case basis” (Recommendation No. 213/51).

Care after release from detention

The Federal Ministry of the Interior added that detention should be promptly ended after a finding is made that the person is unfit to undergo detention. If the requirements of the Hospitalisation of Mentally Ill Persons Act are met, the person can be involuntarily

committed. If the requirements of the Hospitalisation Act are not met, the police physician should inform the person of any additional medical measures and possibilities. However, the Federal Ministry of the Interior will no longer be responsible for implementation.

This procedure cannot be challenged from a legal perspective, especially since the security authorities' duty of care with respect to detained persons and the special relationship of dependency and protection end with release from detention. The NPM considers it a positive signal that police physicians inform persons who are unfit to undergo detention of any additional medical measures and possibilities before their release.

As already mentioned, good communication between physicians and prisoners is a primary necessity for a proper assessment of the state of the detainee's health, including his mental health (see Item 2.6.2.2 regarding the working group on suicide prevention for details).

Role of police physicians In connection with the psychiatric care of detainees, the NPM also dealt with the important role that police physicians play in assessing mental illnesses, judging fitness to undergo detention, initiating diagnostic or therapeutic measures and committing persons under the Hospitalisation Act.

The Federal Ministry of the Interior emphasised that police physicians, as experts, have completed relevant training, which qualifies them to assess mental illnesses. They are qualified to issue instructions under the Hospitalisation Act. Police physicians are also able to correctly assess mental symptoms and psychiatric illnesses. These physicians would like to always have a psychiatrist or psychologist available for acute interventions; however, this is not possible at all times.

Is psychiatric care appropriate? In the opinion of the NPM, these statements of the Federal Ministry of the Interior underscore the problem, which has been described many times: the lack of psychiatric or psychological support for police physicians in their work, especially outside of Vienna. For the NPM, it is not a matter of competition between general practitioners and medical specialists. Rather, the expertise of the medical specialist will only be of practical use if collaboration and ongoing communication with general practitioners takes place. A good communication structure can contribute to ensuring that detainees receive appropriate medical and psychiatric care on the level required by the CPT.

Police physicians should always be able to correctly assess the need for specialised treatment of detained persons based on the situation and to quickly access psychiatric expertise, if necessary, regardless of the day of the week and the time of day.

Finding common solutions The commission's activities show that this goal is not consistently achieved. The face-to-face exchange between the NPM, the Federal Ministry of the Interior and the police physicians deployed to the police detention centres within the framework of the working groups can make an important contribution to structural improvements.

- A clear definition of the term “fitness to undergo detention” should be provided in the Code of Conduct for Detention.
- Particular sensitivity should be used in determining whether a person is unfit to undergo detention due to mental impairment.
- A precise verbal exchange with the person being examined is necessary. An interpreter must be called in, if necessary.
- If there is a clear indication of mental impairment on the medical history sheet or in the detention log, a psychiatrist must be called in.
- Police physicians must have access to psychiatric expertise at all times, regardless of the day of the week and the time of day.
- It is necessary to develop criteria for the provision of adequate health care to inebriated, substance-impaired, mentally ill persons and persons who are a danger to themselves.
- Transfer to specialised clinics rather than placement into specially secured cells is medically necessary.
- Before ending detention, police physicians should inform persons found to be unfit to undergo detention of any additional medical measures and possibilities.

Partitioning of toilet areas in cells for multiple inmates

In the last reporting year, the NPM focused on the inadequate partitioning of toilet areas in cells for multiple inmates (see NPM Report 2014, pp. 123 et seq.).

The Human Rights Advisory Council made a report on 16 June 2015 on the question of the structural partitioning of toilet facilities in police department inmate cells. According to that report, the human rights impact depends, in particular, on the duration of the detention. In the opinion of the Human Rights Advisory Council, the same standards as in correctional institutions should be sought if multiple persons are held in the same cell for a lengthy period of time. Applied to long-term detention in police detention centres, this means that inmate cells that house more than one person must have a structurally partitioned toilet area (see also CPT standards p. 18, margin no. 49; Finland Report of 11 May 1999, paragraphs 72 and 73). If a person is placed into a single cell for a lengthy period of time, a visual barrier (e.g. curtain) should be provided at the request of the affected person, unless otherwise required in the individual case – for example, for reasons of suicide prevention (see Item 2.6.5.2 regarding sanitary facilities in inmate cells during short-term detention).

Expertise of the Human Rights Advisory Council

The structural defects in the toilet areas of cells for multiple inmates at the Salzburg and Steyr police detention centres constitute a (potential) invasion of privacy for the affected persons and were therefore the subject of a complaint by the NPM. Toilets in cells occupied by multiple inmates must be walled in on all sides. Contrary to the case

Criticism of structural defects

of the Linz police detention centre, the Federal Ministry of the Interior did not promise to refrain from placing multiple inmates in the cells at the Salzburg and Steyr police detention centres until they had been structurally adapted.

With respect to the Graz police detention centre as well, the NPM repeatedly criticised that the toilets in cells for multiple inmates were only partitioned from the rest of the cell by doors that were not fully closed off. However, it was noted as a positive step in the past reporting year that the Federal Ministry of the Interior had obtained bids for partitioning the toilet areas.

Graz police detention centre presents renovation plans

In April 2015, the head of the Graz police detention centre asked the commission to discuss the “washroom renovation” project with him and the competent officer at the Styria police department. In the course of a visit, he informed the commission about the planned renovation work in detail and made the relevant documents available. For the purpose of renovating the washroom segments of 37 toilet areas at the Graz police detention centre, a proposal was obtained from a specialised company. The proposal contemplated partitioning the washroom from the inmate cell by adding on to the side walls and installing new single-wing doors, which are lockable from the inside. The washroom’s ventilation system is turned on automatically when the light is switched on. The ventilation equipment will be installed with the proper fire protection. The renovation will provide prisoners with a washroom area that is shielded from vision and equipped with a ventilation system to minimise odours. The total available area of the washroom will remain the same.

Together with employees of the Graz police detention centre, the commission visited several inmate cells to examine the anticipated effects of the planned renovation. On site, it also seemed that the planned implementation would not decrease the size of either the washroom area or the inmate cell itself. The planned renovations ensure the protection of the privacy of detainees and the reduction of noxious odours, which had been demanded by the commission for years. The commission therefore assumes that the solution will also satisfy the relevant recommendations of the CPT. The NPM welcomed the plan and asked the Federal Ministry of the Interior to notify it as soon as the structural reconfiguration of the washrooms in the Graz police detention centre is completed. The NPM will follow up on the efforts to realise the structural measures.

Inmate cells in the Wels police detention centre

The NPM also complained that cells for multiple inmates at the Wels police detention centre have toilets that are only separated from the rest of the cell by a wooden partition. These wooden partitions are open at the top and the bottom. The NPM asked the Federal Ministry of the Interior to take the necessary structural measures as quickly as possible to fully partition the toilets from the rest of the cell on all sides.

The Federal Ministry of the Interior stated that the sanitary facilities at the Wels police detention centre were renovated in 2003. In addition, the Ministry added that it is endeavouring to construct partitioned toilet facilities in all police detention centres – including the Wels police detention centre – within the limits of structural and financial feasibility.

The NPM welcomed this plan in principle. However, the Federal Ministry of the Interior only stated its intention with the express reservation of structural and financial feasibility. Thus, it ultimately remains unclear whether and, if so, when the Federal Ministry of the Interior will actually take the detainees' right to privacy into account by completely partitioning the toilet facilities in inmate cells with multiple occupants.

Reservations regarding a nationwide solution

The NPM also asked the Federal Ministry of the Interior for information on when a decision can be expected regarding a national solution to the problem of toilet areas with no or insufficient partitioning and which police detention centres are currently under consideration. As of the editorial deadline of this report, the Ministry had not yet replied.

- Budgetary priority should be given to planning and implementing the construction of structurally partitioned toilet facilities in cells for multiple inmates at all police detention centres.

Fire prevention at police detention centres

In February 2015, there was a tragic fatality at the Villach police detention centre. Shortly after 5:00 a.m., the officers of the Villach police station brought an inebriated prisoner to the police detention centre. At 5:40 a.m., the detainee was in the cell area. At 5:50 a.m., a law enforcement officer checked the cell when he smelled heavy smoke and immediately sounded the alarm. The cell door became stuck and could not be opened right away. Apparently, the inmate had set a mattress on fire in the cell, which he first leaned against the cell door from the inside. After the cell door was opened, the detainee was found dead due to the massive amount of smoke generated.

Fatality at Villach police detention centre

Due to this case, the NPM asked the Federal Ministry of the Interior for information regarding the fire protection measures in the Villach police detention centre and other police detention centres.

The Federal Ministry of the Interior explained the existing fire protection precautions in police detention centres as follows: every inmate cell generally constitutes an individual fire compartment. The prisoner areas as such are divided into small fire sub-compartments. There is a boundary to each of the individual smoke or fire compartments. There is an alarm button in the inmate cell so that the detainees can activate an alarm if there is a fire.

Fire alarm systems are installed in police detention centres that are newly built, added on to or remodelled by order of the competent (building) authorities. In old buildings, the competent police departments have already ordered technical or structural upgrades by creating fire compartments and installing smoke control doors to maximise fire safety. Fire alarm systems (sensors to detect differences in temperature, fire alarms, etc.) which are suitable for residential rooms are generally not suitable for inmate cells. Experience

No fire alarms in inmate cells

has shown that this equipment is consistently misused, which does not permit a certain detection.

Therefore, current fire protection concepts aim at early detection of the fire by detainees and guards. The appropriate structural and organisational fire protection measures are based on the size, location and furnishings of the detention facility and follow the relevant statutory provisions. The organisational fire protection measures in police detention centres must be coordinated with the building owners on an ongoing basis. Care is taken to provide the best possible safety level, particularly by regular procedure- and results-oriented quality controls and by planned fire protection or fire alarm exercises.

The Villach police detention centre has two fire detectors in the equipment room and one fire detector in the machine room. Therefore, there are no fire detectors in the corridors, communal rooms and cells. However, all corridors and communal rooms, including the security cells, are under video surveillance. Guards closely patrol the areas. In addition, the Villach police detention centre has had fire smoke ventilation systems since July 2015.

No uniform requirements for police detention centres

In the opinion of the NPM, it must be clarified which fire protection precautions – i.e. both of a structural and technical nature – should be prescribed as minimum standards for police detention centres. Since detention facilities are subject to comparable conditions in terms of fire protection (large numbers of potentially vulnerable persons, inmate cells, the state’s special duty of care towards detainees, etc.), the NPM first examined the level of protection existing in correctional institutions.

Decree of the Federal Ministry of Justice

Upon enquiry, the Federal Ministry of Justice made reference to a decree dated 5 January 2006, which states that an automatic fire alarm system must be installed in buildings that are newly constructed, added on to or remodelled. The Technical Guidelines for Fire Prevention issued by the Austrian Federal Fire Brigade Association and the Austrian Fire Prevention Agencies are most relevant in this regard.

The Technical Guidelines 160 N on “Structural and Technical Fire Protection in Correctional Institutions” have been in effect since 2011. These guidelines govern the fire protection systems in correctional institutions in all of Austria. The Technical Guidelines for Fire Prevention 160 N provide that “correctional institutions shall be equipped with an automatic fire alarm system in accordance with the Technical Guidelines for Fire Prevention 123 S. An alarm shall furthermore be forwarded to a fire department reception centre in accordance with Technical Guidelines for Fire Prevention S 114. Only inmate cells may be left out of the scope of protection of the fire alarm system”. In explanation, the Federal Ministry of Justice noted that the Technical Guidelines for Fire Prevention 160 N only apply to new construction, additions and remodelled buildings. Therefore, the fire protection systems do not comply with the Technical Guidelines for Fire Prevention 160 N in all correctional institutions.

In contrast to the areas within the responsibility of the Federal Ministry of Justice, the areas within the responsibility of the Federal Ministry of the Interior do not seem to have any general provisions governing fire protection systems in police detention centres

nationwide. The NPM believes it would be useful to make the level of fire protection in police detention centres as uniform as possible and to at least adapt it to meet the standards applicable to correctional institutions.

The NPM also asked the Federal Ministry of the Interior whether – irrespective of statutory requirements – it intended to issue a decree applying the Technical Guidelines for Fire Prevention 160 N by analogy or to establish uniform minimum fire protection standards in police detention centres in some other suitable way.

NPM proposes uniform fire protection standards

As of the editorial deadline, no response had yet been received from the Federal Ministry of the Interior.

- The Federal Ministry of the Interior should issue uniform requirements for fire protection systems in police detention centres nationwide and adapt the level of fire protection to at least meet the standards applicable to correctional institutions.

2.6.3 Individual cases

Lack of electrical sockets - Villach police detention centre

The NPM also brought up the lack of electrical connections or electrical sockets in the inmate cells at the Villach police detention centre (with the exception of the two cells for the maintenance workers). The NPM asked the Federal Ministry of the Interior whether and, if so, when the Ministry would order the installation of electrical connections in the inmate cells at the Villach police detention centre for the purpose of improving occupational opportunities.

Electrical connections in inmate cells

The Federal Ministry of the Interior replied that three inmate cells in the Villach police detention centre are equipped with an electrical socket. In addition, the Ministry is endeavouring to equip inmate cells with electrical connections within budgetary limits in the course of its adaptation and renovation work, based on the human rights standards developed jointly with the NPM.

In discussing occupational opportunities at police detention centres with the Federal Ministry of the Interior, the NPM emphasised that the members of the working group jointly established the equipping of each cell with an electrical socket, which can be switched on or off from the outside, as a minimum standard.

Thus far, the NPM is not in agreement that this (and other) standards should only be implemented in the course of “adaptations and renovations” or within “budgetary limits”. Therefore, the NPM again asked the Federal Ministry of the Interior when it could order the installation of electrical connections in the inmate cells at the Villach police detention centre. Once again the Ministry has not made any definitive statements in this regard.

- Each of the inmate cells at the Villach police detention centre must be equipped with electrical sockets, which can be switched from the outside (with distributor sockets, if appropriate).

2.6.4 Positive observations

Open detention - Villach police detention centre

Liberal conditions of detention

Irrespective of the lack of electrical sockets in the inmate cells at the Villach police detention centre, the liberal handling of certain areas of life at this facility as compared to other police detention centres should be positively highlighted. There is open detention between 7:00 a.m. and 10:00 p.m. This is noteworthy because detention in open detention stations is generally only provided for persons being detained pending forced return. However, for a substantial period of time, the Villach police detention centre has no longer been used for detention pending forced return, but mainly houses prisoners serving an administrative penalty.

Moreover, after registration, detainees at the Villach police detention centre can use their mobile phones in the locked area and, if requested, they can shower every day. Liberal visiting hours are also customary at the Villach police detention centre.

2.6.5 System-related problem areas - police stations

Supervision and counselling for law enforcement officers

In the course of its visits to police stations, the commission had conversations with employees regarding their personal stress situations in particular and the stress situation at the station in general. The topic of supervision and counselling as a structured reflection of professional activity in the sense of preventive psychological support was frequently addressed.

Supervision and counselling often not accepted

The result of the conversations was that the offer of supervision and counselling is known in many cases, but is not used. Often peer support, i.e. the support of trained colleagues, is considered sufficient, particularly after stressful official operations.

Some of the commissions were of the opinion that the NPM should propose that the Federal Ministry of the Interior require employees to use supervision and counselling. They mainly justified this by the argument that, in providing their services, public security officers must meet all of the requirements for action in conformity with human rights on a daily basis. Consideration should be given to the fact that unprocessed stress impacts future activities and can affect mental health, e.g. in the form of burn-out symptoms. Irritability or aggressiveness as a consequence of a lack of mental health can result in excessive actions with respect to persons being dealt with. Moreover, one can only

speak of proper supervision and counselling if provided by a person who is outside and independent of the team. Peer support does not meet these requirements.

However, it should be taken into account that supervision and counselling cannot be forced or ordered, since it requires readiness to cooperate. Therefore, the NPM asked the Human Rights Advisory Council to provide its advice and expertise on this topic.

In its reply, the Human Rights Advisory Council stated that, in addition to physical protection of the police, mental support is also part of the work environment of a modern police force. The Human Rights Advisory Council stated that supervision and counselling have been offered by the Federal Ministry of the Interior since 2012 and is still in the development stage. At the present time, the Federal Ministry of the Interior only offers supervision and counselling to teams and groups. For individual support, the psychological service (not yet nationwide) and peer support are available. Professional debriefings after deployments constitute a third instrument for providing support to employees in stressful situations. Psychology lessons are part of in-service training.

Expertise of Human Rights
Advisory Council

The Human Rights Advisory Council was of the opinion that supervision and counselling, as an instrument that supports a professional course of action, can make a contribution to encourage law enforcement officers to act in a professional manner oriented towards protection of human rights. Therefore, the Council proposed the development of a wide-scale offering of supervision and counselling and measures to encourage increased use thereof. Since there are arguments for and against mandatory supervision and counselling, the Human Rights Advisory Council believed that a recommendation in favour of these mandatory measures was currently premature.

Encouragement of
supervision and counselling

Following the comments of the Human Rights Advisory Council regarding the development of an incentive system, the NPM proposed that the Federal Ministry of the Interior introduce an offer of individual supervision and counselling from outside. In addition, further sensitising heads of police stations to the issue would encourage use and acceptance of the offer of supervision and counselling.

Offering individual
supervision and counselling
from outside

As of the editorial deadline of this report, the NPM had not received a definitive reply to its proposals from the Federal Ministry of the Interior.

- Individual supervision and counselling from outside should be actively offered to law enforcement officers.
- Heads of police stations should be sensitised to encourage supervision and counselling.

Structurally partitioned toilet facilities in detention areas of police stations

The NPM approached the Human Rights Advisory Council to clarify whether separation of the toilet area from the detention area should generally be recommended even for short-term detentions in police custody (see chapter 2.6.2.4 regarding sanitary facilities in inmate cells during long-term detention).

Length of detention matters

In its statement, the Human Rights Advisory Council pointed out that an assessment of the impact on human rights primarily depends on the length of detention: the shorter the period of detention, the less sensitive are the requirements with respect to sanitary facilities.

In the opinion of the Human Rights Advisory Council, when a cell is occupied by multiple persons, there must be an adequate visual barrier (e.g. curtain), or the detained person must be granted the opportunity to relieve himself in a partitioned toilet outside of the detention area – even during a short-term detention. No visual barrier is necessary in single-person cells when detention is only short-term. This conforms to the CPT standards for police custody (see CPT standards, p. 15, margin no. 47).

Specific conditions of detention are decisive

In its statement, the Human Rights Advisory Council emphasised that the furnishings in a detention area “per se” are not important from a human rights perspective. The important matter is whether the required standards are complied with in the individual case of a specific detention. The same detention area that is not suitable for the long-term detention of several persons can be completely adequate for the short-term detention of individuals.

The Human Rights Advisory Council argued that the highest possible standards should be sought for new construction, new rentals and remodelling measures.

- An endeavour should be made to fully partition the toilet area – even for short-term detentions – for new construction, new rentals and remodelled buildings.

Deficient documentation of detentions

During their visits, the commissions routinely examine the detention books and detention logs at the particular police station. Seamless documentation of every case of deprivation of liberty is indispensable.

Documentation of notification of rights

A detained person is entitled to certain information and notification rights; otherwise, his or her constitutionally guaranteed fundamental right to personal freedom is violated. Public security officers must “verifiably” instruct detained persons of their rights. Such an instruction is only verifiable if it is documented. Only in this way can the NPM – and the courts if a complaint was filed – review whether and to what extent an instruction was actually given. For purposes of accountability, the instruction of the detained person

regarding his or her information and notification rights must be signed by that person. The invocation and the waiver of individual rights must also be signed by the detained person in his or her own handwriting in order to meet the requirement of documentation. If a person who has been granted his or her rights refuses to sign the record, this fact must be recorded by the relevant police officer for purposes of accountability.

Special measures, such as when a detainee was handcuffed and when the handcuffs were removed, must be fully documented and, if necessary (e.g. if the person was handcuffed for a lengthy period of time), the justification must be given.

As in past years (see NPM Report 2013, p. 76 et seq., and NPM Report 2014, p. 132 et seq.), the commissions found deficiencies in documentation in this reporting period as well, such as incomplete documentation of when handcuffs were removed or the lack of the signatures of detained persons on transcripts and records. Usually the commissions speak to the commanders on duty regarding the avoidance of deficiencies in documentation in the course of the concluding meetings.

Clarification at concluding meetings

Encouragingly, the Federal Ministry of the Interior not only undertook sensitisation measures at individual police stations, but also reminded all police departments of the requirement for full documentation of detentions in a decree.

It was determined that the scope and content of the documentation also differed within the individual *Laender*. Therefore, a uniform standard for the maintenance of detention books should be created, i.e. with respect to the necessary entries.

➤ Detentions in police stations must be seamlessly and verifiably documented.

Inadequate equipment at police stations

The commissions generally discuss deficiencies of the equipment at a police station at the concluding meetings with the police station management in order to quickly obtain improvements at that location (see NPM Report 2014, p. 133 et seq.). Only in cases where no solution can be found the NPM approaches the Federal Ministry of the Interior.

Elimination of deficiencies often promised while still on site

In the reporting period, the deficiencies observed included a lack of hygiene, a lack of toilets for female staff, an inadequately labelled alarm button in a security cell and an inadequate heating system. Encouragingly, the Federal Ministry of the Interior eliminated many of these deficiencies.

By contrast, the lack of accessibility for persons with disabilities is a point of criticism that generally cannot be eliminated – or at least cannot be quickly eliminated. The Federal Ministry of the Interior has developed a staged plan under the Federal Act on the Equal Treatment of Persons with Disabilities (*Bundes-Behindertengleichstellungsgesetz*), which provides information regarding the date when each police station should be accessible barrier-free. For about 300 police stations, which are not included in

the staged plan, it is not technically feasible to provide accessibility for persons with disabilities. Therefore, these police stations must be relocated by the end of 2019 or a different organisational solution must be found. If this does not happen, the police stations that are not included in the staged plan, will no longer be acceptable as of 31 December 2019. Notwithstanding this statutory standard, the NPM considers it urgent that police stations become accessible to persons with disabilities as soon as possible.

- Alarm buttons must be adequately labelled to enable detained persons to contact the guards.
- Police stations must be hygienic and have functioning heating systems.
- Police stations must have toilet facilities for female personnel.
- Police stations must be accessible barrier-free. The existing staged plan under the Federal Act on the Equal Treatment of Persons with Disabilities must be followed.

Scope of the NPM's mandate

Equipment at police stations

When the commissions criticised the equipment of police stations or the working conditions of police officers, the Federal Ministry of the Interior repeatedly questioned whether this was included in the mandate of the NPM. Thus, for example, after visits to two police stations, the NPM recommended that printers and a scanner for finger prints be acquired.

The commission found that there were continual difficulties in the records department of the Purkersdorf police station. About 40 to 50 criminal background checks were made at that police station. Since this police station has no scanner to directly enter the fingerprints, an employee must drive from Purkersdorf to Klosterneuburg with the fingerprints in order to scan them. This unnecessarily ties up staff resources on a regular basis.

During a visit to the Graz-Hauptbahnhof police station, the commission observed that there were only three printers for ten computers. The inadequate equipment led to delays and therefore to detentions longer than necessary. Leaving the interrogation room to go to the central printer while leaving the person being interrogated behind constitutes a security risk that should not be underestimated.

Especially in light of the heavy workload found at many police stations, appropriate technical equipment is important, particularly to guarantee secure operations and avoid delays. The Federal Ministry of the Interior was of the opinion that the issue of furnishing police stations with technical equipment was outside of the NPM mandate.

Police stations should doubtlessly be considered places of detention within the meaning of the Article 4 (1) of the OPCAT. In the opinion of the NPM, organisational conditions at a police station, which relate to police interrogations, the capacity of the facility or the efficiency of work processes, affect the execution of measures that restrict freedom. Questions on equipment, even in a broader sense, are connected to the protection and promotion of human rights. They are therefore within the mandate of the NPM – contrary to the opinion of the Federal Ministry of the Interior.

Effects on the deprivation of liberty

2.6.6 Individual cases

Inadequate surveillance of sobering-up cells

In the course of a visit to the Telfs police station, the commission examined the detention book and found that – contrary to the statements of the police – inebriated persons were being held in inmate cells to “sober up”. In general, the commission pointed out that impairments due to substance abuse (alcohol, drugs, etc.) are mental disorders and must be considered illnesses. In the opinion of the commission, intoxicated persons should only be observed by medical specialists and not held in detention cells.

Sobering-up cells should be rejected

Moreover, the commission criticised that a highly inebriated person was not observed in accordance with the physician’s instructions during the detention. The public physician who had been called in ordered that the person be observed at intervals of 30 minutes.

The Federal Ministry of the Interior conceded that intoxication is basically an illness. Development of a guideline which should take into consideration the health care to be provided to inebriated, substance-impaired, mentally ill persons and persons who are a danger to themselves is being handled by the existing working group on suicide prevention (see chapter 2.6.2.2 regarding the working group on suicide prevention for further details).

Working group on suicide prevention

The NPM hopes for speedy implementation of the practice guideline for uniform handling of inebriated, substance-impaired, mentally ill persons and persons who are a danger to themselves in detention, which has been promised by the Federal Ministry of the Interior for years.

With respect to the observed incident, the Federal Ministry of the Interior indicated that the timing of the checks was only missed “by minutes”. The NPM was not convinced by the description of the incident in the comments of the Federal Ministry of the Interior. Therefore, the NPM voiced its criticism. The NPM considered the sensitisation measures that were carried out with respect to the need for documentation to be an important step. Unfortunately, the Ministry failed to instruct the officers at the Telfs police station to call in a (public) physician when intoxicated persons are being detained and to explore the possibility of a transfer to a psychiatric clinic.

2.6.7 Positive observations

After every visit to a facility, the commissions summarise their observations in a visit report. The commissions regularly note positive aspects and improvements, which are mentioned to the officer on duty during the concluding meetings and which are also included in the reports. In order to ensure a constructive collaboration, it is also important to the NPM to report positive impressions to the respective Ministry.

Empathy and good work
climate

In this reporting year, the commissions wish to underscore the commitment observed in the medical care provided to detained persons and the good work climate in some police stations. Empathy and a respectful working environment cannot be underestimated in terms of humane treatment of detainees during the often challenging activities at a police station.

Considerations with respect
to the use of coercive
measures

In some cases, the commissions emphasised the exemplary cooperation, the knowledge possessed by committed employees and the well-documented interrogation records. Recognition was also accorded for justified and carefully weighed entries when coercive means were used. The NPM also praised the significant improvement in the quality of detention in its comments to the Federal Ministry of the Interior.

2.7 Coercive acts

2.7.1 Introduction

56 observations of police
operations

In the year under review, the commissions observed a total of 56 acts of direct administrative power and coercive measures, including eleven (forced) returns and 45 demonstrations, football games, raids and major events.

As in past years, the NPM found few or no complaints about police operations at football games and during raids. However, in several cases the NPM criticised the implementation of forced returns (returns to non-EU states) or returns (returns to EU states under the Dublin Regulation) and the conduct of contact meetings prior to these official actions.

Improvements in handling
demonstrations

There were improvements in handling demonstrations. In the reporting year, several delegations again observed the demonstrations against the Vienna Academics Ball, where the demonstrations and the police operations were significantly more orderly than in 2014. The noticeable improvements were attributable to a new, broad-based communications strategy on the part of the police. The proven measures of the so called “3 D strategy” (Dialogue – De-escalation – Drastic Measures), should lead to medium-term and sustainable improvements in such operations. During the demonstrations, loudspeaker announcements by the police were more clearly audible to the demonstrators.

2.7.2 System-related problem areas

Mandate of the NPM to observe forced returns by air

In an earlier statement (see NPM Report 2013, p. 88 et seq.), the Human Rights Advisory Council asserted that the commissions of the NPM, as part of their mandate, have the right to enter an aeroplane and observe official actions there. This applies at least if the aeroplane is on a runway in Austria and the doors have not yet been closed.

In 2015 the NPM again asked the Human Rights Advisory Council to share its expertise on this matter. The question was whether (forced) returns by air are generally within the mandate of the NPM under Article 148a (3) of the Austrian Federal Constitution. If this is the case, the commissions may accompany flights in the future and observe the (forced) return on board the aeroplane until the target country is reached. The question was discussed several times with the Federal Ministry of the Interior at joint meetings, but not definitively clarified. An exchange with the National Office for the Prevention of Torture in Germany in 2014 strengthened the NPM's resolve to pursue this matter more intensively since the German prevention mechanism was able to report on interesting experiences when accompanying forced return flights.

Expertise of Human Rights
Advisory Council

First, the Human Rights Advisory Council determined that, during forced returns, an aeroplane should be considered a "place of deprivation of liberty" within the meaning of Article 148a (3) (1) of the Austrian Federal Constitution and Section 11 (1) of the Ombudsman Act. This assessment is supported not only by the materials relating to the 2012 amendment to the Federal Constitution but also by the legal opinion of the UN Subcommittee on the Prevention of Torture (SPT), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Union Agency for Fundamental Rights (FRA). The CPT monitors such flights itself. According to the SPT, the term "place of deprivation of liberty" used in Article 4 of the OPCAT is to be interpreted broadly within the meaning of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It should be mentioned that the NPMs in other countries also monitor (forced) returns by air.

Aeroplanes as a place of
deprivation of liberty

Regarding whether and, if so, to what extent escorting law enforcement officers are authorised to exercise administrative power and coercive acts on aeroplanes during (forced) returns, the Human Rights Advisory Council uses the wording of Article 148a (3) (2) of the Federal Constitution as its starting point. According to that document, it is sufficient that these officers are inherently authorised to exercise administrative power and coercive acts. This means that every official deployment of police officers can be a potential object of observation under Article 148a (3) (2) of the Federal Constitution. This is also the case if a public security officer acts in an unlawful manner towards foreigners being deported during a flight. This was also the legal opinion of the Austrian Constitutional Court in connection with the death of a person being detained pending forced return, Marcus Omofuma, in the aeroplane during his return.

Authorisation of law
enforcement officers

In the opinion of the Human Rights Advisory Council, neither the organisation of the flight (e.g. scheduled flight, charter flight or Joint Return Operation organised by Frontex)

nor the country in which the aeroplane is registered is the decisive factor. It must also be concluded that pilots have no right to perform sovereign acts under the Aviation Act (*Luftfahrtgesetz*).

Discussion with the Ministry
of the Interior

After it was determined that aeroplanes are under the mandate of Article 148a (3) of the Federal Constitution also during flights and that commissions can therefore accompany flights and make observations, there was a discussion in autumn 2015 between the representatives of the Federal Ministry of the Interior and the NPM regarding the procedures for such observations by the NPM.

Some questions – such as timely notification of the NPM regarding planned flights – could be immediately clarified by the Federal Ministry of the Interior. In connection with the planned amendment to the Law Enforcement Bodies Act, a new decree will regulate participation and observation by the NPM during (forced) returns by land and air. Further details must still be clarified.

Human rights observers during forced returns

The implementing regulation to the Aliens' Police Act requires the Federal Ministry of the Interior to deploy a human rights observer from the time of the contact meeting until arrival in the country of origin. The observation report is to be sent to the Federal Ministry of the Interior. The question of which non-governmental organisations will observe (forced) returns as human rights observers in the future was unanswered for a long time. A decision has now been made.

The investigative proceedings initiated *ex-officio* in 2012 explored two topics: the first was whether other NGOs besides the Association of Human Rights Austria (*Verein Menschenrechte Österreich*) could provide human rights observers for (forced) returns, especially by air. The second topic was the conflict of roles for the Association of Human Rights Austria between interpreting activities and activities as return counsellors. The conflict of roles was already described and criticised in the Annual Report 2014 (see NPM Report 2014, p. 140).

It was unclear for a long time, which NGOs would provide human rights observers for (forced) returns. Non-governmental organisations criticised that the Association of Human Rights Austria held a kind of monopolistic position and that a broader dispersion of this task was desirable. According to the Federal Ministry of the Interior, the search for NGOs willing to cooperate was difficult and time-consuming. Several meetings had been held with various NGOs.

Finally, the Ministry and the International Centre for Migration Policy Development (ICMPD – an international organisation in the area of migration – worked on a project called “Forced Return Monitoring (FRoM)”, which was completed in 2015.

Under this project, employees of the Association of Human Rights Austria and the Association for Human Life (*Verein Menschen-Leben*) were trained as human rights observers. These persons will be assigned the tasks of monitoring human rights in the future.

Two NGOs will provide human rights observers in the future

This question is to be distinguished from the legal question of whether the NPM may also accompany such flights to observe possible acts of direct administrative power and coercive measures on board the aeroplane. Thanks to the expertise of the Human Rights Advisory Council, this question could be clarified in the affirmative in this reporting year. However, it is to be understood that the NPM does not act on behalf of the Federal Ministry of the Interior within the meaning of Section 10 of the implementing regulation to the Aliens' Police Act during these deployments.

(Forced) returns

As in the previous year, the commissions again criticised the interpreting activities of the Association of Human Rights Austria in this reporting year. In some cases, the commissions observed poor translations by employees of the Association of Human Rights Austria. In other cases, they attempted to convince persons being deported of the necessity of the (forced) return. Since the Association of Human Rights Austria is an organisation that offers return counselling, its interpreting activities continually result in role conflicts so that the objectivity of its interpreting activities cannot be guaranteed (see NPM Report 2014, p. 140 et seq.)

Role conflicts of the Association of Human Rights Austria

In one case, the commission could only examine medical documentation after a lengthy delay. The Federal Ministry of the Interior regretted this delay and referred the police officers to the applicable decree stating that commission members have the right to examine the medical data of detained persons.

Delayed examination of medical data

In addition, the NPM criticised the fact that too little consideration is paid to the best interest of children at the time of a return. A flight departure time of 7:00 a.m. means that children must be awakened at 3:30 a.m., which means that the child's healthy sleep rhythm will be disturbed, particularly with small children. The Ministry then stated that the Federal Office for Immigration and Asylum will endeavour to avoid returns of children in the early morning hours in the future.

Impairment of the best interest of children

During the same return the commission also complained that a commanding officer had intentionally given a woman and her children false information. He told the woman that her husband was already in Poland and that she should therefore not defend against the planned return. However, at that time, the guard commander was aware that the husband of the affected person had been admitted to Otto Wagner Hospital complaining of a back problem.

False information provided to persons being returned

Since the Federal Ministry of the Interior did not address this allegation in its first statement, the NPM urged it to respond. Thereafter, the Ministry informed the NPM that the commanding officer could no longer remember because the incident had occurred

some time ago. In this regard, the NPM criticised, above all, the manner in which the Federal Ministry of the Interior handles criticism from the NPM. First it does not address the criticism from the NPM at all. Then, if it is an urgent case, the Ministry indicates that it cannot verify the allegation due to the lengthy period of time that has passed. If complete information had been provided at the outset, this prolonged and ultimately unfruitful process would not have been necessary.

Separation of families

In another case, as in the preceding reporting year, the NPM complained that the separation of a family in the course of a planned return to Hungary had at least been accepted. On the first attempt, the family could not be placed in detention pending forced return because they were away visiting relatives and could not be found at their dwelling place. On the second attempt, the husband could not be found. The mother and children were ultimately placed in detention pending forced return without the husband and father and were supposed to be handed over to Hungarian authorities four hours later.

Since the husband could not be found at his dwelling place on two occasions, the authority assumed that the husband wished to avoid return. In the opinion of the Federal Ministry of the Interior, this justified the return of the wife and children without the husband and father of the children.

No weighing of interest in accordance with Article 8 of the ECHR

The NPM did not assume that the father had gone into hiding or intentionally sought to prevent his forced return. The Federal Ministry of the Interior did not weigh the interests as required by Article 8 of the ECHR. The planned return was ultimately not carried out since the schedule for the return could not be adhered to despite the efforts of the Federal Ministry of the Interior.

Forcible implementation of a return

Another observation related to a husband who was to be returned to Poland with his family. In the course of the forced return, the family refused to board the aeroplane, whereupon the husband was restrained and handcuffed. In the course of this action, he collapsed due to an existing back problem. The children became very agitated and ran around aimlessly. These scenes were observed by an independent witness, who provided the NPM with his observations to be recorded.

In this regard, the NPM, inter alia, made reference to two recommendations of the former Human Rights Advisory Board at the Federal Ministry of the Interior stating that, from the standpoint of proportionality, the interests in carrying out an official act should be weighed against the risks in the specific situation – particularly if coercion is going to be used. In the individual case, this weighing of interests can result in halting the official act, postponing it to a later time or even cancelling it. In another recommendation, the former Human Rights Advisory Board at the Federal Ministry of the Interior stated that, at every stage of a forced return, it should be determined whether human rights issues have arisen that make a continuation of the forced return seem inappropriate.

Resistance despite the fact that the official act has been cancelled?

In its comments, the Federal Ministry of the Interior replied that the man was only restrained to prevent him from fleeing and to return him to the vehicle, but not to carry out the return. Accordingly, the recommendations of the former Human Rights Advisory

Board did not apply. The affected person strongly resisted while lying on the ground. Moreover, he had been informed that the return had been cancelled. In the opinion of the Federal Ministry of the Interior, the children were not in a panic but ran away on command.

It was difficult for the NPM to believe that the affected person resisted after being informed that the return had been cancelled. The assertion that the children ran away on command was not consistent with the commission's record and the statements of the independent witness.

Six days later, the commission observed a new attempt to effectuate this return. On the way to the bus that was to take him and his family to Poland, the man's crutches were taken away from him because they were the property of Mödling Hospital. Moreover, the affected person was placed in body cuffs, which remained on him during the entire trip. The Austrian authorities failed to inform the Polish authorities of the need for crutches. The Federal Ministry of the Interior regretted this error.

Contrary to the opinion of the Federal Ministry of the Interior, the NPM believes that the man was never a danger to himself or others due to his poor physical condition. Therefore, the restraining straps should have been removed from the affected person during the trip to Poland.

Was restraint necessary?

In the same case, the question of voluntary returns to the country of origin arose. While the wife told the commission that she and her family would have preferred to voluntarily return to Poland, the authorities had no knowledge of the fact that the family wished to voluntarily return to their homeland, according to the Federal Ministry of the Interior.

Voluntary return versus (forced) return

The NPM takes note of the frequent difficulties in communication between affected persons, the Association of Human Rights Austria and the Federal Ministry of the Interior with respect to the question of voluntary return to the home country. Therefore, the NPM recommended to the Federal Ministry of the Interior already in 2013 that it should define guidelines so that guidance can be given to persons who wish to voluntarily return to their home countries. These guidelines, which must be communicated to the affected persons, should clearly state by what date and at what office or organisation an appropriate application for voluntary return should be filed.

- Separating families should be avoided during (forced) returns.
- Professional interpreters should be made available during (forced) returns.
- Special consideration should be given to the best interest of children during (forced) returns.
- The interests in carrying out a (forced) return – particularly if coercion is used – and the resulting risks must be in a reasonable relationship to each other.
- In every stage of the action, it should be determined whether human rights aspects have arisen that make continuation of the procedure seem inappropriate.

- Guidelines for voluntary returns must be prepared to provide guidance to persons who wish to voluntarily return to their home countries.

Notifying the NPM of upcoming operations

There has been a discernible improvement in comparison to past years in notifying the NPM regarding upcoming operations. Nevertheless, the commission responsible for southern Lower Austria and Burgenland stated that it is rarely notified of (forced) returns. The Federal Ministry of the Interior gave its assurance that an examination would be made. The commission for Tirol and Vorarlberg also found that there were differences in compliance with the notification obligation. The Vorarlberg police authorities give full and timely notification as a rule, but notification by the Tyrolean police authorities is sometimes late or not given at all. Any systemic deficiencies should be eliminated since only timely notice enables the commission to observe the police operation.

Failure to notify the NPM

In two cases, the competent commissions were not notified of the postponement of an operation and the earlier rescheduling of a contact meeting in the course of a forced return. In both cases, these failures were the consequence of a misunderstanding or a series of unfortunate misunderstandings, in the opinion of the Federal Ministry of the Interior. The officers involved have already been sensitised. In its reply, the NPM stated that it hoped these misunderstandings would remain isolated cases. Whether there are structural defects, such as a lack of information or sensitisation of employees regarding the tasks and competencies of the NPM, must be examined if there are further incidents.

Late notification of the NPM

The NPM criticised late notification of the competent commission regarding an eviction from a house in Vienna. At a prior meeting between members of the commission and representatives of the Vienna police department, it was agreed that the commission would be sent the order dated 24 July 2014 regarding an upcoming eviction from a building on 26 July 2014 or 27 July 2014. In fact, the authority order was not sent to the commission until 28 July 2014, the day of the eviction. The result of the belated notice was that the commission arrived too late and could only observe part of the eviction.

In this regard, the NPM referred the Federal Ministry of the Interior to the decree relating to notification of the NPM regarding upcoming operations (“notification decree”) and demanded that orders by authorities be sent to the commissions as soon as possible so that they will have an actual opportunity to participate.

- Only timely notification of the NPM regarding upcoming operations enables observation by the commissions and compliance with the NPM’s mandate.
- Sensitisation of officers to the competencies and authority of the NPM and the “notification decree” is desirable.

Deployment of suitable employees for monitoring and control activities

In two cases, the NPM criticised the lack of suitable employees to carry out an official act. For example, during monitoring and control activities in the area of prostitution and sex work, women are often encountered who may also be victims of human trafficking. Female officers should always participate in these official actions to win the confidence of the women being controlled and to clarify uncertainties.

In one case, no female officer participated in a control operation in the area of street prostitution, although this would have been feasible and reasonable. In its comments, the Federal Ministry of the Interior stated that it would take the recommendation of the NPM regarding the participation of female officers in such operations into account in the future.

Street prostitution

In another case, when controlling red light districts, the officers did not determine whether the sex workers there may have been victims of human trafficking. Since no interpreters were brought along, not much was said to the sex workers. Therefore, it was difficult to identify any victims of human trafficking. In the opinion of the commission, the employees were not aware of the problem. The NPM expressed the hope that an intensive analysis of the topic of human trafficking by the Federal Ministry of the Interior would lead to increased sensitisation of its employees in the future.

Sex workers in red light district - human trafficking

- Female officers should always be part of the operations team during monitoring and control activities with respect to street prostitution and red light districts.
- The persons in charge of the operations and the employees must be sensitised regarding the identification of victims of human trafficking.

Demonstrations

The competent commission observed the PEGIDA demonstration and counter-demonstration in Linz in the spring of this reporting year.

After the officially sanctioned segment of the counter-demonstration had ended its rally, a large number of counter-demonstrators attempted to disrupt the PEGIDA demonstration. Due to the heated atmosphere, the task force attempted to calm the situation and prevent an escalation. Therefore, the officer-in-charge informed the counter-demonstrators that their behaviour was unlawful and that they should let the PEGIDA demonstration proceed. However, the measures taken by the counter-demonstrators ultimately caused the PEGIDA demonstration to be stopped early.

PEGIDA demonstration in Linz

In this regard, the NPM's criticism was that the authority should have issued a prohibition under Section 13 of the Assembly Act (*Versammlungsgesetz*) to protect the constitutionally guaranteed rights of assembly and free speech. The NPM cannot judge whether the dissolution of the counter-demonstration would have met the proportionality test in this particular case. However, if there had been a larger police presence, it would have been

possible to clear the area. Based on past experiences in Vienna, the authorities and the task force should have expected and prepared for numerous and, at times, potentially violent counter-demonstrators.

PEGIDA demonstration in Vienna The commission was very positive about its observations of the PEGIDA demonstration in Vienna. The demonstration was very orderly and the interventions made by police officers were reasonable and deescalated the situation. The officers determined the identities of persons properly and quickly. The commission also observed that conversations between WEGA employees and demonstrators deescalated the situation, as the NPM regularly advocates.

Supporting staff Once again the NPM was critical of the fact that the head of one commission, who wished to observe a restraint action, was prevented from doing so by police officers, even though he was wearing the identity card of the NPM on his body so that it was clearly visible. In its comments, the Federal Ministry of the Interior stated that the helmeted police officer initially did not recognise the head of the commission as such. The Federal Ministry of the Interior added that, if the supporting staff provided by the police department of Vienna had been deployed, the incident could have been avoided.

The commissions can decide whether to call on supporting staff on a case-by-case basis. There are surely situations in which the authority's offer makes sense. However, being permanently accompanied by supporting staff is inconsistent with the system of preventive control. Moreover, permanent support is not feasible since the commissions generally divide into small groups and it is often not clear in advance how many small groups will be formed.

Demonstrations against den Academics Ball As in previous years, several delegations observed the demonstrations against the Vienna Academics Ball, which is held every year at the Vienna Hofburg at the end of January. The NPM noted a positive development this year. In contrast to the previous year, the police were well-prepared in 2015. They noticeably improved tactical communication. The Federal Ministry of the Interior stated that the Ministry and the police department of Vienna now strive for active and open communication among all participants when there are large operations. A concept has been developed which includes communication not only with the advertisers at the rallies and the organisers of the events and the demonstrators, but also comprises providing information to the public and the media. Meetings are held in advance, e.g. with youth organisations. The social media platform Twitter was also used for the first time.

The criticisms voiced by the NPM were not nearly as serious as in previous years and raise the hope that there has been a change of strategy. Apparently, the strategic analysis of the less-than-optimal police operation in 2014 made sense and was expedient in implementing the police operation in 2015. The Federal Ministry of the Interior expressed its understanding of many points of criticism (addressing persons disrespectfully, delay in the removal of handcuffs, a lack of notification to pedestrians of any barriers) and promised additional efforts to improve the course of future operations. Ongoing observation and participation by the commissions in operations will show whether permanent structural improvements have been made.

There were problems with detainees who were restrained with cable ties because these restraints could not be loosened for a long time and only after many attempts. As a result of this criticism, the Federal Ministry of the Interior announced that side-cutting pliers will be brought along in the future to cut cable ties.

The NPM criticised that some ball attendees were brought to the ball by the police in police vehicles. In the opinion of the NPM, it is the task of the police to enable ball attendees to arrive safely, but not to transport them.

- The 3 D strategy and the communication strategy should be continued and implemented on an ongoing basis.

2.7.3 Individual cases

Visit to GERKO Schwechat

In 2012 a commission visited the GREKO detention rooms at Vienna International Airport Schwechat and discovered defects and potential hazards, such as a large metal hook that jutted out from the wall and a metal trash can with sharp edges. Moreover, no daylight entered the detention rooms, and there was no call bell to contact the guards if necessary.

Dangerous detention rooms

The potential hazards were promptly eliminated. With other defects, a joint effort with the airport was necessary, which took a long period of time.

In April of this year, the NPM was informed that most of the defects had been eliminated. The remaining structural changes that had to be made would be undertaken within the next few months. The commission will monitor the implementation of the adaptation measures in a follow-up visit.

Elimination of defects

Compensatory monitoring measures

In January of the reporting year, before the high numbers of refugees coming to and through Austria, a commission observed that, in the course of a compensatory monitoring measure, persons who were not entitled to stay in Austria were being required to leave the train at the main train station in Vienna.

Despite the very cold temperatures in January 2015, the persons detained had to wait 20 minutes in the open until a means of transportation was available to bring them to the police detention centre.

The NPM criticised the long waiting time and proposed that arrangements for a means of transportation be already made while on the train in order to shorten the waiting time at the train station. In addition, it was proposed that a heated room be made available

Detained persons not to be „put on display“

at the main train station so that the persons detained can pass the time until they are picked up in a warm place and be shielded from the glances of curious onlookers.

- Transportation for refugees must be arranged in a timely manner to avoid stays in the train station's main hall.
- A heated room at the Vienna main train station should be set up for compensatory monitoring and control activities

2.7.4 Positive observations

The commissions observe many demonstrations, raids, events, football games and forced returns within the scope of their competencies. As in the reports of previous years, the commissions also reported positive findings in 2015.

Football games and targeted campaigns

At almost all football games and targeted campaigns, the police officers conducted themselves in a highly professional manner. At the great Vienna Derby and the European Cup match between Rapid Vienna and Ajax Amsterdam, the police acted appropriately and deescalated the situation. When persons were detained, the officers' treatment of the detainees was consistently correct.

Improvements with respect to demonstrations

At many demonstrations, the police prevented demonstrators and counter-demonstrators from meeting by changing the march route on short notice. At the same time, the police attempted to avoid escalation by applying the 3 D strategy used so successfully during EURO 08 (Dialogue – De-escalation – Drastic Measures). Potential troublemakers were expelled. The police accompanied the demonstration in a loose formation without shields and helmets at a generous distance from the protest march. This tactic allowed the demonstrations to proceed smoothly. In comparison to the previous year, police loudspeaker announcements were more audible, e.g. when the crowd was being encircled.

Targeted campaigns, e.g. with respect to labour exploitation, prostitution or monitoring and control activities by aliens authorities, were regularly given a positive assessment by the commissions, and the NPM always informed the Federal Ministry of the Interior of this in writing.

The commissions also gave positive feedback to the relevant employees or their supervisors in the concluding meetings. In cases in which investigative proceedings were initiated, the NPM informed the Federal Ministry of the Interior of both positive and negative observations. On some observations, the conduct of several named employees was highlighted in a positive manner. The NPM also informed the Federal Ministry of the Interior of this.

IV. ANNEX I

Monitoring framework, methodology and further action by the Austrian NPM

I. Preamble

Under the Austrian Federal Constitution, the Austrian Ombudsman Board, together with its commissions, is vested with the responsibilities of a National Preventive Mechanism (NPM) in accordance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as with the monitoring and control of institutions, facilities and programmes in accordance with the UN Convention on the Rights of Persons with Disabilities, and with the monitoring and concomitant examining of authorities empowered to exercise direct administrative power and coercive measures.

II. Objectives and basic principles

The objective is to protect and promote human rights, including but not limited to the regular, nationwide and generally unannounced monitoring and control by the commissions of institutions and facilities where persons are or can be deprived of their liberty, as well as of institutions, facilities and programmes designed for persons with disabilities and of the exercise of coercive measures by authorities empowered by the State.

The benchmark for the fulfilment of the responsibilities of the NPM are all the standards and principles developed under the provisions of both international law and Austrian regulations to protect human rights.

The joint work of the NPM is based on the following guiding principles:

- “Quality before quantity”: The preventive activity of the NPM serves to protect against violations of and intrusions into human rights. “Prevention” is defined as measures and strategies to minimise risks and anticipatory action to protect human rights. Therefore, the improvement of general quality standards is not a central responsibility of monitoring and control activities. The focus on preventive monitoring and control to protect against violations of human rights determines the core activities of targeted, unannounced visits in selected facilities and institutions and of confidence-building communication on-site with persons in all roles.
- “Priorities and topics”: Fundamentally, the visits by the commissions are oriented towards concrete monitoring topics and priorities that are understood as guidelines rather than rigid rules. The size and composition of the visiting delegations are based on the defined monitoring focal points chosen by the commissions, as well as the

number and planned duration of these visits. Preserving the necessary flexibility, for example during general initial visits or in the event of unexpected impressions on-site, is reasonable and appropriate. It must be possible to maintain a free and unobstructed view of occurring tendencies and to react quickly and flexibly to acute situations.

- “Harmonised procedures”: The preparation, carrying out and follow-up of visits by the commissions is based on a jointly coordinated methodology. This is helpful for both, the delegation teams assembled from across the commissions and the further development of monitoring processes that can be compared across Austria. The intention is to counteract the obstacles and problems that arise from federal structures in similar types of institutions by way of monitoring procedures and assessment standards that are as uniform as possible Austria-wide, notwithstanding any necessary regional priorities.
- “Documentation”: The effectiveness of improvements or elimination of structural problems, which have been identified and detected, depends largely on factors such as specificity, traceability and the reliability of the source(s). The work is guided by the principle of delivering a simple and un-bureaucratic but also a substantive and fact-oriented documentation of the monitoring findings. It should enable an assessment based on human rights and it should comply with the international principles that have been developed for this type of documentation. Additionally, simple impressions and provisional assessments can subsequently have certain relevance, in particular for the definition of follow-up visits or monitoring priorities.
- “Communication”: The intensive and ongoing sharing of experience within the individual components of the NPM is of essential importance. Communication that is direct and based on trust promotes the joint work and makes it easier. Likewise, ongoing sharing of ideas and experience between the AOB and the commissions regarding the progress or the obstacles in their day-to-day work and in the political process is important; the AOB endeavours to participate in and to have the opportunity for discussions in all the regional governments.
- “Continuing education”: Ongoing information about international developments, offerings of special training and relevant specialist literature support the further development of joint monitoring and control activities, which must also be seen in the light of the high expectations directed towards the Austrian National Human Rights Institution – which is also the headquarters of the International Ombudsman Institute (IOI) – in terms of following and sharing “best practices”.
- “Advisory functions”: Interaction in the advisory process with the Human Rights Advisory Council, which is as target-oriented and efficient as possible, is a joint responsibility of the NPM. As consulting on the “definition of general monitoring priorities” and the submission of suggestions on “ensuring uniform procedures and investigative standards” are included in the area of competence of the Human Rights Advisory Council, this also supports the harmonisation of procedures.

III. Monitoring methodology

A uniform methodology for on-site monitoring procedures must be differentiated from the assessment standards of human rights-based evaluation. One is the process of gathering information, while the other is the evaluation of the matter itself. These two components cannot be separated from one another completely, as they are intertwined. Depending on the focus of the information gathering (e.g. deployment of private security companies in psychiatric clinics or provision of food during forced returns), different steps or monitoring tools are necessary. This is why process and evaluation cannot be isolated from one another. Ultimately, the process is the means to arrive at an evaluation.

Consequently and in accordance with the monitoring objectives, principles and standards, the procedure of the commissions in how the actual practice of their visits is structured in order to achieve an Austria-wide comparability of the human rights-based assessments in accordance with international standards, particularly in accordance with the “Analytical self-assessment tool for National Prevention Mechanisms” (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Twelfth Session, 6 February 2012, CAT/OP/1) and the “Guidelines on National Preventive Mechanisms” (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 2010, CAT/OP/12/5), is carried out according to the following pattern:

- Definition of a clear and well-demarcated monitoring priority or monitoring subject, as this is necessary both for the quality of the information gathering and in order to have the necessary space to be able to perceive any other problems that go beyond the original scope.
- Explanation of which (inter)national standards and statutory framework conditions exist in this regard.
- Development within the NPM as to which investigative steps must (in any case) be taken (e.g. interviews with certain persons, access to certain documentation, etc.). In the course of this process, it must also be considered how circumstances that are discovered can best be cross-checked
- The reports should show whether the agreed-upon investigative steps were undertaken or if not, why they were not possible.

IV. Further action

The visit reports conclude with a human rights-based assessment, which contains a recommendation directed towards the AOB on what action should be taken, as well as more detailed remarks. The commissions can additionally suggest that further investigations across multiple institutions and facilities be undertaken by the AOB. To the extent that it is not clear from the visit report that no further action is needed, the AOB confronts the highest body, which is responsible for the supervision and operation

of the facility and, if appropriate, also the owner and/or operator of the facility with the observations of the commission (consultation proceeding or confrontation proceeding). The heads of the commission are kept informed on an ongoing basis.

After the investigation has been concluded, the final assessment (evaluation) is sent to the highest responsible body. It can contain suggestions on how to remedy the deficiencies that were found or how to implement preventive measures. Upon recommendation by the head of the commission or by the AOB, a “recommendation in accordance with Article 148c of the Austrian Federal Constitution” is drafted in some cases or if prompted by a such certain case. In addition to a brief and anonymised description of the case and/or any observed maladministration and the human rights-based assessment, this recommendation contains a summary, which defines the human rights standard applied and indicates which measures should be taken by the responsible state authorities.

Subsequently, the draft recommendations are submitted to the Human Rights Advisory Council and after it has dealt with them in its advisory capacity, they are sent to the supreme administrative bodies. The addressee of the recommendation is obligated to comply with the NPM’s recommendation within a period of eight weeks and to notify the NPM thereof or to provide reasons in written form why the recommendation was not implemented. The disclosures on the website must contain this statement; if need be, in abridged form.

To the extent that the owners and/or operators of the monitored institutions and facilities are not local or regional authorities, their management bodies are informed in a suitable way of the NPM’s assessment, with Article 148c of the Austrian Federal Constitution being applied *mutatis mutandis*, and their competent state supervisory authority being notified. Once the recommendation has been adopted, its content is binding for the NPM (guiding principle). During follow-up visits, it must be ensured that the recommendation is complied with. On one hand, the guiding principles should help the commissions in preparing follow-up visits and on the other hand, they can be of assistance when generating visit reports. Thus, they not only identify human rights violations but also address the preventive character of the mandate.

IV. ANNEX II

List of recommendations by the Austrian Ombudsman Board and its commissions

I. Institutions and facilities

Infrastructural fixtures and fittings

Hospitals / Psychiatric institutions and facilities

- The configuration of the space and the organisational procedures in psychiatric institutions can contribute significantly to the prevention of violence and aggression.

Institutions and facilities operated by child and youth welfare authorities

- Facilities operated by child and youth welfare organisations must be fully accessible.

Police detention centres / police stations

- The toilet areas in the cells for multiple inmates must be structurally separated.
- Cells for multiple inmates without (fully) walled-in toilet areas may not house more than one inmate until they have been renovated.
- Social areas must be created for inmates serving an administrative penalty.
- Police detention centres must be cleaned regularly and at proper intervals.
- The showers must be checked regularly (particularly the direction in which the shower water sprays) and repaired, if necessary (replacement of shower heads).
- Inmates must be given daily access to restroom sinks with warm water connections.
- Police stations must be hygienic, well-kept and equipped with functioning heating systems.
- A permanently activated call bell system must be provided so that persons in police custody can always contact the guards.
- Police stations should be accessible barrier-free; the existing staged plan under the Federal Act on the Equal Treatment of Persons with Disabilities (Bundes-Behindertengleichstellungsgesetz) must be complied with. The approximately 300 police

stations not contained in this plan must be relocated by 31 December 2019, or another organisational solution must be found.

Barracks

- When barracks are retrofitted or when new barracks are built, military detention areas should be equipped with separate sanitary facilities in future.

Correctional institutions

- Structural adaptations so that correctional institutions are equipped to accommodate persons with disabilities should take priority.
- Forensic ward/psychiatric institutions: If six-person rooms cannot be separated structurally, setting up mobile partitions can increase privacy.
- Furnishing a three-person inmate cell with two bunk beds should be avoided due to the possible overcrowding of the cell.
- Specially secured cells, which are not in use due to their equipment and furnishings, should be rendered unusable. Finally, the room should be removed from the cell layout plan.
- In multiple inmate cells, inmates must be provided with storage lockers that can be locked.

Living conditions

Retirement and nursing homes

- Retirement and nursing homes are not an adequate living environment for young persons with disabilities.
- Unusual mealtimes and early bedtimes are an expression of structural violence and should be avoided. Evening activities for residents with dementia who suffer from insomnia and are restless are necessary.
- The wishes of the residents should be taken into consideration when mealtimes are scheduled; nutritional recommendations should be followed. According to these recommendations, when meals are being provided to a residential community, three main meals and two snacks are ideal. The time between meals should not be longer than five hours and the time between supper and breakfast should not be longer than twelve hours.

- Access to the outdoors once a day has to be ensured, in particular for residents with mobility impairments.
- The right to privacy must be maintained, both when providing care-related assistance and when configuring rooms with multiple occupants (visual barriers by way of screens, etc.).
- Comprehensive barrier-free accessibility has to be ensured.

Institutions and facilities for persons with disabilities

- Persons with disabilities have to be enabled to plan their everyday life according to their own personal needs and to participate in society. The concept of social space orientation (*Sozialraumorientierung*) should be used.
- For persons being cared for in institutions and facilities, self-advocacy must be ensured regardless of the kind of disability. Suitable support measures are necessary. Peer-to-peer sharing of information should be promoted.

Hospitals / psychiatric institutions and facilities

- Children and juveniles may not be housed and treated in adult psychiatric wards; according to the CPT, this is a violation of preventive human rights and professional standards.

Institutions and facilities operated by child and youth welfare authorities

- Placement of minors should be in close proximity to the parents' residence unless this is inadvisable for pedagogical reasons.
- House and group rules must be developed in a participatory process with the minors; children's parliaments and the like must be established in all institutions and facilities.
- Individual privacy must be enabled for minors as well; while staff should be able to open doors, it should be possible to lock them from the inside.

Correctional institutions

- Time and exercise outdoors makes inmates healthier and should be made possible for at least one hour each day, weather permitting. Especially older, fragile or sick persons must be enabled to spend time in the fresh air at regular intervals to maintain their health or promote recovery.

- To the extent possible, the religion of the inmates should be taken into consideration with regard to the selection of food.

Contact with the outside

Correctional institutions

- Tables that are too large prevent touching during visits and should therefore be replaced.

Educational, work-related and occupational activities

Institutions and facilities for persons with disabilities

- Integration into normal jobs should be adequately promoted and wages in day-care centres/occupational workshops must guarantee acquisition of entitlements under social insurance law.

Correctional institutions

- Inmates should not have to choose between work and the rights to which they are entitled, such as outdoor exercise.
- The expansion of employment opportunities for women must be accelerated. Women should have equal access to leisure-time activities.
- In particular, women should not be financially disadvantaged by the lack of employment opportunities
- The current practice of a learning platform, as offered in twelve correctional institutions, should be evaluated in the near future.
- A total ban on Internet access and computer use is inadmissible. Permanent steps must be taken to provide abuse-proof access to the Internet for continuing educational purposes.
- Correctional institutions must ensure that inmates who lack a primary school education receive the necessary instruction at the primary school level. In any case, an instruction opportunity should be provided if there is a large number of inmates to whom this applies.

Access to information within the facility

Police detention centres / police stations

- Repatriation counsellors cannot replace professional interpreters. Repatriation counselling and interpreting services must be provided by different persons.
- Prompt translation into 27 languages of the information in the “Infomat” for detainees awaiting forced returns in police detention centres and in the Vordernberg detention centre is necessary.

Correctional institutions

- Inmates should know the punishment they can expect for various forms of disruptive and abnormal behaviour. Providing this data to inmates is preventive in nature. This data should provide decision-makers with a background for establishing a uniform ruling practice.
- Information notices must be revised as soon as possible if there is a change in the law.
- Access to information does not only mean that information is provided. Information should be provided to the inmates in a language and vocabulary they can understand.

Complaint management

Institutions and facilities for persons with disabilities

- In all institutions and facilities, persons with disabilities must have an adequate opportunity to submit complaints.

Correctional institutions

- The establishment of a complaint register must be vigorously pursued.

Measures that restrict freedom

Retirement and nursing homes

- Care that is based on human dignity and human rights is unthinkable without the active protection of personal freedom. Therefore, this right to respect calls for institutions and facilities to rethink the use of measures that restrict freedom in their own practice and examine them self-critically on a regular basis.
- Measures that restrict freedom often become unnecessary after psychosocial

interventions, personal attention and consideration of individual needs.

- Equipment with the necessary materials for care in accordance with current standards as an alternative to measures that restrict freedom (low-profile beds, beds equipped with split side guards, bed alarm systems, sensor mats, etc.) have to be ensured.
- Any coercive measure is excessive if a suitable and more mild directive is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel.
- Restrictions of freedom by way of drugs are subject to control by the courts and must be reported by facility management to residents' representatives as part of enforcement of the rights of the individual.

Institutions and facilities for persons with disabilities

- Measures that restrict freedom, which are used to compensate a lack of barrier-free accessibility or space and personnel shortages, are without exception inadmissible and are an expression of structural violence.
- Psychosocial interventions and individual care are always preferable to isolation and measures that restrict freedom. Measures that restrict freedom ordered because patients are a threat to themselves or others must be both the least severe means of control and the last resort.
- Minors with learning disabilities or who are mentally ill may not be subjected to any age-atypical measures that restrict freedom. Just like adults, they are entitled to a review of these measures by the court.
- When measures that restrict freedom are used allegedly to protect patients against being a threat to themselves or others, particular care and a review of the alternatives is always necessary.
- The use of time-out rooms may not be the result of inadequate care, insufficient medical or psychiatric care or unsuitable settings and presumes a crisis intervention plan and de-escalation training for the staff; it is solely for the temporary protection of the person in question or other persons in the event of acute aggression against third parties and is not a permissible measure to discipline or sanction other abnormal behaviour; it should be as brief as possible, with constant observation and the opportunity for calming conversations; it must occur in an environment that is free of fear, stimulus-free and with no risk of injury; it must be documented and reported to the representative(s) of the residents as a measure to restrict freedom; it must be accompanied by observations and analyses of interaction that can show the interplay between the behaviour of the persons involved and actions/reactions of staff or other residents.

Hospitals / psychiatric institutions and facilities

- Operators of hospitals and psychiatric institutions must ensure – as far as personnel, concept and organisation are concerned – that there be as many graduated response possibilities with regard to intervention intensity as possible before coercive measures are used.
- De-escalation management and work on the prevention of multi-dimensional violence and falling help to prevent measures that restrict freedom.
- Consensus-based treatment agreements can reduce the frequency and duration of coercive measures.
- Restraints and isolation are not therapeutic interventions but purely security measures that are used when a therapeutic approach is not possible. If their use appears to be unavoidable, it is necessary to maintain human dignity and guarantee legal certainty. Interventions must be kept as short and as non-intrusive as possible.
- Any coercive measure is excessive if a suitable and more mild directive is sufficient to achieve the desired level of success. Interference with the right to personal freedom and other personal rights may not be more dramatic than is necessary with regard to substance, space, time and personnel.
- If restraints are used as a last resort, they may not be perceived by the persons affected as a threat, nor may the way that the restraint process was undertaken increase feelings of powerlessness and fear.
- Placement of patients in beds set up in hallways accompanied by the use of restraints is an unacceptable violation of their human dignity and their fundamental personal rights. Restraint of patients must take place out of sight of third parties; use of restraints can be used only with constant and direct supervision in the form of a watch by an attendant. Restraining straps on beds may not be constantly visible.
- After they have been restrained, patients must be supervised 1:1 “constantly, directly and personally” as the CPT has been demanding for years.
- In implementation of a recommendation by the CPT, a central register must be set up in all psychiatric hospitals and wards to record the cases when measures to restrict freedom of movement were used in order to be able to evaluate their use and frequency without consulting patient records.
- Restraint persisting over several days is extremely alarming from a human rights perspective and should fundamentally be avoided. In special cases, seamless documentation and monitoring must be ensured.

Police detention centres / police stations

- A stay in a lockable inmate cell is only voluntary if there is no doubt that the affected person is aware that his stay is voluntary.
- Detention at police stations must be seamlessly documented to ensure that the deprivation of liberty is verifiable.
- Under the detention regulations, the reason for placing an inmate in a specially secured cell must be documented in each individual case.

Correctional institutions

- Task force trainings may not cause longer lock-up times.
- Forensic ward/psychiatric institutions: Strapping a patient to a hospital bed is only permitted when it is absolutely necessary due to the progression of the disease. The external conditions accompanying the restraint may not be frightening to the person affected. During the period of restraint, this type of detention must be continually questioned. The form on “Restrictions on the freedom of movement”, recommended by the NPM, must be prepared.
- A potentially suicidal inmate may not be housed in a single cell. Video monitoring does not rule out suicide by the persons at risk during an unobserved moment.

Security measures

Institutions and facilities operated by child and youth welfare authorities

- Upbringing that is free of violence must be fully ensured for all minors.
- The imposition of group punishment is inadmissible.
- Pedagogical consequences as a reaction to disruptive or abnormal behaviour should not be excessive or humiliating.

Correctional institutions

- Saliva tests should replace urine tests because they are less intrusive by nature. All institutions should make saliva tests available as soon as possible.
- If the Federal Ministry of Justice assigns persons in detention to a public psychiatric facility, the Ministry is responsible for deficits in their infrastructure. If the Federal Ministry of Justice cannot ensure that these deficits are remedied, the persons affected must be housed in a facility run by the Federal Ministry of Justice itself.
- A condescending and insulting tone is an affront to human dignity.

Health care

Retirement and nursing homes

- Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls.
- It must be ensured that persons in facilities for the elderly can freely choose their doctors.
- Care by specialists must be ensured without restrictions.
- Before medications are prescribed, the type, extent, implementation, expected consequences/side effects and risks of the drug treatment must be explained to the persons affected and their informed consent must be obtained. It is not admissible to administer medications unobtrusively with food without obtaining informed consent from the persons affected.
- Administering medicines/drugs is fundamentally the job of doctors that can be delegated to qualified nursing staff within the scope of a field of activity for which they are jointly responsible, provided that the amount, dose, and type and time of administration is noted in written form in the patients' charts by the doctors authorised to issue prescriptions.
- PRN medication is permitted in individual cases if the criteria for the assessment of timing and dose of the medication to be administered is unambiguous, beyond any doubt and verifiable according to the doctor's instructions, without the nursing staff making inadmissible diagnostic or therapeutic decisions at their own discretion that exceed their competence.

Hospitals / psychiatric institutions and facilities

- Prevention of falls: When being admitted to hospital, all patients should be observed and questioned with regard to fall risk factors. There should be regular analyses in each ward with regard to frequent reasons for falls in order to minimise risks (damp or slippery floors, poor lighting, lack of grab bars, high steps, etc.). A multi-professional team should plan measures, distribute information and implement therapeutic interventions.
- Orientation training, exercises, investing in low-profile beds, bed, chair and floor mat alarms, individually adjusted hip protectors, visual aids, grab bars in hallways, etc. contribute to the prevention of falls.

Institutions and facilities operated by child and youth welfare authorities

- Particular caution is necessary with regard to drugs being used off-label.
- PRN medication may not be administered by pedagogic staff.

Police detention centres / police stations

- An interpreter or a bilingual person must be deployed when conducting a medical examination of a non-German-speaking detainee.
- Information regarding the deployment of an interpreter or a bilingual person must be documented in the detention logs.
- Every inmate must be provided with the medical case history sheet in his or her native language regardless of any knowledge of German.
- A guideline must be developed, which takes the healthcare of inebriated, substance-impaired, mentally ill persons and persons who are a danger to themselves into account.
- Medical examinations must be verifiably documented without any contradictions.
- Medications may only be administered by trained personnel under a doctor's supervision.

Correctional institutions

- Preventive examinations are part of standard medical care.
- Psychiatric and psychological care is part of health care and, as such, must be ensured by the institutions.
- Regular visits, in particular, should help prevent the physical and emotional neglect of long-time inmates.
- A provision on who can dispense and administer what medicines to inmates and when must be developed.
- Anomalies in the prescription of psychiatric drugs can be quickly detected with the aid of the "Medication Management" control module. The monthly reports are to be screened for prescription practices.
- Inmates are entitled to the same level of medical care as persons at liberty. Deploying an interpreter during medical care is absolutely necessary.

Personnel

Retirement and nursing homes

- Staff resources, especially during the night shift, must be adequate enough to guarantee the safety of the residents. Care personnel must be able to undertake unforeseen assistance and care promptly, recognise emergencies early on and hear calls for help.
- In order to maintain and improve the working capability of personnel, it is necessary to have professional psychological supervision that takes place during working hours with external supervisors who can select the care teams. This improves psychological hygiene and helps to prevent burnout, bullying/harassment and violence.

Hospitals / psychiatric institutions and facilities

- Inclusion and participation of private security personnel in patient care is inadmissible and may not occur. Concomitant arrangements are necessary to maintain patients' personal rights and to enable measures to ensure staff safety.

Institutions and facilities operated by child and youth welfare authorities

- In addition to basic training, socio-pedagogic staff must have special competence in dealing with violence in crisis situations. Mandatory training and continuing education on this subject, the inclusion of violence prevention in institutional models and codes of practice, as well as the appointment of a violence protection specialist are absolutely necessary preventive measures to prevent violence.

Police detention centres / police stations

- All activities engaged in and measures taken by private security personnel at the Vordernberg detention centre should be documented.

Correctional institutions

- Efforts to find an amicable solution with respect to personnel matters may not be so protracted that there is an adverse impact on the interests of inmates.
- The night shift in the juvenile department should only be staffed with juvenile department employees.
- The judiciary administration should make a targeted search for suitable employees for the detention of juvenile offenders. Such employees should be offered attractive working conditions after completing the relevant training.

- Having to deal with suicides often leads to stress disorders long afterwards, which should be minimised through measures taken by the employer.
- The judiciary administration must make every effort to ensure that seeking psychotherapeutic care is not viewed as a weakness.
- Sexual harassment is an affront to human dignity. Derogatory or hurtful statements and depictions are also unacceptable and therefore must be avoided.
- The employer must ensure that the sexual autonomy, sexual integrity and privacy of employees are not endangered. Therefore, the employer must ensure that no pictures of naked women are hung in staff rooms.

II. Returns and release of detainees

Forced returns / returns

- Separating families during (forced) returns should be avoided.
- It is helpful to deploy additional female officials when deporting families with children.
- In the case of women who are pregnant, this official act should not take place in the period between eight weeks prior to the expected date of delivery and eight weeks after childbirth.
- A psychiatric report and/or psychological preparation can prevent difficult situations.
- If a person is fearful of flying, there should be a medical report, including the prescribed medicines.
- A sufficient amount of baby food must be made available. It must be made possible for the mother to breastfeed the baby without disruptions.
- Good conduct of interviews with due regard for the situation should be standardised.
- Professional interpreters should be used during (forced) returns.
- Requests for voluntary departure should always be given priority so that coercive measures can be avoided.
- Release after termination of detention pending forced return and – if intended – placement with a support organisation should be made without delay.

III. Exercise of direct administrative power and compulsion

- Demonstrations: When the police encircle a crowd, the persons in the crowd must be given clearly audible information.
- Demonstrations: Encirclement should be for as short a time as possible.
- Demonstrations: Identifications must be processed as quickly as possible. An adequate number of computers is necessary for this.
- Demonstrations: The successful “3 D strategy” (Dialogue – De-escalation – Drastic Measures) should be retained and further developed.
- Compensatory measures in border areas: Interpreters must always be available.
- Compensatory measures in border areas: The initial questioning of traumatised persons, who are often picked up during compensatory measures (asylum seekers, victims of human trafficking) must be done by professionals.
- Compensatory measures in border areas: Quick clarification regarding the reason for and the sequence of the official act is absolutely necessary to avoid uncertainty.

IV. General recommendations

Retirement and nursing homes

- Implementation of insights based on health care science and the application of important assessment instruments, including from the perspective of preventive and human rights monitoring – e.g. for risk assessment in connection with fall prevention, pain, hygiene, malnutrition, skin damage – requires a reorientation and professionalisation of care.
- More specific education of doctors with regard to treatment of elderly patients with drugs is necessary.
- Research is needed with regard to drug safety for the very elderly both in and outside of stationary long-term care.
- When safe and humane care cannot be guaranteed, the residents must be transferred to another facility. Supervisory authorities are called upon to act quickly.

Institutions and facilities for persons with disabilities

- After the official country review of Austria within the scope of the UN Convention on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities recommended that Austria should undertake additional measures to “protect women, men, girls and boys with disabilities against exploitation, violence and abuse”. The NPM also calls for this.
- Dismantling large-scale institutions and a consistent reorientation toward aid in the form of personal assistance and offerings within the socio-spatial sphere is the core piece of disability policies that conform to human rights principles.
- Employment of persons with disabilities in sheltered workshops in their current legal and factual configuration does not comply with the provisions of UN CRPD, especially with Section 27 “Work and employment”, specifically but not exclusively because the persons with disabilities who work in these workshops are – without exception – not considered employees under labour law by the Austrian legal system and are not covered by any independent social insurance from this employment (except for statutory accident insurance). The ability of all persons with disabilities, who are currently employed in (sheltered) workshops, of earning a living should be guaranteed regardless of their individual performance capability and apart from the current social welfare or minimum benefit system.
- More complex conditions and multiple disabilities often require specially optimised care. This must not be a question of resources. The development of the personality in children and juveniles with major mental or physical disabilities depends in large part on whether and how they are supported in perceiving their environment, grasping it in the truest sense of the word and being able to explore it themselves.
- When persons with disabilities are limited by structural inadequacies, a lack of comprehensive accessibility, inadequate staffing during day or night shifts, poorly adjusted aids or insufficient advancement of mental or practical capabilities, the social development of these persons is hampered in an inadmissible way.
- It is an intrinsic quality of large-scale institutions that the basic attitude vis-à-vis persons with disabilities is primarily protective rather than an attitude that is based on resources and strengths. But also personal contacts and supportive relationships that might be possible in the vicinity are – at the very least – made more difficult when residents are transferred to homes that are further away. As a result of the size of the facilities, the way that individual needs and wishes are addressed becomes inferior. Increased efforts to drive deinstitutionalisation forward are necessary. Comprehensive overall concepts are lacking and must be developed.
- Care home agreements in written form for persons with disabilities are obligatory. Agreements must be simply and comprehensibly worded. The persons involved must be able to understand and follow the content.

Hospitals / psychiatric institutions and facilities

- The guiding criteria for professional action must be the principles of voluntary action, (assisted) self-determination, participative decision-making and intensive care and occupational activity – if necessary during acute crises at a ratio of 1:1. This requires resources, patience and personal attention, equal footing between staff and patient, respectful attitude vis-à-vis individual life patterns, as well as ongoing qualification of staff in dealing with crisis situations, violence and aggression.
- Aspects such as communication, information and transparency of action while maintaining privacy and self-determination are highly important, especially vis-à-vis people who are ill. Gender-specific issues and vulnerabilities always require particular attention.
- De-escalation can take place at various different levels. It begins with prevention of aggression, in a conversation that seeks to calm an agitated patient and then ranging from conflict resolution without losers to restraints, which must be used with the least invasive impact on the patient while maintaining the patient's dignity.
- When the use of net beds is discontinued, alternatives to measures restricting freedom must be considered and realised.
- Availability of psychiatric care must be planned in a forward-looking way and flexibly adjusted to the regional conditions.
- Residential and rehabilitation possibilities for persons with chronic mental disorders must be expanded; they would prevent some effects requiring hospitalisation.
- More training possibilities for specialists in the child and adolescent psychiatry speciality field are urgently needed.

Institutions and facilities operated by child and youth welfare authorities

- Assistance opportunities must be individualised, including within the framework of full residential care (*Volle Erziehung*) in institutions and facilities.
- Scientifically-based plans to assist children and juveniles by the *Laender* must include care deficits and measures to remedy them.
- Laws governing occupations and professions and the training of social pedagogues should be standardised Austria-wide (agreement under Section 15a of the Austrian Federal Constitution)
- Sex education and prevention of violence and sexual assault are indispensable. Effective prevention must teach the different types of boundary violations and encourage children and juveniles to get help, to insist on their right to physical and sexual self-determination and to critically question gender role stereotypes.

- The legal entitlement to assistance by young adults should be embedded in legislation and case management should be improved.
- The differentiation between children and juveniles under full residential care both under and outside of reception conditions under the Basic Provision Agreement contradicts the UN Convention on the Rights of the Child and must therefore be rejected. Unaccompanied minor refugees (UMRs) are subject to the full protection of the operator of child and youth welfare organisations and are entitled to care that is appropriate to their needs and is based on the latest developments in pedagogy. Occupation and recreational opportunities in UMR facilities must be expanded. More budget resources from funds provided under the reception conditions are needed to make psychosocial care and integration easier. Uniform minimum standards across Austria for UMR care are necessary.
- All *Laender* must fulfil their care responsibilities themselves by way of suitable institutions and facilities, in order to avoid breakdowns of relationships that do not support the welfare of the children.
- The structures in homes hamper work in accordance with the insights that social pedagogy provides. The effect of negative group dynamics can be much stronger than that of pedagogical and therapeutic social and conflict training or additional mechanisms that are supposed to support development of the personality, behavioural changes, as well as school and occupational integration. Smaller regional “family-style” care facilities should replace large homes.

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The unabridged version of this Annual Report is available in German and can be found on the website of the Austrian Ombudsman Board

