



VOLKSANWALTSCHAFT

# Report

of the Austrian Ombudsman Board  
and its Commissions  
on the National Preventive Mechanism

2013



## Preface

This report gives an account of the first full year of the Austrian Ombudsman Board's (AOB) new role to protect and promote human rights. It is the first report to present the activities of the National Preventive Mechanism (NPM) and to give reasons for preventive monitoring and control decisions. The NPM is composed of the AOB and six regional commissions, which carried out 530 visits in the reporting year. Public as well as private institutions and facilities were monitored, especially places of detention. The sheer number of visits shows that the commissions are fully operational and that the work as National Preventive Mechanism is starting to take effect. The Human Rights Advisory Council plays an important, advisory role.

The preventive work of the AOB and its commissions was already effective in 2013: Deficits were identified and rectified in a number of cases and measures for improvement were initiated. However, the AOB as NPM not only has a monitoring mandate, it also aims at educating about the importance of human rights, informing about the latent dangers of human rights violations and spreading awareness. This report will show that the AOB as NPM also started numerous activities in this area.

International co-operation and networking continued and intensified. Time and again, procedures can be corrected by exchanging experiences with similar institutions and facilities abroad. This also benefits Austria's reputation as a country, which carefully monitors and promotes the observance of human rights.

This report presents the key figures for 2013 in detail in the performance record and focuses on preventive monitoring activities. This report will also be sent to the UN Subcommittee on Prevention of Torture (SPT) in Geneva, to which the AOB - in its role as NPM - must report.

The members of the Austrian Ombudsman Board would like to thank the Human Rights Advisory Council for its advisory support and the commissions for their commitment during the monitoring visits. Our particular thanks go to the employees of the Austrian Ombudsman Board, who have made it possible for the new members to start on a strong basis and for work to continue seamlessly, as well as to Ms Terezija Stoisits and Mr Peter Kostelka, whose term in office as members of the AOB ended in June 2013, for the many years of commendable work.

The Austrian Ombudsman Board would also like to thank the Federal Ministries and other federal, regional and municipal bodies for their willingness to cooperate this past year.



Günther Kräuter



Gertrude Brinek



Peter Fichtenbauer

Vienna, May 2014

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## 1. Introduction

In 2013, the AOB and its commissions were able to successfully continue its previous work as NPM. However, the AOB also, and above all, ensured that the previous year's realignment took hold, enabling new roles to apply efficient administration practice. It should be noted that in July 2012, the AOB was entrusted by the Federal Constitution with the task to protect and promote the observance of human rights and of the rights of persons with disabilities in Austria.

This report demonstrates how the AOB exercises its new role and function both as National Preventive Mechanism (NPM) and Human Rights House of the Republic, and outlines the results of implementing preventive tasks in the past year.

In addition to its national tasks, the AOB also plays an important international role. This results in three main priorities, illustrated in more detail below:

(1) As an institution protecting citizens' rights, the AOB must help citizens to obtain their rights if they feel that public administration has treated them unfairly. Investigating individual complaints also serves as an indicator of the administration's operation and can point towards deficits or undesirable trends in public administration. Finally, the administration is monitored to promote transparent, efficient and citizen-friendly procedures as well as clear decision-making processes.

Efficient and citizen-friendly administration

(2) The AOB's preventive activities aim to prevent violations of human rights and of the rights of persons with disabilities, whenever possible, or at least to make such violations improbable. For this purpose, the commissions set up by the AOB carry out comprehensive, routine visits to places of detention and observe police operations. The commissions' findings help to identify deficits in the system based on individual cases, which could constitute a latent risk for human rights violations and therefore require rapid and efficient responses. Preventive activities do not need a trigger but run routinely.

NPM activity to protect human rights

(3) For years, the AOB has encouraged international co-operation, a fact which is also reflected in the International Ombudsman Institute (IOI), whose General Secretariat is located at the premises of the AOB. Cross-border networks gained further importance when the AOB accepted its new tasks as National Preventive Mechanism (NPM). An exchange of experiences with other NPM institutions must now be ensured, so that comparable methods can be developed for monitoring activities. These activities allow Austria to meet its obligation to participate in asserting human rights standards across the world.

International networking

It is important to remember that successes outlined in this report are to a large extent due to the positive work of the NPM commissions and the support of the Human Rights Advisory Council.

During the reporting year, the Human Rights Advisory Council held five ordinary and one emergency meeting. It specified priorities for the monitoring visits and provided

Important advisory role

legal advice for the AOB. Among other things, the Advisory Council for instance compiled a legal statement of opinion, based on which the commissions must be given extensive access to the medical data of detainees at police detention centres. This allows the NPM to monitor in detail whether medical treatment is appropriate at places of detention. It also enables the commissions to ensure that inhumane and degrading treatment or illegitimate restrictions to liberty, such as medication-based "immobilisation", are prevented.

It is thanks to the commissions' work that numerous problematic conditions have already been uncovered. The commissions' criticisms related to highly varied areas, such as structural deficits, insufficient staff resources or incomplete documentation. Some of these deficits were rectified soon after meetings with the directors of the institution. In many cases, clear improvements were apparent during follow-up visits to the monitored institutions and facilities.

Commissions  
performed 530 visits

During the reporting year, the six expert commissions visited 465 public and private institutions and facilities, where people are detained. In 65 further investigations, the commissions observed the behavior of executive bodies and officers of administrative authorities while issuing direct orders or carrying out coercive measures, particularly during (forced) returns and manifestations. These visits were generally unannounced in order to gain as genuine an impression as possible.

Whenever the AOB as NPM identifies a need for action based on the commissions' findings, it takes further measures. It contacts the supervisory authorities and the bodies responsible for the institutions and facilities in order to effect improvements. This process takes a long time, but the NPM nevertheless completed 234 of 530 visits in the reporting year.

However, the AOB's roles do not relate exclusively to monitoring and ensuring that human rights as well as the rights of persons with disabilities are observed. It is not only a case of identifying undesirable trends, presenting them for discussion and ensuring that deficits are rectified. The AOB also considers its role to foster the awareness process so as to achieve an end to this "culture of looking the other way" in the case of undesirable trends or deficits.

The next aim is to compile a long list of reform tasks. It will only be possible to realise this with the help of members of parliament.



## 2. Overview

### 2.1 Legal mandate

The AOB has been controlling and monitoring public administration in Austria by order of the Federal Constitution for 37 years. As a result, the AOB examines the entire federal public administration, including its activities as holder of private rights, to identify grievances and possible maladministration. Everybody can approach the AOB when having a problem with an Austrian authority, once no further legal remedy against the grievance is available. The AOB must follow up all admissible complaints and inform those affected of its results. If cases of maladministration are suspected, the AOB can also act on its own and initiate official investigative proceedings. In addition, if the AOB arrives at the result that an ordinance contradicts the law, it is authorised to apply for its repeal to the Austrian Constitutional Court.

Monitoring public administration

The AOB's competences widened significantly as of July 2012: By order of the Federal Constitution, the AOB is now also responsible for the protection and promotion of human rights. As National Preventive Mechanism (NPM), the AOB and its expert commissions examine around 4,000 public and private institutions and facilities where persons are or can be deprived of their liberty. These include correctional institutions, retirement and nursing homes, psychiatric facilities and crisis centres. In addition to this, the AOB monitors institutions and facilities as well as programmes for persons with disabilities in order to prevent exploitation, violence and abuse. The AOB and its commissions further observe and assess executive bodies and officers of administrative authorities authorized to issue direct orders and carry out coercive measures, particularly during (forced) returns and manifestations.

Preventive monitoring to protect human rights

These new competences implement two important UN human rights conventions, ensuring broad preventive human rights protection in Austria: The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the provisions of the UN Convention on the Rights of Persons with Disabilities (CRPD).

### 2.2 Structure

The Austrian Ombudsman Board consists of three members appointed for six years at a time. At the end of April 2013, the National Council appointed Günther Kräuter and Peter Fichtenbauer as the AOB's new members, who will replace Peter Kostelka and Terezija Stoisits as of 1 July 2013. Gertrude Brinek, Ombudsman since 2008, was confirmed for a second term in office.

New members since 1 July 2013

Ombudsman Günther Kräuter is responsible for social matters as well as the care and health sector. At the federal level, his area of responsibility includes health

matters, pension and accident insurances, labour market administration, as well as the family and youth sector. At the regional level, his tasks comprise the areas social and health care administration, youth welfare, matters concerning persons with disabilities, animal protection and veterinary practice. In addition to this, Mr Kräuter assumed the position of Secretary General of the International Ombudsman Institute (IOI) in July 2013.

Ombudswoman Gertrude Brinek is responsible for matters regarding the federal administration of the judiciary, the penal system, public prosecution, taxes, fees and duties as well as the authority for the protection of historical monuments. At the regional level, Ms Brinek deals with municipal administrations and all local matters, cemetery administration as well as communal or municipal public transport services.

Ombudsman Peter Fichtenbauer's area of responsibility on the federal level includes police law, the law on asylum and the law relating to aliens, national defence, agriculture, forestry and water management, natural conservation and environmental protection, trade and operating plants, nurseries, schools and universities. At the regional level Mr Fichtenbauer examines matters of traffic and agricultural and questions relating to regional and municipal taxes.

The AOB employed an average of 90 employees in 2013, organisationally allocated to the three areas of responsibility of each member of the AOB, administration or the international department.

Six expert commissions set up for country-wide visits

In July 2012, the AOB set up six commissions with a total of 48 part-time members to meet its constitutional mandate to protect and promote human rights. They perform regular visits to places of detention and institutions and facilities for persons with disabilities across the country. The commissions further observe the behaviour of executive bodies and officers of administrative authorities authorized to issue direct orders and carry out coercive measures. By co-operating, the commissions and the AOB uphold the National Preventive Mechanism (NPM).

Human Rights Advisory Council as advisory body

In addition to this and also since July 2012, a Human Rights Advisory Council has been acting as the NPM's advisory body. It offers advice to the members of the AOB when setting general monitoring priorities and prior to issuing determinations of maladministration or recommendations. It can make recommendations on how to harmonise courses of action and monitoring standards. Non-governmental organisations and ministries nominated the 32 members and substitute members through equal representation. The *Laender* are also represented on the Advisory Council. Ms Renate Kicker, Chairperson of the Human Rights Advisory Council, and Ms Gabriele Kucsko-Stadlmayer, Deputy Chairperson\* of the Human Rights Advisory Council, were appointed by the AOB.

\*in January 2014 Andreas HAUER succeeded Ms Kucsko-Stadlmayer as the Council's Deputy Chairperson

## 2.3 Facts and figures

### 2.3.1 Preventive control and monitoring activities

In 2013 a total of 530 visits were performed within the AOB's preventive mandate. Of these, 465 fell within the mandate as NPM relating to institutions and facilities where persons are at risk of being exposed to cruel, inhuman or degrading treatment or measures depriving them of their liberty; 96 % of these visits were unannounced.

465 NPM visits to institutions and facilities

The institutions and facilities to be monitored by the AOB fulfil different functions and - based on their functions - can be classified as different institution types. The statistics of the visits follow this system of classification. In detail, visits were made as follows: 89 visits to police departments, 52 to correctional institutions, 84 to youth welfare institutions and facilities, 67 to institutions and facilities for persons with disabilities, 106 to retirement and nursing homes, 63 to psychiatric wards at hospitals and medical facilities and 4 to military barracks.

The commissions further observed the behaviour of executive bodies and officers of administrative authorities when issuing direct orders or carrying out coercive measures in a total of 65 instances. In most cases, (forced) returns and manifestations were observed; 61 % of these visits were unannounced.

65 observations of police operations

The majority of visits took place in Vienna and Lower Austria. It is worth noting here that these are the two biggest *Laender* with a very high institution density.

The commissions' observations and findings are recorded in standardised reports of their visits. These form the basis for subsequent investigation and for the AOB's final assessment. In many cases, the AOB as NPM must contact the supervisory authorities and the parties responsible for the institutions and facilities in order to identify possible deficits in the system and to develop suggestions for improvements together. During the reporting year, the NPM successfully completed its work on 234 visit reports compiled in that year.

Prior year data is not available, so a comparison to the previous year usually provided in monitoring statistics is not possible in this performance record. The AOB and its commissions took over its preventive monitoring duties as of 1 July 2012.

### Preventive Monitoring 2013

	Visits to institutions and facilities	Observations of orders and coercive measures
Vienna	131	33
Burgenland	22	1
Lower Austria	99	2
Upper Austria	52	3
Salzburg	20	8
Carinthia	27	0
Styria	50	1
Vorarlberg	15	0
Tyrol	49	17
<b>TOTAL</b>	<b>465</b>	<b>65</b>
<i>(of which unannounced)</i>	<i>(449)</i>	<i>(40)</i>

#### 2.3.2 Development of staff and organisational structure

Focus on co-operating with the commissions

The new human rights mandate significantly changed the content and work environment at the AOB. In its second year as National Preventive Mechanism (NPM), the AOB aimed at further strengthening this new focus in 2013. The effectiveness of the NPM depends heavily on maintaining positive co-operation with the expert commissions and monitoring according to international standards. As a result, further education and organisational development measures focus primarily on these aspects. Targets specifically included optimizing the co-operation between the commissions and the AOB, solidifying a joint understanding of the monitoring standards and ensuring expert dialogue both nationally and internationally.

Exchanging experience with the commissions

Continuing the previous year's educational programme, workshops with the commissions took place in March and November 2013, the purpose of which was to exchange experiences in human rights monitoring. The AOB and the commissions reflected on their experiences in working as the NPM so far. The monitoring standards for visits were another area of focus. The aim of the workshops was to establish uniform courses of action for visits and to set normative standards taking account of the specific requirements of different types of institution. Once again, Ms Silvia Casale was available as international expert.

Organisational development continues

The organizational development process, which started in 2012, continued 2013. Given the change in the members of the AOB, a workshop for them as well as their respective Chiefs of Cabinet took place in July. Specific work steps were agreed on,

which seemed sensible and necessary for the NPM's further development. During this process, work on the database for visit reports was also stepped up and a policy was developed as a basis for examinations by the AOB's commissions. This draft has been discussed and refined with the commissions since the end of November 2013.

Four projects, which the AOB tendered at the beginning of September, formed the core of this process; legal experts from the AOB staff were invited to actively participate in these projects. The first project dealt with defining two key terms which are central to the AOB's work: maladministration and human rights violation. The objective of the second project was to look at how the AOB as NPM understands prevention. The third project compiled answers to the question of which quality standards the NPM's visit reports must observe. A fourth project group prepared a database, with the aim of facilitating the evaluation of the commissions' findings. All projects were finished successfully with detailed project reports at the end of October. The work was presented to the commissions at the end of November and is being processed further in joint work groups in order to reach uniform definitions and effective standards.

### 2.3.3 International activities

#### International organisations

For the AOB, co-operating with international organisations is an important part of its work. The many years of close co-operation with the EU's Fundamental Rights Agency (FRA) or the active involvement in the OSCE dialogue on the tasks of national human rights institutions, deserve a special mention. The AOB also makes use of the opportunity to report to the UN on the implementation of international human rights contracts in Austria.

Good co-operation with international organisations

During the official country review of Austria in September 2013, the AOB provided the responsible UN Commission (CRPD) with details regarding Austria's compliance with its obligations under the UN Convention on the Rights of Persons with Disabilities. In November 2013, before the official hearing, one of the AOB's legal experts took part in a public meeting of the UN Commission on Economic, Social and Cultural Rights (CESCR) and explained the AOB's perceptions of the problems of vulnerable persons, especially in terms of asserting economic, social and cultural human rights.

Involvement in country reviews

As National Human Rights Institution (NHRI), the AOB is also represented on the International Coordinating Committee of National Human Rights Institutions (ICC). Since October 2013, the AOB has been a member of the South-East European NPM network, whose purpose is to exchange experiences and mutually support the implementation of NPM tasks.

### **Bilateral contacts**

Exchanging experience  
across borders

The AOB used the opportunity of numerous working meetings to exchange experiences on an international level. In January 2013, the AOB welcomed the Federal Ombudsman of Belgium to discuss its experiences as National Preventive Mechanism. At a workshop with Sir Nigel Rodley, Director of the Human Rights Commission, the members of the AOB gave a report of their activities as National Human Rights Institution. Other guests in 2013 included a delegation from the Petitions Committee of the German Bundestag and the Director of the Department of Fundamental and Child Rights at the European Commission's General Justice Directorate.

### **International conferences**

Presence at inter-  
national conferences

Ombudswoman Brinek attended the 9<sup>th</sup> National Seminar of the European Ombudsman Network in Dublin. The AOB was also present at the 9<sup>th</sup> Human Rights Forum in Lucerne, which focused on the key topic "Human Rights and Persons with Disabilities" and attended a conference in Strasbourg organised by the Council of Europe, which looked at the development of human rights standards for detaining migrants.

### 3. Preventive monitoring

#### 3.1 Introduction

Since 1 July 2012 and in accordance with the Act on the Implementation of the OPCAT, the Austrian Ombudsman Board (AOB) and the commissions set up by it monitor all public and private institutions and facilities where individuals are or can be detained (National Preventive Mechanism). In addition, facilities and programmes designed to serve persons with disabilities are visited and the conduct of executive bodies and officers of administrative authorities authorized to issue direct orders and carry out coercive measures are monitored and concomitantly inspected as well.

Preventive work

The second half of 2012 saw the implementation and organisational development of the AOB's new responsibilities. The present report aims to present the first results obtained by the preventive work of the AOB and its commissions in a compact yet comprehensive way. To the extent that the preventive activity extends to the legislative competence and enforcement powers of the *Laender*, these are also taken into account. The only exception to this is Vorarlberg, a *Land* which entrusted its regional ombudsman with preventive tasks within the sphere of its administration.

The preventive responsibility of the AOB and its commissions is to protect and promote human rights. "Prevention" describes risk reducing measures and strategies. As a result, the improvement of general quality standards is not a key task of this monitoring activity. The focus on preventive monitoring as a protection against human rights abuse directly leads to its core activities, i.e., targeted unannounced visits to selected institutions and trust-building communication with people of all roles on site.

Monitoring criteria

The entirety of international and national standards and principles developed to protect human rights are the criteria according to which the AOB and its commissions fulfil their responsibilities.

As a National Preventive Mechanism (NPM), the AOB and its commissions jointly developed guidelines for visits based on experiences made over the past year. Accordingly, the visits of the commissions are guided by specific areas and topics of monitoring. The NPM also receives advice from the Human Rights Advisory Council regarding the monitoring priorities. However, it must be ensured that, in keeping with the legal requirements, monitoring activities are performed "comprehensively and routinely". The established monitoring priorities and, notably, the size of the facility to be visited determine the composition and size of the visiting delegations as well as the number and intended duration of visits and observations. The NPM considers it to be both reasonable and expedient to maintain flexibility, e.g., through initial survey visits or in the case of unexpected circumstances on site. Taking an

Guidelines developed for visits

unbiased look at other problem areas is as important as responding quickly and flexibly to urgent situations.

Consistent monitoring procedures and evaluation criteria

The procedure of preparing, carrying out and following up on the commissions' visits is based on a mutually developed methodology. This facilitates cross-commission visiting teams and the further development of monitoring procedures across the country. Notwithstanding the regional monitoring priorities, consistent monitoring procedures and evaluation criteria across the country have the purpose of overcoming obstacles and problems that – due to Austria's federal structure - arise in similar facilities.

The effectiveness of improving or eliminating identified structural problems first and foremost depends on factors such as accuracy, transparency and source reliability. The guiding principle is to document the results of each investigation as simply and unbureaucratically as possible while ensuring that the documentation is both informative and fact-oriented. Furthermore, international principles developed for this purpose must be taken into account so as to enable a human rights evaluation. In addition, first impressions and preliminary assessments that have been recorded can subsequently be of relevance, above all for establishing the topics of follow-up visits or possible monitoring priorities.

The NPM hopes that the efforts towards developing and creating a log database will be completed in the first half of 2014. This database aims above all to guarantee a consistent approach of the commissions and to facilitate the NPM's evaluation.

## 3.2 Competences

### 3.2.1 Monitoring and control in accordance with OPCAT

OPCAT In accordance with the international obligation under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the AOB and the six regional commissions set up by it, must monitor and examine – either with or without announcement - all facilities where persons are or can be detained. They perform these duties as the National Preventive Mechanism (NPM) according to OPCAT. Between autumn 2012 and the end of December 2013, the commissions visited 491 facilities that fall within the scope of the NPM's mandate. Even though this figure includes required multiple visits to facilities, approximately 12% of the 4,000 public and private institutions and facilities taken on by the NPM were visited.



### 3.2.2 Monitoring facilities and programmes for persons with disabilities

In accordance with the UN Convention on the Rights of Persons with Disabilities (CRPD), facilities and programmes for people with disabilities must be monitored. Across the country, the commissions visited 67 long-term care facilities for people with psychosocial disorders and the disabled as well as day-care centres; all special institutions for people with disabilities. It is explicitly pointed out here that the protection of the rights of people with disabilities must likewise be safeguarded in all other institutions and facilities that are monitored by the AOB and its commissions.

UN Convention on the Rights of Persons with Disabilities

### 3.2.3 Concomitant monitoring of coercive measures

In compliance with a decree issued by the Federal Ministry of the Interior, the AOB and its commissions shall be informed of targeted campaigns, major raids and events as well as (forced) returns. The commissions, particularly the ones responsible for Vienna, concomitantly monitored 28 (forced) returns. Police operations at events and assemblies where the commissions suspected a potential for conflict were monitored in 37 cases.

Direct orders and coercive measures

## 3.3 Human and financial resources

### 3.3.1 Budgetary provision

As part of the mandate of the AOB sufficient budgetary means were allocated for NPM tasks in 2012 and 2013. The AOB in agreement with the NPM commissions determines the use of funds allocated to the work of the NPM. In 2013 a budget of EUR 1,450,000 were available to remunerate the heads and members of the commissions as well as the members of the Human Rights Advisory Council. This also included travel costs occurred in relation with the commissions' activities as well as payment for preparing and following up on visits.

Budget

The AOB as NPM will advocate a continuation of its intensive monitoring activities in spite of general austerity measures. The AOB does not intend to reduce the number of visits and attendant inspections carried out by the commissions in future years. Performing visits continually and even repeatedly is in keeping with the international mission and principles of preventive monitoring.

### 3.3.2 Commissions

AOB set up six regional commissions

To fulfil its responsibilities in accordance with the Act on the Implementation of the OPCAT the AOB must set up and mandate multidisciplinary commissions.

If required, the commissions may involve experts from other specialist areas provided that no member of another commission is available for this purpose. Previous experience has shown that an increase in the number of commissions or the number of the commissions' members is not required.

#### Commissions

Commission 1	Commission 2
Tyrol/Vorarlberg	Salzburg/Upper Austria
Chair: Karin TREICHL	Chair: Reinhard KLAUSHOFER
Members	Members
Susanne BAUMGARTNER Sepp BRUGGER Elif GÜNDÜZ Max KAPFERER Lorenz KERER Monika RITTER Hubert STOCKNER	Markus FELLINGER Wolfgang FROMHERZ Katalin GOMBAR Esther KIRCHBERGER Robert KRAMMER Renate STELZIG-SCHÖLER Hanna ZIESEL
Commission 3	Commission 4
Styria/Carinthia	Vienna (districts 3 - 19, 23)
Chair: Angelika VAUTI-SCHEUCHER	Chair: Ernst BERGER
Members	Members
Klaus ELSENSOHN Odo FEENSTRA Daniela GRABOVAC Ilse HARTWIG Sarah KUMAR Silke-Andrea MALLMANN Erwin SCHWENTNER	Andrea BERZLANOVICH Sandra GERÖ Helfried HAAS Christine PEMMER Petra PRANGL Nora RAMIREZ_CASTILLO Walter SUNTINGER

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
Chair: Manfred NOWAK	Chair: Franjo SCHRUIFF
Members	Members
Susan AL JAWAHIRI* Lisa ALLURI Harald P. DAVID Marijana GRANDITS Sabine RUPPERT Maria SCHERNTHANER Hans Jörg SCHLECHTER	Karin BUSCH-FRANKL Süleyman CEVIZ Corina HEINREICHBERGER Siroos MIRZAEI Cornelia NEUHAUSER Elisabeth REICHEL Karin ROWHANI-WIMMER

*\*(as of Feb. 2014: Gregor WOLLENEK)*

### 3.3.3 Human Rights Advisory Council

Advisory body The Human Rights Advisory Council serves as an advisory body. It is constituted of representatives of non-governmental organisations and federal ministries. At this point, the NPM would like to thank the members of the Human Rights Advisory for their commitment and valuable support regarding the clarification of monitoring competences and questions of evaluation standards to be applied.

#### Human Rights Advisory Council

Chair: Renate Kicker

Deputy Chair: Gabriele Kucsko-Stadlmayer (*as of January 2014: Andreas HAUER*)

Name	Function	Institution
Mathias VOGL	Member	Federal Ministry of the Interior
Konrad KOGLER (since Nov. 2013: Matthias KLAUS)	Substitute member	Federal Ministry of the Interior
Anna SPORRER (since Jan. 2014: 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 GÖKAL	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
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

Waltraud BAUER, Government of Styria	Member	Representation of the <i>Laender</i>
Shams ASADI, Municipality of Vienna	Substitute member	Representation of the <i>Laender</i>
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
Bernd WACHTER	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>
Erich FENNINGER	Substitute member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Michael FELTEN	Member	Pro Mente Austria in collaboraion with HPE
Angelika KLUG	Substitute member	Pro Mente Austria in collaboraion 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 JAUK	Member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum</i> Salzburg
Renate HOJAS	Substitute member	Violence prevention centers: <i>Verein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum</i> Salzburg
Katrin WLADASCH	Member	ZARA (Association for civil courage and anti-racism work) in collaboraion with <i>Neustart</i>
Roland MIKLAU	Substitute member	ZARA (Association for civil courage and anti-racism work) in collaboraion with <i>Neustart</i>

### 3.4 Visits during the reporting year

#### 3.4.1 Visits in figures

530 visits In the reporting year, the six commissions carried out a total of 530 visits and monitored the conduct of executive bodies and officers when issuing direct orders or carrying out coercive measures. As a rule, the commissions carried out their visits and monitoring activities without prior announcement.

##### Monitoring activities of the commissions - 2013

facilities and institutions	465
(forced) returns	25
police operations*	37
<b>TOTAL</b>	<b>530</b>

*\*these include manifestations, events and assemblies*

The law specifies that the NPM must carry out its preventive monitoring “comprehensively and routinely.”

##### Monitoring activities of the commissions (by *Laender*) - 2013

Vienna	164
Lower Austria	101
Tyrol	66
Upper Austria	55
Styria	51
Salzburg	28
Carinthia	27
Burgenland	23
Vorarlberg	15
<b>TOTAL</b>	<b>530</b>

Visits to institutions and facilities were intentionally chosen as the monitoring priority for 2013. The focus was primarily on institutions that had not previously been subject to preventive monitoring by the former Human Rights Advisory Board of the Federal Ministry of the Interior.

	pol.	ret. + nur.h.	youth	inst. f. disabl.	psych. wards	corr. inst.	bar..	return	pol. op.
Vienna	26	22	28	23	14	17	1	17	16
Burgenland	3	9	6	2	1	1	0	0	1
Lower Austria	17	20	23	12	12	13	2	2	0
Upper Austria	23	7	6	3	6	7	0	2	1
Salzburg	7	4	4	3	1	1	0	3	5
Carinthia	3	9	1	4	6	3	1	0	0
Styria	4	15	8	6	9	8	0	0	1
Vorarlberg	2	9	0	0	3	1	0	0	0
Tyrol	4	11	8	14	11	1	0	4	13
<b>TOTAL</b>	<b>89</b>	<b>106</b>	<b>84</b>	<b>67</b>	<b>63</b>	<b>52</b>	<b>4</b>	<b>28</b>	<b>37</b>
<i>(unannounced)</i>	<i>(87)</i>	<i>(105)</i>	<i>(82)</i>	<i>(66)</i>	<i>(60)</i>	<i>(48)</i>	<i>(3)</i>	<i>(21)</i>	<i>(19)</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

Subsequent to visiting facilities or monitoring coercive measures being carried out by executive bodies or officers, the commissions did not always express complaints in the course of their final meetings with those responsible for the facility or the police operation. Most of the time, the evaluation of the reports provided by the commissions required the AOB to approach the supervisory authorities for structural defects to be identified and remedial action to be developed jointly with the authorities. Overall, the AOB as NPM wrote a total of 234 letters and emails. In 171 cases, the NPM did not have to take any action; 296 cases are still pending; has not yet completed its examination or the reports have otherwise not yet been evaluated.

**Preventive monitoring 2013**

	completed	pending
police	35	52
retirement & nursing homes	46	60
youth welfare	37	49
institutions & facilities for persons with disabilities	22	45
psychiatric wards in hospitals & medical facilities	26	37
correctional institutions	25	27
military barracks	4	0
(forced) returns	12	16
police operations	27	10
<b>TOTAL</b>	<b>234</b>	<b>296</b>
<i>(no action necessary)</i>	<i>(171)</i>	

**3.4.2 Visiting procedure**

Visiting procedure  
of the NPM

In coordination with the AOB, the commissions set their agenda for visits on a quarterly basis. This allows the AOB to inform the commissions in advance of any individual complaints about institutions or facilities that they have already dealt with or of any existing results from its ex-post control activities. The monitoring priorities that have been agreed upon while accounting for the suggestions of the Human Rights Advisory Council determine the monitoring focal points. However, these monitoring priorities are chosen in such a way as to allow the commissions to deal with topics that are specific to institutions or regions. Given the large number of different institutions and facilities, initial visits should provide an opportunity for gaining first atmospheric impressions. At times, it will only be possible afterwards to determine if a further visit at the same or a similar institution is needed and regarding which subject.

The visiting delegations are put together in regular meetings. In consultation with the AOB, the commissions may call in external experts, should the monitoring priorities make this necessary.

Standardized  
visit reports

The commissions' observations and findings are recorded in a standardised visit report, which is divided into five chapters: Basic information about the visited institution, findings regarding the visit, findings regarding the monitoring priority, other comments and concluding meetings.



Monitoring includes all aspects of the protection of the human rights of individuals deprived of their liberty. Questions regarding the application of security measures or measures restricting a person's liberty, signs of torture or degrading treatment and health care are particularly relevant to the examination. Supervision and enforcement plans, procedures for (forced) returns and releasing those detained, staff situation and complaint management are also investigated. Furthermore the commissions examine location, building structure and infrastructural fixtures and fittings of the institutions, living and residence conditions of the individuals detained, if they are able to establish contact with the outside, if their right to family and privacy is preserved, the existing training and employment offers as well as access to internal information.

The visiting delegations record the concluding meeting with the heads of the visited facility or the leader of the police operation in a separate document. This includes any initial impressions and observations gained on site as well as an agreement on how to eliminate shortcomings if possible. These visit reports are made routinely available to the visited institutions and facilities.

Based on the commissions' findings, human rights evaluations and recommendations, the AOB carries out a further, more detailed investigative proceeding. The competent ministries and supervisory authorities are involved in case of systemic questions and/or shortcomings at specific institutions and facilities. Especially in the case of systemic questions, the AOB turns to the Human Rights Advisory Council. The Council's expert reports are then incorporated into the AOB's final evaluations.

In this context, the AOB would like to stress that authorities and institutions have mostly been very cooperative and did not give the impression that they were reluctant to implement the necessary measures and improvements.

### 3.4.3 Reports of the commissions

In accordance with Article 19 (3) and following the Standing Rules of the Austrian Ombudsman Board, the heads and the members of the commissions were appointed based on their expertise in the field of human rights. This expertise also encompasses involvement in relevant expert panels and networks of civil society groups. In this sense, the commissions also view their activities as an important possibility to forge closer links with NGOs. Information from and contacts to NGOs constitute the indispensable foundation of the commissions' work. These contacts are also an essential source of information for the heads of each commission when planning their visits, both announced and unannounced, in accordance with Article 21 (2) 4 of the AOB's Standing Rules.

Forging links with  
NGOs

In "traditional" monitoring areas, i.e. institutions which mainly serve as detention centres, the commissions could tap into the vast experience accumulated by the former Human Rights Advisory Board of the Ministry of the Interior (police custody)

The pioneering work  
of the NPM

as well as an extensive stock of international standards. In areas which primarily perform care services, i.e. the health and social sectors above all, the Austrian National Preventive Mechanism (NPM) does pioneering work. The aspect of prevention, one of the key tasks of the NPM is of significant importance here. In many cases, the aim is to assess whether a structural deficit that does not necessarily indicate a violation of an individual's human rights must nevertheless be considered a risk factor in terms of a human rights violation and, if so, on what considerations such an assessment should be based. The multidisciplinary composition of the commissions, which combines expertise from different expert areas, constitutes a rich source of specialised knowledge, to be supplemented by external experts that are called in if needed. Together with the expert knowledge from the more traditional field of competence of the AOB, comprehensive recommendations can be made, which are presented to those responsible in a discursive process.

These preventive activities require that the commissions view themselves as more than just an ex-post control body. The commissions consider it their duty to contribute to a strengthening of human rights standards at the visited institution and to advocate the protection and promotion of human rights across Austria. The top-down approach of an official investigative proceeding, which must be based on the documentation of hard facts, is not always the best way to achieve this target. The commissions must account for the systemic aspect of complex social systems when arranging their visits, interacting with employees and clients, conducting interviews and giving feedback to the institutions. The trust of a multitude of different contact persons must be gained while maintaining the required professional distance. Allowing for these aspects turns each visit into a highly complex process, both technically and interpersonally, which in the end leads to two products: first the visit report provided to the AOB, and second the preliminary feedback to the institution, which is given verbally in a final meeting or, if required, in writing. The daily routine of these visits repeatedly highlighted the importance of direct feedback and the commissions' systemic understanding of their role.

Commissions' work  
frequently triggers  
process of change

The commissions' experience shows that this mode of operation meets with more and more understanding and acceptance and frequently triggers processes of change, which may be a faster way to efficient solutions than an official investigative proceeding. In some institutions, the commissions also have to provide information and awareness training on the subject of OPCAT and the commissions' mandate. This notably happens when individual elements of the state monopoly on the use of force were gradually transferred to private companies providing security services - as is the case in some psychiatric wards - and are thus no longer within the competence of the National Preventive Mechanism. The commissions put special emphasis on steering against this development of privatizing public services and responsibilities - as exemplified in a facility for detention pending (forced) returns recently put into operation in the city of Vordernberg (Styria).

In fulfilling the responsibility defined in Section 16 (3) of the AOB's Standing Rules, i.e. to "regularly visit and inspect facilities and programmes designed to serve persons with disabilities," the commissions observe the UN Convention on the Rights of Persons with Disabilities, which became law in Austria upon its ratification. The framework defined by the Convention significantly exceeds the monitoring requirements of other areas. Here too, the commissions are called upon to develop their own mode of operation without being able to rely on previous experience. The focus on the key target of inclusion frequently contravenes the internal quality of care services (particularly in large educational institutions for disabled children and adolescents). The commissions must consider both aspects; however, the demand for inclusive educational offers for impaired children, contained in the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, is of particular significance to the commissions' evaluations.

Focus on UN-CRPD results in broad monitoring activity

In various areas ranging from any correctional or therapeutic treatment to the care of children and adolescents, the commissions encounter problems that go beyond the institutions they visit. The availability of facilities for follow-up after-care programmes outside the institutions – usually assisted living and housing – has a significant impact on the quality of care at the institutions in question. The lack of follow-up care facilities leads to prolonged stays in clinics and prisons that are factually not justified. Different parties are responsible for identifying such a deficit (hospitals or prisons on the one hand, social services on the other hand). This complex situation must be reflected in the commissions' visit reports and handled by the AOB according to the different areas of responsibilities of each member (usually, topics are overlapping between two or even all three areas of responsibilities). Restricting the monitoring activity to the visited institution would yield a distorted perspective rather than offering a vital contribution to an improved human rights situation.

Follow-up affects quality of care in institutions

## 3.5 Recommendations

### 3.5.1 Retirement and nursing homes

#### General

106 visits to retirement and nursing homes	In the reporting year, the commissions carried out 106 visits to retirement and nursing homes run by public and private institutions across the country. The agenda of visits included large, medium-sized and small institutions. All institutions showed a great willingness to cooperate.
Leadership and responsibility	Institutions vary conspicuously in terms of concepts and cultures. In the course of many visits, the commissions identified a high level of commitment among nursing staff and a respectful treatment of the elderly. A number of visit reports also showed an open and positive atmosphere. Supervisors have a decisive impact on the level of attentiveness and respect displayed by the nursing staff towards residents; supervisors also influence the extent to which nursing teams are able to discern the psychological and physical needs of residents in order to attend to them. If staff supervisors are perceived to be qualified and considerate leaders, this is passed on to the treatment of the elderly. If this is not the case, staff fluctuations and frequent sickness absences generate a sense on the part of the residents that they are not looked after well. This also applies if staff are convinced that they are unable to contribute much to the residents' well-being.
Co-operation to protect personal freedom	The AOB as NPM has entered into a co-operation agreement with associations based on Article 11 (5) of the Ombudsman Act 1982. Two meetings took place in 2013, with the purpose of exchanging experiences. Based on the Nursing and Residential Homes Residence Act ( <i>Heimaufenthaltsgesetz</i> ), the AOB and its commissions received support through suggestions and information on reports and legal proceedings in relation to specific occasions or institutions. The joint target is to minimize the frequency, extent and intensity of measures that restrict freedom, i.e. to reduce technical, medication-based, communicative and interactive encroachments on the freedom (of movement). Care focused on human dignity and human rights is inconceivable without an active protection of personal freedom. As a result, this entitlement to respect means, that institutions must reassess measures that restrict freedom and show self-criticism when reviewing their practices. Suggestions regarding the application of lighter measures but also invitations in accordance with the Nursing and Residential Homes Residence Act ( <i>Heimaufenthaltsgesetz</i> ) to submit belated reports (e.g. based on spatial restrictions as a result of closed or coded doors to rooms or living areas) have already been touched upon in the course of the commissions' concluding meetings.
Improvements effected by the NPM	Supervisory authorities and institutions only assured the NPM that modern hospital beds and other facilities would be purchased (step by step) and that barrier-free access would be provided or at least improved, after the commissions' visits had

been evaluated. Furthermore, the AOB - in its role as NPM - also made institution-specific recommendations for implementing measures to offer a better protection of privacy in rooms with multiple beds (installation of screens, room dividers, etc.), to check wheelchairs considered inadequate, to install and/or repair emergency call systems, to improve hygienic conditions or to update sanitary facilities. These recommendations have already been partially taken up in the course of the concluding meetings with the commissions.

## Monitoring priorities and overall findings

In retirement and nursing homes, the commissions came across structural problems such as incorrect occupancies, inadequate pharmacotherapies and deficits in the implementation of the Nursing and Residential Homes Residence Act. The AOB will present these topics to the Federal Government and the *Laender* once again in 2014 for a more in-depth account of the problems.

The problem of accommodation for younger, mentally ill people and/or people with multiple disabilities in geriatric centres and retirement and nursing homes was already an issue in the reporting period of 2012. In this reporting year, the commissions faced this problem again several times. For instance, they encountered a 58-year-old man who, since an accident in 2011, has been a resident in an institution that is normally reserved for people over the age of 70. In the case of a 40-year-old woman, health problems resulting from a drug-related condition were given to justify care in a retirement home. A 42-year-old intellectually impaired woman was said to require levels of care that could not be provided at home or in assisted housing. Examples like these are recorded by all the commissions.

Young people in nursing homes

No figures exist to show how many people in Austria are affected by similar circumstances. Only the Viennese Association of Medical Institutions states that approx. 220 people under 60 are currently living in geriatric centres (with the exception of special wards) and 79 people live in a socio-therapeutic institution near the city of Ybbs (Lower Austria). The pilot project run by the Viennese Association of Medical Institutions aims to provide adequate accommodation for people under the age of 60; the project is scheduled to start in 2014. Similar initiatives in the other *Laender* would be desirable.

The commissions were frequently faced with complaints about insufficient funds. Especially in institutions that house an above-average number of mentally ill individuals and/or many residents suffering from dementia, the AOB identified a need for stronger psychosocial care.

Lack of resources

In Austria each *Land* has passed its own regional laws and prescribes its own staff-to-patient ratios. The Austrian Court of Audit has already observed that the lack

Staff availability varies

of a consistent Austria-wide legislation results in strongly divergent performance standards. The Federal Association of Retirement and Nursing Homes in Austria (*Lebenswelt Heim*) speaks out in favour of creating a consistent minimum level of staff-to-patient ratio in retirement and nursing homes and so far, based on its observations, the AOB agrees. Legal provisions in Lower Austria for instance allow that only two members of staff are necessary to look after 98 residents overnight. A Viennese institution for the care of people suffering from dementia is designed and approved in such a way that only one staff member is necessary for night duty in a facility which consists of two structurally separate areas of shared accommodation.

NPM considers supervision and coaching for staff indispensable

People who work in the care and nursing sector are generally subject to great emotional strain as they are constantly faced with sickness, suffering and death. It is uncontested among professionals in this sector that regular supervision and coaching is necessary to maintain and improve the working ability of staff. Professional supervision should be carried out during working hours by external supervisors, to be appointed by the team. This supports mental hygiene and prevents burnout, mobbing and violence. In the NPM's view, all directors should be responsible – by law – for motivating their (specialist) nursing staff to take advantage of such supervision and coaching services. The commissions unanimously agree that there is uncertainty and prejudices regarding the potential achievements of supervision exist. According to the NPM, the argument that there is no recourse to supervision because staff are not interested, does not justify a lack of effort.

#### Safety in pharmacotherapy indispensable

In order to provide safety in pharmacotherapies for geriatric patients, the Federal Ministry of Health, at the recommendation of the AOB as NPM, announces the elaboration of scientific recommendations for long-term care. Interface problems must be solved regarding restrictions of freedom through drugs and/or medication.

Potentially inappropriate medication and poly-pharmacy

The question of which medications are potentially unsuitable above all for older people due to the active agents contained in them has been a research topic for several years. An Austrian list records 73 potentially unsuitable medications, which should not be prescribed for older people due to an adverse benefit/risk profile or questionable efficacy. A current study shows that 70.3% of nursing home residents in Austria nevertheless receive potentially unsuitable medication. The commissions also frequently highlight the problem of such prescriptions.

Ministry follows recommendations

In addition, the greater number of different medications administered to the elderly simultaneously increases the frequency of intolerances in addition to side effects and interactions. If such adverse side effects are then again treated with drugs, the way is paved for poly-pharmacy. This heightens the drug-related risk of falls, delirium

and incontinence in addition to a reduction of cognitive abilities and dexterity. Drug-related morbidity and more frequent hospitalisations may be a consequence of such problematic prescription practices. As a result, the NPM thinks that effective strategies based on geriatric findings and experiences are urgently required to optimise pharmaceutical treatment. Having been entrusted by the AOB with this problem, the Federal Ministry of Health recently announced that it is planning to initiate recommendations for the use of psychotropic substances in long-term care settings for older people.

The legal protection of individuals within the scope of medication according to the Nursing and Residential Homes Residence Act is primarily ensured by the fact that doctors need to inform the directors of nursing homes in case a specific pharmacological treatment would constitute a restriction of freedom through medication. The commissions are qualified to assess this independently; however, they reached some limits. In numerous institutions and facilities, they criticized that precise indications and the therapeutic purpose of the prescribed and administered medicines were not often clear beyond doubt based on the documentation available and that reports to the residents' representatives were often omitted. The manual "Restrictions to freedom through medication" created at the initiative of the Federal Ministry of Justice may be a useful document for medical practitioners; however, it does not seem to be sufficiently well-known among physicians. All commissions repeatedly referred to the need for more training. Supplementary consultations with consultant psychiatrists commissioned by the directors of nursing homes could also improve pharmaceutical treatment and ensure a more efficient execution of the Nursing and Residential Homes Residence Act. However, provisions relating to the organization of nursing homes are not dealt with on a federal level, but fall within the responsibility of the *Laender*.

Restriction of freedom through medication is problematic

According to the AOB as NPM, interface problems in applying the Nursing and Residential Homes Residence Act occur whenever nursing staff is not informed about the diagnosed medical condition and, due to a lack of knowledge about the effects of psychotropic medication, is unable to independently appraise the therapeutic indications for drug treatments. Physicians consider themselves obliged to maintain confidentiality in this respect and occasionally refuse to disclose further information. Qualified nursing staff must provide other health practitioners with all information relevant for the treatment (Article 9 (2) of the Health Care and Nursing Act (*Gesundheits- und Krankenpflegegesetz*); however, no analogous provision exists in the Act on the Medical Profession. The AOB believes that there is a need for clarification in terms of a binding interpretation of the law or an amendment to the Act on the Medical Profession. The Federal Ministry of Health has taken up the NPM's recommendation and has pledged to draft a letter to the *Laender* in order to inform the institutions. If the problem cannot be solved in this way, the Ministry does not preclude a clarification of the law as such in a second step.

NPM recommends clarification of the Act on the Medical Profession

## Individual cases

### Urgency due to hazardous care

Degrading conditions in an unapproved institution led to an immediate response. Shortly after the commissions' visit, all persons in need of care were transferred to other institutions.

Disastrous conditions Commission 5 visited a small facility in Lower Austria, where a married couple took care of three persons suffering from dementia and with limited mobility. As the wife was in full-time employment, responsibility for attending to the residents lay exclusively with her husband, who had no relevant professional training. Records of doctors' visits and medication could not be found, and the living areas were in a wretched state. There were no appropriate sanitary facilities and the bathroom was mouldy. As a consequence, the residents in need of care were found to be in a weak and neglected state.

Quick help The AOB was quick to start an investigative proceeding. An immediate on-site inspection ordered by the regional government revealed that the operators of the facility had only been approved for tourist accommodation while there was no licence to care for people requiring higher-level care. All recipients were transferred to other institutions immediately after the commissions' visit. Criminal proceedings for unauthorised treatment and administrative proceedings for operating a nursing home without licence were initiated.

Individual case: VA-NÖ-SOZ/0098-A/1/2013

### Criticism of meal times

When setting meal times, the wishes of residents should be taken into account and nutritional recommendations should be met.

When visiting an institution in Burgenland, Commission 6 found that inhabitants had no say when it came to organising their daily routines or handling their day-to-day needs, even where residents would still have been able to do so.

Long abstinence from food Dinner was already served at 4:30 pm, and the next meal provided was breakfast at 7 am. Several residents, who would have preferred to eat later in the evening, criticised this arrangement independently of each other. The NPM believes that a fasting period of 14.5 hours, caused by such a daily routine and lack of snacks between meals is detrimental rather than beneficial to a person's health.

In a first statement, the supervisory authority has explained that it would consider



paying more attention to this factor during its inspections. It has also promised to clarify if the institution needed to take measures in order to ensure a more independent lifestyle and what these measures should be. The result is not yet available.

In October 2013, the Federal Ministry of Health released a publication entitled "Scientific Processing for Recommendations – Nutrition in Old Age at Different Living Situations." According to this paper, three main meals and two snacks in between meal times are ideal when catering for a community. The interval between meals should not exceed five hours, and no more than twelve hours should elapse between dinner and breakfast.

The NPM recommends implementing these nutritional recommendations – if they are not yet established – in all retirement and nursing homes in Austria.

Nutritional  
recommendations

Individual case: VA-B-SOZ/0006-A/1/2013

### Optimising drugs supply failed

The directors of one institution in Vorarlberg had intended to introduce psychiatric visits for quality assurance. This failed as a result of insufficient co-operation from physicians.

Commission 1 visited an institution in Vorarlberg and gained a very positive overall impression. The institution is run based on a model of shared accommodation with five accommodation-sharing groups, and the daily routine of residents follows the latest findings.

Based on the principle of a free choice of physician, up to 14 General Practitioners (GPs) were responsible for medical care. The directors of the residential home sought to optimise the supply of medication. However, they were forced to discontinue the project of introducing psychiatric visits for quality assurance. GPs did not appear at the agreed times, changed the medication prescribed by the specialist physician who had been called in and threatened the directors of the residential home with boycotting further activities because of the consultant psychiatrist.

Lack of willingness to  
co-operate

Individual case: V-SOZ/0001-A/1/2013

### 3.5.2 Hospitals and psychiatric institutions

#### General

The NPM commissions visited 63 psychiatric institutions and other hospitals in the reporting year, mainly visiting psychiatric wards (42).

Encroachment on personal rights	Measures to guarantee safety and avert danger may only be applied once therapeutic measures are exhausted. Such measures not only strain those affected but also physicians, nursing staff and other patients. The dilemma lies with the mandate: medical and nursing staff have the right to encroach gravely upon personal rights if a serious risk of self-harm or harm to others is identified due to a mental disease. From a human rights perspective, the frequency and duration of restraints or isolation measures against the patient's will or of involuntary administration of medication must be considered a quality indicator for in-patient psychiatric treatment.
NPM recommends planning guidelines	There are currently no Austrian standards regarding the minimum requirements for the architectural design of open or closed accommodation areas; likewise, no recommendations exist for the design of psychiatric wards in terms of suicide prevention, to be considered at least for future renovations or new constructions. Given the wealth of research being conducted internationally on the therapeutic environment of psychiatric wards, the AOB as NPM recommends that evidence-based planning guidelines for psychiatric treatment be also developed in Austria.
Spatially restrictive conditions and obsolete structures	The commissions frequently pointed out structural deficiencies in buildings or spatially restrictive conditions in psychiatric wards, which lead to additional stress and sudden aggravations. The <i>Laender</i> and operators of care facilities contacted by the AOB explicitly acknowledged these deficiencies. Statements obtained by the AOB further attest to a significant need for investment over the next few years, as current structural framework conditions cannot ensure that up-to-date psychiatric care is provided or that the duty of care is fulfilled.
Investments planned	In Vienna, psychiatric treatment of patients at the Otto-Wagner Hospital will cease by 2020. Closure will happen gradually by progressive decentralisation and transfer of beds to other, at times newly built hospitals. With reference to the findings of Commission 3, Carinthia has confirmed to be planning comprehensive renovation measures at the regional hospital of the cities of Villach and Klagenfurt, so as to ensure treatment that maintains high standards and the greatest possible protection of in-patients. Capacity extensions are also planned in the Tyrol and in Vorarlberg.
Overheating due to insufficient thermal insulation	Commission 3 observed that insufficient insulation of the roof of the psychiatric gerontology ward at the regional psychiatric clinic Sigmund Freud causes strong overheating of the top floor during the summer. In spite of air conditioning units, aged patients repeatedly required infusions in order to prevent dehydration. The <i>Land</i> of Styria assured the NPM that it would redeploy its budget and renovate the

roof of the floor in question, to improve thermal resistance and indoor temperature at the department for geriatric psychotherapy and psychiatric gerontology.

At the regional hospital in Mostviertel Amstetten-Mauer, Commission 6 identified a large mould formation in the common room of the forensic psychiatry department. The mould was subsequently removed and the area re-plastered with mould protection. Such defects are inevitable in a building that is more than 100 years old; plans for a new building are under way.

## Monitoring priorities and overall findings

In consultation with the Human Rights Advisory Council, the use of “mechanical and electronic measures restricting freedom in psychiatry” became a monitoring priority for all the commissions.

Commissioned by the Federal Ministry of Health, *Gesundheit Österreich GmbH (GÖG)*, a national research and planning institute for health care, collects data on the application of the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*) and publishes its findings biannually in a report. These reports periodically identify significant regional differences in the way measures that restrict freedom are handled. However, the data does not specify what causes these differences. Salzburg had the smallest proportion of in-patients, with at least one restriction to the freedom of movement being reported (22.6%), while Vienna had the largest proportion (61.53%). Detailed comparisons of the restraints applied (type, reason, method, frequency per patient, duration) in Austrian clinics are currently impossible due to different documentation systems.

Large differences between clinics

Intensive talks with physicians and nursing staff aiming to reach unanimous agreements regarding the treatment of patients are already an achievement in themselves. Scientific literature provides evidence that these agreements regarding treatment are effective for reducing the frequency of coercive measures. Consequently, all steps taken in individual cases must be rooted within the organisation even at a time of impending crises. Based on the commissions' observations so far, it can be established that only individual wards respond to a severe risk of self-harm or of harm to others by offering 1-to-1 supervision of psychiatric patients as a milder means and an alternative to physical restraints. Apparently, the consistent combination of restraints and individual supervision and – where staff resources are limited – the motivation of staff to be mindful of early interventions or required short-term restraints is proving successful. As a visit of Commission 5 to the regional hospital Waidhofen/Thaya (Lower Austria) has shown, the consistent implementation of such precautions means result in the fact that the use of means of restraints can be largely avoided.

Best practice: treatment agreements and 1-to-1 supervision

NPM reminds clinics that CPT standards must be applied

Other institutions are much less pro-actively focused on avoiding means of restraints. The commissions frequently criticised the permanent visibility of instruments of restraints, e.g. if beds with straps or cage beds are available for use in the patients' rooms. Due to the lack of space, physical restraints were sometimes even performed in corridor beds. Many patients describe that the sense of being entirely at someone else's mercy is always present. Such practices are diametrically opposed to the standards of the European Committee for the Prevention of Torture (CPT). Such means of restraints should therefore be avoided by guaranteeing that human resources are available both adequate in terms of quantity as well as quality. If means of restraint are used as the last resort, those affected must not perceive them as a threat, and the modality of application must not intensify feelings of impotence and anxiety. For this reason, CPT recommends not to apply instruments of physical restraint to patients within sight of uninvolved parties.

### Medical Examination

Sedatives must be administered "state of the art" and be suited to their purpose. Treatment guidelines are being compiled at the NPM's recommendation.

Anti-psychotic drugs with strong side effects

Commission 1 was concerned about the use of Haldol as a first medication to sedate patients in acute situations at three psychiatric institutions in the Tyrol. Haldol is a highly effective anti-psychotic with massive side effects, which should only be administered after a strict risk/benefit analysis that takes account of pre-existing medical conditions such as heart, kidney or liver diseases and only after an ECG has been performed. The manufacturer of the drug explicitly recommends that it should only be administered intramuscularly. However, the commission observed that Haldol was administered intravenously without prior ECG and that sufficient documentation for this application as a first choice of treatment was not available.

Assurance that treatment guidelines will be complied with

The Land of Tyrol and those responsible for the medical institutions assured the NPM that treatment guidelines for the use of Haldol would be developed with the help of the University of Innsbruck by the end of 2013.

Individual cases: VA-BD-GU/0057-A/1//2012, GU/0058/2012, GU/0011-A/1/2013

## Use of net beds

The use of net beds to restrict the movement of agitated patients is contrary to international human rights standards. It is considered a demeaning and degrading treatment by the UN Committee Against Torture (CAT).

From 1999 onwards and again on the occasion of its most recent visit to Austria in 2009, the CPT has expressed the following stance towards the use of cage beds, which have long dropped out of use in most European countries:

Violation of international human rights standards

“CPT reiterates its recommendation that net beds be withdrawn from services as a tool for managing agitated patients/residents in all psychiatric/social welfare establishments in Austria.” In this context, CPT also made it clear that it “does not agree that the phasing-out of net beds invariably leads to an increased use of means of mechanical and/or chemical restraint.”

The federal legislator stipulates in the Act on Medical Profession (*Ärztegesetz*), the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*) and the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) that the treatment of patients and any restriction of their freedom must be performed in a state-of-the-art way. Neither of the above-mentioned nor the Austrian Act on Medical Devices (*Medizinproduktegesetz*) prohibits the use of net beds. Nevertheless, Western Austria stopped using net beds 30 years ago. They are, however, still used in Vienna and occasionally in Styria and not only in psychiatric hospitals and wards.

Net beds only in Vienna and Styria

Following observations at Otto-Wagner Hospital and Kaiser-Franz-Josef Hospital, Commission 4 remarked that, from a human rights perspective, the constant presence, i.e. the visible use of net beds and other instruments of restraint are problematic for both fellow patients and visitors. Immediate availability increases the likelihood of use. Above all in the case of long-term, difficult patients, the use of such means of restraint quickly becomes a “foregone conclusion.” While a reflection on the use of net beds, which also takes the use of alternative measures into account, is provided for in the de-escalation risk management rules, such a reflection does not always take place.

Avoidable use

In keeping with the recommendations of international bodies, the AOB as NPM emphatically advocates the abolition of net beds in Austria. It must, however, be ensured that this does not result in an increase of other physical or chemical restraints; furthermore, the use of more gentle measures should be encouraged, e.g. through the purchase of height-adjustable hospital beds and sensor mats. As early as 2003, the then Human Rights Commissioner of the Council of Europe, Álvaro Gil-Robles, got straight to the heart of the problem when he said:

NPM calls for abolition of net beds

“[...] The continuing use of cage beds is, indeed, symptomatic of the wider reforms that are still required in the social care homes and psychiatric institutions. These reforms will clearly not come without cost – without considerable investment in

the material and human resources of mental health care services. However, the respect for the dignity and most elementary rights of persons with mental disabilities demands these reforms as an urgent priority [...].”

Individual cases: VA-BD-GU/0040-A/1/2012, GU/0059-A/1/2012, GU/0003-A/1/2013, GU/0022-A/1/2013, GU/0062-A/1/2013

### Central register of means of restraint

All psychiatric institutions should set up a central register containing detailed information on the recourse to means of restraint so as to be able to evaluate their use and frequency across Austria.

- CPT recommendation On the occasion of its visit to Austria in 2009, the CPT issued a report recommending that psychiatric institutions create a central register containing detailed information on each instance of recourse to means of restriction, covering the type of restraint used, the reason for resorting to it and the duration of its use. This register should also include records of all instances of chemical restraint.
- NPM commissions GÖG to focus on the subject The AOB as NPM has asked *Gesundheit Österreich GmbH (GÖG)*, a national research and planning institute for health care, to discuss the CPT recommendation in its expert talks with the directors of psychiatric wards across the country. These talks as well as the statements by the operators of psychiatric institutions both showed the concern that such a register could lead to a stigmatization of those affected. However, it should be objected that data could certainly be collected in accordance with data protection regulations and a stigmatisation of patients is in no way intended.
- Central register as a preventive method Benchmarking restraint practices through a comparison of clinics across the country is impossible at this point, as not all psychiatric institutions keep electronic records and the collected parameters vary. As set out previously there is currently no data-based explanation for the large regional differences in the use of severe measures of restraint. For evaluating restraint practices, it would thus seem advisable to agree on a set of clear and plausible quality indicators across Austria in order to avoid “isolated solutions.”
- Ministry pledges initiatives In light of the obstacles and concerns that have been expressed, the Federal Ministry of Health has pledged to the NPM that it would approach the *Laender* again regarding the implementation of the CPT recommendation and clear any legislative steps that may be required with the Federal Ministry of Justice.

## The use of private security companies in psychiatric institutions

Involuntary placement and/or hospitalization in addition to the prescription and application of severe freedom-restricting measures require a legal authorisation, as they constitute a grave encroachment on the right to personal freedom. Personnel of private security companies may not be assigned with authorisations reserved to medical staff.

The AOB as NPM observes that more and more hospitals assign companies which offer private security services. There is a tendency that these companies take on responsibilities of personal and property protection as well as other supervisory services within medical facilities. During their visits, the commissions obtained increasing evidence pointing towards security service also being used to treat patients.

For example, Commission 2 reported after a visit to a hospital in Upper Austria that private security services had attended trainings on means of restraint in the psychiatric ward of the facility. The employees of the private security firm were then asked to assist medical staff with applying major instruments and means of restraint in the reception and monitoring room, where a bed with 5-point restraints and double-sided rails was kept ready for use. The patients held in this room can be monitored via a large viewing panel. The security firm was assigned the permanent task of observing restrained individuals via monitors throughout the night. Interviews revealed that the employees of the security firm did not consider themselves to be sufficiently trained for these tasks.

Active involvement in restraints and supervisions

After several visits at a medical facility in Vienna, Commission 4 found that uniformed personnel of a private security company is authorised to perform means of restraint on psychiatric patients according to the instructions of the medical staff. When examining the manual of the contracted services, the AOB discovered that in the case of critical patient situations and imminent danger, the security service is in fact authorised by contract to restrain patients without consultation and without being instructed to do so by medical staff. The security service further assists in searches of persons and can even be called for help whenever there are critical situations in dealing with patients. The contracted services explicitly include such operations as a task within the scope of "personal safety."

Assistance in coercive powers also in Vienna

The observations that have so far been made regarding the activities of private security companies in hospitals show that the visits of the commissions may only have revealed the peak of the iceberg. In the course of the media debate initiated by the AOB as NPM, a medical specialist at a hospital in Lower Austria himself conceded that, "if the worst comes to the worst," people who are admitted unconsciously drunk are not monitored by medical or nursing staff but by the staff of private security companies.

Monitoring of unconscious people

The NPM believes that all these developments must be halted. The supervision and treatment of people, especially mentally ill people, is a highly sensitive matter and specific regulations reflect this fact. Neither the householder's rights (*Hausrecht*) pursuant to Article 344 of the Austrian Civil Code (*ABGB*) nor the right to report and detain pursuant to Article 80 of the Austrian Code of Criminal Procedure (*Strafprozessordnung*) nor the employment law of medical professions offer a sufficient legal basis for such wide-ranging authorisations of security services.

Involvement of private security companies is not permissible

Here, reference must be made in particular to Article 3 of the European Convention on Human Rights (ECHR), the right to private autonomy in the context of respecting private life according to Article 8 ECHR, and the related legislation by the European Court of Human Rights as well as to Article 1 of the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*). According to these, the personal rights of mentally ill people admitted to a medical institution must be specially protected and their dignity as human beings must be respected and upheld in all circumstances. This can only be ensured if a sufficient number of qualified hospital staff is available. In any case, the involvement of private security companies in coercive measures under the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*) – and therefore under the sovereign administration of the federal government – is not permissible. Pursuant to the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*), during placement in a hospital, only the bodies of the medical institution are authorised to search individuals and their possessions if the conditions of Article 34a are met.

Employment law specifies limits to delegation of authority

Article 19 of the Health Care and Nursing Act (*Gesundheits- und Krankenpflegegesetz*) offers a detailed job description of psychiatric medical and qualified nursing staff: only qualified members of the psychiatric medical and nursing team may observe, supervise and care for patients, as well as assist with medical measures. Individual care activities or cooperative activities within the scope of therapeutic and diagnostic assistance may only be delegated to members of the care assistance staff (see Article 84 of the Health Care and Nursing Act) following instructions by members of the medical, qualified nursing team or physicians. The Health Care and Nursing Act does not provide for further delegations.

In agreement with the Human Rights Advisory Council, the AOB - in its role as NPM - takes the view that the practices shown must be classified as highly alarming and constitute a breach of constitutional provisions. According to the NPM, systemic deficiencies and insufficient staff resources in the organisational structure of operators and medical institutions must not be compensated for by a transfer of tasks to private security companies.



## Child and youth psychiatry must be extended

A lack of resources affects health care coverage for children and adolescents who suffer from mental diseases, behavioural disorders and development disorders and are in need of expert help.

The Austrian Structural Plan for Health clearly states that one child and adolescent psychiatric ward must be made available per 300,000 residents. In most *Laender*, only about half of the beds for children and adolescents provided for in the structural plan are in fact available; only Carinthia reaches the lower end of the target. If a child or adolescent in Austria requires psychiatric treatment, in addition to out-patient treatment no more than eleven physicians are available with additional training in child and adolescent psychiatry, medical practices and contracts with medical insurances.

Commission 1, responsible for the Tyrol and Vorarlberg, and Commission 4 in Vienna, repeatedly noticed that children and adolescents are treated and placed in adult psychiatric wards. This situation, which is considered inadequate by all parties, is caused on the one hand by insufficient beds for treating adolescents and children in specialised settings, and on the other hand, by a lack of medical specialists. This situation is further aggravated by insufficient capacities in the area of follow-up care. This leads to a prolongation of stays on wards, which is medically not indicated and results in further (avoidable) capacity restrictions.

Care in adult  
psychiatric wards

In consideration of these findings, the AOB has initiated investigative procedures and the *Laender* have subsequently pledged improvements, some of which will be effective in the medium term.

AOB initiates  
investigative  
proceeding

The *Land* of Vorarlberg has promised the AOB that it would raise staff numbers and carry out a structural reorganisation, particularly regarding a co-operation between the regional hospitals in the cities of Rankweil and Feldkirch and the Carina medical institution, so as to improve the care situation.

Treatment options for mentally ill children and adolescents in Vienna have been expanded continually. With the opening of the Hospital "Nord" in 2016, capacities for mentally ill children and adolescents will for the first time be created on the Northern side of the Danube and an additional number of 30 beds will be set up there. Also, an extension of the University Clinic for Child and Youth Psychiatry at the Vienna General Hospital (*AKH*) is scheduled for 2017. In addition, a feasibility study to estimate costs is currently under way as an emergency measure for assessing if Ward 07 of the University Clinic for Child and Youth Psychiatry can be spatially divided. This way, it would be possible to separate the patient groups of children up to 12 years and of adolescents.

Ongoing efforts in  
Vienna

As a result of structural and spatial deficiencies, the Tyrol is planning to construct a new child and youth psychiatric ward on the premises of the regional hospital in

the city of Hall. Planning has been completed, and a separate area for children and adolescents has been earmarked. The Tyrolean Association of Medical Institutions has already implemented recommendations made by Commission 1 for improving the care situation of children and adolescents until the new building is finished.

#### Psychiatric wards are not a „place to live“

Based on the precondition of adequate follow-up care offers, the duration of care for patients in psychiatric clinics must be limited to the medically indicated extent.

In the Tyrol, Commission 1 came across a man who – except for short breaks – had been placed at a psychiatric ward since 1967. Almost every week, he had to put up with changing occupancy in a two-bed room. His sole possessions were five personal photographs. Only an investigative proceeding of the AOB had the effect that the man was slowly introduced to life in a care home located on the clinic's premises.

Extended help required Across Austria, there probably is a significant number of chronically mentally ill people who could be called "misplaced." This problem is aggravated due to a reduced number of hospital beds and the closure of psychiatric wards that allow for individuals to be given a long-term treatment and to be adequately prepared for being discharged from hospital. The NPM believes that individuals with a chronic mental illness, particularly those who are diagnosed as schizophrenic with pronounced symptoms and those with delayed psycho-mental development and frequent psychiatrically relevant episodes, need to be provided with additional help to master their everyday life.

### 3.5.3 Youth welfare institutions

#### General

Since July 2012, visits to institutions and facilities operated by youth welfare authorities have been taking place in all *Laender* with the exception of Vorarlberg. 84 shared accommodations and residential homes for children and adolescents were visited in 2013 and the AOB received largely positive reports from the commissions. Most children and adolescents who cannot grow up with their parents for various reasons stated that they felt at ease and well treated. The atmosphere at both, private and public institutions and facilities as well as their readiness to co-operate was viewed very positively.

However, it was critically observed on many occasions that finding suitable places for the age group of adolescents aged 12 years and above can prove very difficult. The after-effects of traumatic early life experiences range from symptoms of anxiety or depression to suicidal crises, self-harm or behaviour that is harmful to others, and an increased risk of addiction. Especially children and adolescents who experienced psychiatric wards need supervision that must meet special requirements and take place in small groups or as one-to-one support at the hands of specially trained staff. The availability of follow-up therapy is of particular importance here. In Austria, there are only few examples of models of shared accommodation that combine child and youth psychiatry with educational support.

Lack of places for adolescents with mental disorders

The maximum number of children and adolescents allowed in shared accommodation varied greatly between the different *Laender*. In Burgenland, for instance, shared accommodation for up to 16 children may be approved. In Styria, up to 13 children may be looked after in one shared accommodation group whereas the maximum in Carinthia is twelve. In Lower Austria and Vienna, groups may reach up to ten, and in the Tyrol and Upper Austria only nine minors per accommodation group, whereas Salzburg approves shared accommodation groups of up to eight minors. The duty to ensure compliance with human rights above all regarding minors in non-parental care means that group sizes must at least be reduced to a size that creates the conditions for a challenging and supportive education. The AOB therefore takes the view that group sizes exceeding ten children match neither social pedagogical findings nor current standards of non-parental supervision. The different regulations across the *Laender* have no factual justification.

Different regulations for sizes of shared accommodation groups

The AOB has signed a co-operation agreement with the Austrian Ombudspersons for Children and Adolescents (*Kinder- und Jugendanwaltschaft*) in order to allow for a more effective joint implementation and enforcement of the rights of children and adolescents. In November 2013, the NPM heard that, following the commissions visits, both children and adolescents and the directors of private and public youth welfare institutions voluntarily made contact with the Austrian Ombudspersons for Children and Adolescents to discuss practices that were considered problematic. While this effect must be welcomed from a preventive point of view, it also means

Co-operation between AOB and Children's Ombudspersons

that the Ombudspersons for Children and Adolescents no longer have sufficient staff resources available.

In all its reports in recent years, the AOB has called upon regional parliaments to set up external contacts for minors in non-parental care. The commissions have now also offered corresponding recommendations.

### Monitoring priorities and overall findings

Following a suggestion of the Human Rights Advisory Council, the AOB chose the topic of “measures to prevent violence” as its monitoring priority as NPM in 2013. Based on standards and criteria developed for this purpose, the NPM surveyed how institutions and facilities in question handle this subject.

Further violence prevention training and education

As became clear during visits, not all institutions offer training programmes to prevent violence. While some see mandatory and continuing training sessions for employees as a natural part of quality management, others assume that basic training is sufficient. Some institutions make use of additional training according to the “PART” concept (Professional Assault Response Training), which teaches confidence in handling aggressive or violent behaviour and offers strategies for responding adequately to these situations as a qualified social education worker.

Many interviews conducted by the commissions with social education staff have confirmed an increased readiness to use violence in recent years and a growing number of violent incidents at care institutions. As this makes educational work significantly more difficult, the NPM believes it to be of particular importance that the *Laender* with their mandate of helping children and adolescents, respond to these developments. It should be natural for specialists in child and youth welfare to not only acquire theoretical professional knowledge but also to be able to apply it. In addition to basic training, special competences for dealing with violence in crisis situations are required to pass actual performance in practice. The NPM believes that mandatory further education and training on this subject, the inclusion of violence prevention in institutional guidelines and codes of conduct, and the appointment of a violence protection officer are indispensable measures to prevent violence. Corresponding recommendations have been sent to the regional governments.

No adequate supervision

In Upper Austria, Salzburg, Tyrol, Styria and Vienna, the commissions noticed several cases where children and adolescents were not adequately accommodated. For instance, this happens if an institution lacks the supervision concept that would be necessary in a particular situation based on individual needs. On the one hand, this is caused by a limited access to social therapy. On the other hand, the *Laender* require child and youth welfare to find accommodation that is as “affordable” as possible.

In Salzburg, Commission 2 visited an institution that is reserved for adolescents with severe social behaviour issues. Some would have needed intensive experience-based education and did not receive adequate support in an institution for adolescents diagnosed as requiring psychiatric care. As a result, neither the adolescents nor staff could be guaranteed adequate and comprehensive protection against violent acts. Physical attacks against minors and severe verbal threats above all against female staff could not be avoided. The director of the institution complained that he had no say in either admissions to or discharges from the institution because such decisions were made by the regional government alone. The latter rejected the requested transfer of a boy who was unable to cope with the group situation and frequently acted as aggressor or instigator. Only the intervention of Commission 2 led to his transfer. The example of this shared accommodation, which at the time of visit had existed for no more than half a year, clearly demonstrates the weaknesses of the system and, unfortunately, is no isolated case.

If too much strain is put on supervisors in shared accommodation, a rigid system of punishments is occasionally introduced as a result. The commissions and the AOB - in its role as NPM - frequently criticised "codes of conduct" that were evidently not introduced for educational reasons only. In this context, Commission 2 came across a model, where adolescents were barred from the premises of a young people's home for several days. In its report to the supervisory authority the AOB classified this as a grave violation of the institution's supervisory duty. According to the AOB, other forms of punishments of a breach of rules are equally unacceptable from a human rights perspective, such as being held incommunicado from the family of origin, the removal of doors from toilets and showers, and group punishments.

Punishment as a symptom of strain

The UN Convention on the Rights of the Child attaches great importance to the participation of children and adolescents in decisions, which affect their lives. As has been discovered in some institutions, the possibility of having a say is not yet very pronounced in practice. While some shared accommodation groups have house parliaments, these meet only rarely. The extent to which children are involved in the elaboration of group rules also varies widely. The NPM feels that there is a significant backlog demand for ensuring that the rights of children are enforced in practice.

Involvement in important decisions

The commissions carried out critical evaluations of schools and workshops on the premises of residential homes in the Tyrol, Upper Austria and Styria. Schools and workshops in residential homes can offer opportunities for minors with adjustment and behavioural problems, who would have lost their places in schools or their apprenticeship and been considered "un-schoolable" in the past. The responsibility to ensure mandatory attendance at school or complete apprenticeships is thus passed on to youth welfare and its institutions due to the "segregation of difficult minors." As is already the case in Vienna, the tradition of schools and training centres at residential homes should be reconsidered because, given appropriate educational care, children and adolescents are well able to attend public educational institutions. If greater inclusion is not encouraged, minors will not leave

Residential home schools - symptom of a closed system

the institutions during the day and will therefore to a large extent not be able to establish contacts with their peers outside the facility. Certificates from such institutions will stigmatise them as “kids from care homes” all their lives. In the 1960s and 1970s, these closed systems were a potentially fertile soil for violence and abuse. The AOB has asked the *Laender* concerned to revise their concepts towards greater educational integration and stronger transparency.

## Individual cases

### Supervision of unaccompanied minor fugitives

Institutions and facilities which take care of nearly twice the number of children and adolescents as planned, have led to an extremely tense staff situation and induced the NPM to take immediate action.

Commission 5 has already carried out three visits to a crisis centre supporting unaccompanied minors as well as children and adolescents affected by child trafficking. In contrast to other *Laender*, Vienna met its responsibility and did not transfer unaccompanied minors to the initial reception centre at Traiskirchen. However, this caused a bottleneck in the institution at the end of 2012 resulting in overly long care periods and subsequently an excess in care figures. In December 2012, 17 minors lived at the crisis centre designed for a maximum of 10 children and adolescents. This created an extremely tense situation for the staff. In addition, the site was bleak and in need of renovation.

NPM achieves  
improvement

By now, the occupancy rate has been reduced enormously because places offering basic care in Vienna have been extended significantly. Requests for improvement were put in and additional members added to the staff team; in October 2013, the crisis centre moved to a new building. Nevertheless, satisfactory supervision of children and adolescents was still not apparent even on the commission’s third visit. In the NPM’s opinion, children and adolescents suffering from (fugitive) trauma in any case require psychotherapeutic care and depend on therapy offers in their mother tongue. These must be made available and tailored to their needs. As a result, the AOB invited the responsible parties and specialists to take part in a meeting to discuss the observations and criticisms of Commission 5 in detail. Further changes were promised.

In the meantime, the NPM has received explicit requests from the Ombudspersons for Children and Adolescents to carry out such visits in the other *Laender* as well in the interests of all unaccompanied minor fugitives. These will take place in 2014.

Individual case: VA-W-SOZ/0010-A/1/2013

## Unacceptable conditions at a home for young people

During two visits to a home for young people, Commission 2 identified unacceptable conditions, which must be classified as a violation of human rights. As part of its investigative proceedings, the NPM was able to trigger measures to improve the situation.

In a 60-page report, Commission 2 severely criticised the living conditions at a home for young people after two visits. The grievances mentioned primarily related to insufficient staff, questionable punishments for breaking rules (due to a lack of staff-intensive mechanisms for crisis intervention), insufficient protection against violence and a lack of caring and supportive education. Social educational activities in this institution are undoubtedly highly challenging. This was also reflected in the fact that staff was frequently absent because of sickness, high staff fluctuation and a low number of applications for job vacancies. The AOB initiated investigative proceedings and summarized the alarming results of the visits. Different measures were recommended to improve the situation and the involvement of the Ombudsperson for Children and Adolescents in Upper Austria was encouraged.

In a meeting with the responsible political agents, the affected specialist areas and the Ombudsperson for Children and Adolescents of Upper Austria, there was no opposition to the criticisms. As revealed in the presented reports from the supervisory authority, an expert group from the supervisory authority reached similar conclusions during its last visit. In a first step, the group sizes were reduced from eleven to nine children and adolescents in consultation with the AOB and the search for additional staff was intensified.

Group size already reduced

At the NPM's recommendation, the relevant members of the government also approved the commissioning and financing of a project focusing on the interdisciplinary optimization of the concept and the practical implementation in the institution's everyday social educational work. The preventive standards to be developed in 2014 will also be transferable to other institutions and serve as "best practice" in Upper Austria. The project team is made up of one employee from the AOB, one member of Commission 2 and the Upper Austria Ombudsperson for Children and Adolescents.

Optimization project commissioned

Individual case: VA-OÖ-SOZ/0007-A/1/2013

### Isolation is not a permissible educational concept

A separation of minors in a small wooden hut as a punishment for misconduct is not in line with the principle of modern pedagogy and legally prohibited in the context of youth welfare measures.

Immediately after its visit to a shared accommodation group, Commission 6 reported about an institution where seven boys with significant psychosocial impairments, severe behavioural issues and early childhood attachment disorders received care. The directors developed a concept for dealing with the difficult adolescents, which set out a spatial and temporal separation in a small, sparsely furnished wooden hut in order to punish them for breaking the rules or misconducting against leaders or members of the group.

Interviews revealed that minors were at times forced to spend a day or in some cases even 72 hours there without a break. The main building could only be entered to use the sanitary facilities or to get food or clothing. This separation was first and foremost described as oppressive and involving feelings of claustrophobia during the night.

Supervisory authority  
responded promptly

The NPM informed the Lower Austrian regional government of these unacceptable conditions, which ceased immediately. More frequent visits were promised and the parties responsible for the institution have by now submitted a revised concept for crisis intervention to the supervisory authority.

Individual case: NÖ-SOZ/0023/A/1/2013



### 3.5.4 Institutions for persons with disabilities

#### General

In 2013, the commissions carried out 67 visits to institutions and facilities for persons with disabilities. Public and private sponsors were monitored, and the institutions ranged from daytime workshops via shared accommodation and homes to care wards.

The UN Convention on the Rights of Persons with Disabilities (CRPD) is considered a milestone and obligates among others to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.” The intention is to trigger a rethinking process within society, which also requires the support of political decision-makers on all levels.

Obligations under UN-CRPD require unhesitating politics

Substantial EU documents support the transition from institutionalization to community support (see European Commission 2009, European Expert Group 2012). No reliable data is currently available for Austria on the number of adults as well as children and adolescents with disabilities living in large, medium-sized and small residential institutions or making use of assisted living or personal assistance. However, the objective of enabling people with disabilities to live a self-determined life makes clear strategies and concepts necessary.

De-institutionalism requires clear concepts

Even though the UN Convention on the Rights of Persons with Disabilities was ratified in 2008, the AOB still identifies a lack of a corresponding strategic plan - both on a federal and on a regional level. Nevertheless, the government programme 2013-2018 contains declarations of intention to build large institutions, set up alternative support services and develop independent protection models for around 20,000 people with disabilities working in workshops. On a regional level, Styria is currently the only *Land* having developed an “action plan for persons with disabilities” and having recognized its own need for action.

AOB identifies lack of political desire for implementation

Even though many problems remain unsolved, it must be stressed that the commissions found several institutions and facilities where no complaints were made and even classified some as exemplary. These individually adapt their infrastructure and service to the desires and needs of their clients. Participation plays an important role and is also applied.

## Monitoring priorities and overall findings

In consultation with the Human Rights Advisory Council, the AOB chose the topic “measures to prevent violence” as its monitoring priority. As does the independent mechanism according to Art. 33(2) CRPD, the monitoring committee (*Monitoringausschuss*), the AOB also defines violence broadly as specified in the CRPD.

Attention on different areas of focus	The AOB’s understanding of the terms “exploitation, violence and abuse” in Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities (CRPD) is based on sources of international law. Accordingly, the AOB developed a broad definition of its mandate in a policy document which has been sent to the Human Rights Advisory Council and the commissions. With regard to an effective prevention of violence, the following topics deserve special focus: complaint management, the regular reflection on norms and values of cohabitation, the further training of staff, the privacy of those affected, their opportunity to live a self-determined sexuality, flexibility in designing everyday life, all types of restrictions to freedom and mobility, access to comprehensible information, self-assertion and self-defence measures, networking with other social areas etc. As a result of the broad definition of violence, the following problems primarily became apparent during the visits:
Violation of Nursing and Residential Homes Residence Act	In several cases, the institutions did not report medication-based restrictions of freedom to the residents’ representatives, contrary to the mandatory provisions of the Nursing and Residential Homes Residence Act ( <i>Heimaufenthaltsgesetz</i> ). In several cases, the commissions documented and admonished mechanical and electronic restrictions of freedom, such as locked doors or beds with fall arrest equipment, which did not seem justified given the option of milder alternatives.
Insufficient documentation	Medical and care documentation were inadequate in several cases. For example, it was not possible to say which individuals were prescribed which psychotropic drugs due to which diagnoses. Clear indication descriptions for PRN medications were missing, and at times, diagnoses were updated insufficiently. In this context, there were also shortcomings with regard to medical education.
Autonomy not fostered	Repeatedly, deficits were identified in the area of accessibility and support in accessing the outdoors. Inside the institutions, people with disabilities were also highly limited in their range of actions through restrictive rules. Apart from this, the commissions identified in several institutions that care leaves too little room for own experiences and follows the rule “safety before independence”. As a result, the potential of people with disabilities to develop individually is not exhausted, and self-confidence and independence are not promoted sufficiently. The more controlling the institutional systems, the bigger the risk that too little support is provided for empowerment. Not all institutions have set themselves the target to promote contacts between people with and without disabilities and to support friendships and partnerships.

The commissions discovered in care homes, shared accommodation and workshops that persons with disabilities are insufficiently involved in the decision-making process and that they are strongly patronized even in everyday matters. This creates a cycle where potential resources remain unused and the dependency relationship is manifested in learnt helplessness.

In some institutions, the topic of violence is barely considered. Directors of these institutions argued that it goes without saying that staff did not resort to violence and that it therefore did not have to be mentioned. Special de-escalation training or supervision were not offered in these institutions.

Insufficient reflection on violence prevention

Since those affected receive insufficient information about their rights and have too few options to express their complaints, efficient complaint management is impossible. In many cases, not even complaint boxes were provided.

The sheltered workshops for persons with disabilities do not pay a salary but only a small amount of pocket money. This - as evidenced by two commission visits - even if the institutions generate profits thanks to the diligence and work of people with disabilities. If profit sharing is not in place in such cases, the AOB identifies a risk of exploitation in the sense of Article 16 (3) of the CRPD.

Risk of exploitation

During its official check of Austria, the UN Committee Against Torture expressed its concerns regarding the protection of children against domestic violence. The protection of children with disabilities against violence and abuse in institutions are of particular importance to the UN Committee (see CAT/C/AUT/Q/6 para. 7). Excessive or not age-appropriate restrictions of freedom, which do not serve educational purposes, must be classified as a type of violence against children.

In Austria, children and adolescents as holders of basic rights enjoy special protection warranted in the constitution regarding their personal freedom, which includes an examination of measures restricting freedom. The Act on Personal Freedom and Article 5 of the European Convention on Human Rights (ECHR) stipulate "legal protection proceedings" for restrictions to freedom for minors which exceed custody appropriate for their age.

Without pre-empting the ruling of the Supreme Court, the NPM cannot understand from a human rights perspective why mentally disabled or mentally ill minors should not enjoy the same legal protection in certain institutions in light of excessive and not pedagogically justifiable restrictions to their freedom as adults with the same disabilities, as implemented by resident representatives based on the Nursing and Residential Homes Residence Act (*Heimaufenthalts-gesetz*). As a result, the AOB also obtained statements from all associations for resident representation on this topic. These unanimously agree that legal protection for mentally disabled or mentally ill minors must be strengthened and that this should be achieved with additional resources for individual legal representation.

Legal protection must be strengthened

The AOB is aiming for a clarification by the legislator that all mentally ill or mentally disabled minors enjoy the same legal protection as adults.

## Individual cases

### Measures restricting the freedom of minors

Any arrangements restricting freedom, which are to balance out a lack of accessibility, room or staff resources are not permissible for disabled minors.

In one institution for minors and adults with disabilities in Lower Austria, Commission 6 documented three cases where age-inappropriate restrictions to freedom were used for children. The surroundings of the care ward in question are not barrier-free. The admission criteria published by the institution explicitly state that patients who are able to walk will not be admitted. However, the commission met a blind five-year-old, who was able to move, even though it was medically excluded at the time of his admission in 2008 that he would ever be able to move about independently. A forecast which proved to be wrong three years later. The commission also considered two girls to have an at least restricted ability to walk.

Cot with Perspex construction

Not only during sleep times but also in the late afternoons when 1-to-1 care was not possible for reasons of time, these children were temporarily kept in a locked wooden cot. When the boy managed to open the lock himself, the cot was secured with a special construction mad of Perspex. He was therefore not able to leave the bed by himself. The reasons given for the measures were that the children were to be protected against falls. There was also concern that the blind boy might mistakenly turn off important medical equipment for other minors.

Measures removed after NPM's criticism

The NPM voiced its criticisms of these restrictions to freedom to the Lower Austrian regional government - on the one hand based on the measures per se and on the other hand because they were not reported to the residents' representatives. The institution responded positively and has now ceased to secure beds altogether. It has also found ways to allow all three children to make more independent experiences of movement.

Individual case: VA-NO-SOZ/63-A/1/2013

### Autonomy violated by rigid institutional rules

Severe criticisms of one institution for persons with disabilities, particularly by the residents themselves, significantly contributed to the fact that proceedings were initiated by the supervisory authority. The proceedings resulted in a withdrawal of all permits.

Commission 5 made two visits to an architecturally impressive institution with a large park and modern workshops, where twelve young people with disabilities

from different *Laender* received care. The private organization's offer comprised both a daily structure and fixed accommodation.

The commission found that in both areas, there was a rigid set of institutional rules, which the residents were forced to obey. They perceived it as a great restriction to be faced with numerous prohibitions and not to be allowed to move around and develop their skills freely. Not just the clients but at times staff as well suffered from this tense atmosphere, which was attributed to the Board of the Association and to the institution's director. The workshops were hardly used; money was saved on work materials for cost reasons, and strengths and resources were not promoted in a targeted way. One staff member told the commission that the managing director displayed disrespectful and authoritarian behaviour, did not tolerate any disruptions and insisted that any violations of his instructions should incur punishments (e.g. house arrest, cell-phone and TV bans, no visits to cafés, no pocket money to be used freely etc.). The residents independently from each other expressed that they did not like being in this institution ("not my thing", "what they offer is just for kids"), and would like to see more or other activities. One young woman described that she suffers from nightmares and feels afraid of the institution.

Authoritarian management, rigid rules and punishment

Shortly before the commissions' visits, the *Land* of Lower Austria had cancelled its contracts with the institution. It had – among other things – become apparent that all care staff employed until early July 2013 only worked during the day and on working days. All night and weekend shifts were performed by four foreign professional caretakers as part of a 24-hour care contract. No accredited certificates of education could be presented to the authorities. During the investigation proceedings, the AOB pointed out that the basic principles of UN-CRPD were breached due to the permanent violation of the needs and desires of the persons with disabilities. Clients should be offered alternatives to ongoing care, and proceedings by the supervisory authority should be launched to withdraw the permits. These requests were met. All clients placed under public cost support were able to leave the institution by mid-November 2013.

AOB demands consequences

Individual case: VA-NÖ-SOZ/84-A/1/2013

### 3.5.5 Correctional institutions

#### General

The commissions carried out a total of 52 visits in correctional institutions and facilities for mentally disordered offenders. Similar findings and observations by the commissions revealed systemic weaknesses in prison administration. Examinations going beyond a focus on individual cases were performed for these structural deficits.

Not just the directors of the institutions made every effort in the concluding meetings with the commissions to immediately rectify any grievances. The willingness to cooperate of the directors of prison administration and to develop solutions for improvements must also be mentioned positively.

#### Monitoring priorities and overall findings

##### Staff shortage results in longer lock-up time and impedes supervision

Lack of staff in correctional institutions results in overly long lock-up times for inmates and in insufficient activity offers. There are also often not enough staff to look after younger inmates.

From the start, the commissions addressed the question whether present staff can meet the requirements of the highly utilized Austrian prisons. The commission did not simply demand that staff be added, but also focused on specific problem areas, and - in line with the mandate - also pointed to possible consequences:

Women under-represented in prison service

For example, women are clearly under-represented among prison guards at the prisons in Wels and Salzburg, which is regrettable in light of the requirements of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT: see Item 26 for precautions against abuse). Since it has so far not been possible to raise the proportion of female employees in the prison service, the NPM recommended advertising measures to increase the number of female employees.

Overly long lock-up times

There is often also insufficient staff to supervise specific groups, such as adolescents. This was particularly apparent in Innsbruck. There, afternoon supervision of adolescents takes place exclusively as overtime, so that events are cancelled if the civil servants do not have the time. Especially for adolescents, it is important to ensure sufficient protection against abuse. Time spent outside prison cells as well as activities avoid conflict; they are more likely to prevent assaults among inmates (also see CPT Standards, p. 83 f). Even at Gerasdorf prison, closing times were recently changed from 10 pm to 6 pm due to the tense staff situation.

At the correctional institutions in Stein, Vienna-Josefstadt, Wels and Innsbruck, lock-up times are rigid. As a result, inmates at Stein are locked in their cells from 2:30 pm during the week, and from 12 midday at the weekend and on bank holidays. The commissions also take a critical view of lock-up times at the correctional institutions in Graz-Karlau, Suben, Simmering, Favoriten, Eisenstadt, Ried and St. Pölten.

The AOB as NPM is aware that the individual needs of the growing number of inmates (averaging 8,864) have made prison administration increasingly resource-intensive in recent years. The fact that in some cases, a change in the organizational structure (with the same staff) has led to improvements in lock-up times shows that duty rosters must also be based on the needs of the inmate population. In addition, more attention must be paid at nursing care and support in the future. In this context, the World Health Organization's (WHO) recommendations for this group of individuals must be applied. The umbrella association of social institutions (*Dachverband*) offers hospice courses for this purpose. Furthermore, a catalogue of amenities for inmates in the last stage of their lives was developed.

In terms of employment, around half of prison businesses are mere operations aimed at maintaining the system. The remaining businesses focus on generating revenues. All inmates employed in 2012 worked an average of 2.13 hours per day of custody. The employment ratio is 54 %. Whereas system maintenance businesses are indispensable, businesses focusing on revenues must at times close due to a lack of staff. Regrettably, this even affects institutions where a project is currently operating. The aim is to reduce lock-up times, e.g. through longer departmental services at weekends and on Sundays and bank holidays. Closure days in the workshops necessarily result in more time spent in cells, which has a negative effect on (younger) inmates. The situation is particularly precarious at Graz-Jakomini. There, it became apparent that the employment offer is only sufficient for five people. On the day of the visit, 52 places had been allocated.

Closure of institution businesses due to lack of staff

As a result, that the Federal Ministry of Justice is working on a catalogue of measures in cooperation with staff representatives in order to, on the one hand, assure a high level of supervision, and on the other hand to also achieve the required level of security.

Ministry develops catalogue of measures

Individual case: VA-BD-J/0035-B/1/2013; BMJ-Pr10000/0070-Pr3/2013

### Severe deficiencies in facilities for mentally disordered offenders

The first examinations of treatment of mentally disordered offenders in institutions (forensic commitment) reveal severe deficiencies: overly long stays due to a lack of follow-on care institutions, too few court-appointed experts, missing quality standards for expert statements, inadequate accommodation with the other inmates.

Too few follow-on care institutions

Both the commissions on site and the AOB are confronted with complaints issued directly by those affected about excessively long stays in forensic commitment. The lack of adequate follow-on care institutions is evident. The Federal Ministry of Justice is aware of this problem and states that "it is extremely difficult to establish suitable follow-on care institutions due to their low social acceptance and complex financing structures." Nevertheless, as NPM the AOB takes the view that solutions must be found in order to improve this untenable situation.

Lack of quality standards for expert statements

As part of the monitoring priority "detention of mentally disordered offenders", the commissions also paid particular attention to forensic expert statements, on which the admissions and releases from therapeutic treatment are based. In some expert statements, the commissions see a clear balance in the ratio of the descriptive to the analytical parts. Other expert statements make exorbitant use of description.

As a result, it has been recommended that an interdisciplinary work group should be set up, which is to deal with creating quality standards for psychological and psychiatric assessments in the context of reaching a verdict and during the release process. The aim is to statutorily stipulate that the court-appointed experts used in the admission process should not also be used in the release process.

The low number of experts available is also a cause for concern. For example, during its visit to the Graz-Karlau prison, the commission became aware that only one expert is used for the forensic expert statement of the entire area of the Higher Regional Court Graz, who must examine up to eight people per day. When required, a retired colleague from another *Land* is consulted. The lack of forensic experts is also due to the fact that the act regulating the fee schedule for court-appointed experts (*Gebührenanspruchsgesetz*) does not specify appropriate fees for the medical examination and the expert statement.

In this context, the Federal Ministry of Justice stated that the historical rate in the act regulating the fee schedule for court-appointed experts no longer matches current conditions and requirements for the different expert statements by physician appraisers. In an evaluation of this rate over a period of four months, it became apparent that there is a need to revise the fee schedule for expert statements by physicians in legal proceedings. A further round of discussions with the Main Association of Court-Appointed Experts and the Austrian Medical Chamber was set to take place in October 2013. The AOB does not yet have the results.



Often, inmates expressed their desire for more transparency and information regarding the decision-making processes for relaxing prison sentences to the commissions. The AOB received numerous individual complaints in this regard. Prison sentences are only relaxed after this has been suggested by a multidisciplinary group, which either meets for the occasion or regularly at enforcement conferences. Such conferences are regularly attended by the Head of the Prison Guard, the Coordinator of Psychiatric Services, the Head of Psychological Services, and the Head of Social Services. At times, members of the specialist area are consulted and decision are based on whether there is a positive development process and whether prison sentences may be relaxed on a formalized pattern defined in June 2010. Indications of a positive development process are therapy compliance and adherence, a partial acceptance of the disease, dysfunction and offence, medication compliance, establishment and strengthening of protective factors, reflection on and reduction of factors relevant to the offence, improvement of stable-dynamic factors, acceptance of structural elements, an active involvement in and design of future prospects, ongoing stability, acceptance of responsibility and improved affect regulation as well as, if applicable, a distance from the consumption of substances.

More information if relaxing of prison sentence is required

Subsequently, inmates are informed of the final decision regarding relaxing prison sentences by attendees of the enforcement conference. Particularly when rejecting requests to relax prison sentences, an explanation of the reasons for the rejection is extremely important to inmates. For the AOB, it is essential that the reasons for rejecting the request are discussed in detail with the inmates. This should also be recorded in the electronic archive (Integrated Prison Administration) in order to make both the process and the main content of the meeting traceable.

It also became apparent that the separation requirement for detention of mentally disordered offenders is not always maintained. For example, in its report about its visit to the Karlau prison, the commission stated that the preventive treatment of mentally disordered prisoners practised at the institution practically merges into regular prison areas. Anyone not in a residential group is forced to accept lock-in times in the early afternoon. Opportunities for visits and visiting hours are no better than at the main prison. The commission saw several instances in which the "distance requirement" was not met.

Separation requirement not observed

The Federal Ministry of Justice acknowledged that temporary stays outside these departments are possible for medical, safety-related or technical enforcement reasons. Prison administration is making every effort to keep such stays as short as possible. Potential organizational solutions (renovation of existing departments) for a more sustainable general implementation of the separation requirement are being developed in co-operation with the relevant institutions. However, this endeavour is made more difficult by the ever increasing number of inmates.

Individual cases: VA-BD-J/0349-B/1/2013; BMJ-Pr10000/0089-Pr 3/2013, VA-BD-J/0492-B/1/2013; BMJ-Pr10000/0067-Pr3/2013, VA-BD-J/0349-B/1/2013; BMJ-Pr10000/0089-Pr 3/2013

### Health care and medical attendance in prisons

Inmates are entitled to the same level of medical care as free individuals. The use of interpreters is indispensable in this context.

As a result of the commissions' observations, the NPM studied the health care and general medical treatment situation and the handling of inmates on hunger strikes and/or at risk of suicide in Austria's prisons.

Electronic capture of medical data

Since the first part of the Medical Data module in the Integrated Prison Administration system (IVV MED) was completed in November 2010, it is possible to capture all medical data and documents electronically. This basic module is continuously updated to the latest (medical) level based on experiences in practice. Historical health data are transferred when required. The electronic patient file can only be viewed and edited by staff working in the medical area. In the case of medical emergencies (during the night), it is possible to access an emergency log on request. Data workflow is logged automatically and reported electronically to the director of the institution. The logs are saved and stored.

Hunger strike and suicide risk

In the case of a hunger and/or thirst strike, the AOB was able ensure that a corresponding form is available in IVV MED. Employees to whom the hunger/thirst strike is announced must make a written report and forward this to the institution's physician, who then fills in the given form during the examination and prescribes further measures. This ensures traceable medical checks and treatment. In terms of medical treatment for inmates at risk of suicide or if suicidal acts have already been taken, a psychiatric specialist must be consulted as soon as possible, and at the latest within 24 hours. The expert then makes a recommendation regarding accommodation. If the patient's condition deteriorates significantly, a transfer to a hospital must be arranged.

Medical superintendent added to prison administration

With regard to monitoring of medical practice by a qualified central department as requested by the NPM, the Federal Ministry of Justice stated that a medical superintendent was added to prison administration. A tender was initiated to fill the role of the new supervising physician-in-chief. An (electronic) integration of the medical superintendent in the electronic documentation system was promised within two years.

The commissions' reports show that inmates often feel that the appointment times with physicians are too limiting and/or that these have too little time for the inmates' concerns. The Federal Ministry of Justice states in this context that medical treatment at the special hospitals Vienna-Josefstadt and Stein is available around the clock. Other prisons can call in an emergency doctor outside appointment hours or affect a transfer to an outpatient department or hospital depending on the medical requirement.

The physician and the director of the sick ward must agree on which medications may be dispensed during the night if required. Generally, only non-prescription medications may be dispensed.

The NPM welcomes the measures taken, particularly the implementation of the IVV MED module and the medical superintendent in order to ensure that persons deprived of their freedom can enjoy the same health care as free individuals (see CPT's view on p. 31 ff of the CPT Standards). The mere possibility of tracing actions preventively results in an increased diligence of medical services in dealing with and treating prisoners, and contributes to avoiding violations of Section 3 of the European Convention on Human Rights (ECHR).

In the context of mandatory electronic documentation, the AOB considers it necessary to integrate the medical superintendent into this system more quickly. Clear legal principles for the medical superintendent's tasks must also be established.

Finally, in terms of the occupancy situation, Austrian prisons currently hold around 4,300 non-Austrian individuals from more than 125 countries of origin. Even though inmates request the involvement and support of other inmates from the same language areas, it must further be guaranteed that sensitive, highly personal matters, particularly when clarifying medical questions or findings, must only be translated by court-appointed and certified interpreters.

Medical consultation only with court-appointed interpreter

Individual case: VA-BD-J/00039-B/1/2013; BMJ-Pr10000/0032-Pr3/2013

### Major inequalities in punishment for administrative offences

Inmates should know what punishment to expect for what offence. Since there are currently no guidelines for imposing sanctions, practice varies greatly.

The commissions identified extremely different practices in terms of punishments for administrative offences. For example, the same offence is fined very differently in Western Austria compared to the East of Austria. This raises the question why there is neither a catalogue of criteria nor guidelines by the Federal Ministry of Justice as to when administrative offences should be punished.

According to the Federal Ministry of Justice, the diversity of possible administrative offences, and hence possible sanctions, speaks against such a catalogue. Fines, it states, should always be imposed individually. The type and intensity of the punishment relates to the appropriateness of the punishment. Anyone wishing to complain can take legal remedy. The type of punishment to be imposed in a situation is discussed in annual seminars with the directors of the institution - based on jurisdiction. In this context, particularly the criteria regarding punishments appropriate for the act or culpability are discussed.

Ministry refers to individual nature of punishments

Jurisdiction should be made accessible

However, this also means that there is a lack of transparency as to the criteria used for decisions. According to the NPM, the Federal Ministry of Justice's view is insufficient. Especially because punishable actions are not split into groups of offences, neither a list of possible punishments nor rules for the determination of punishments are helpful. For instance, it is apparent that the punishment type "reprimand" is rarely used. Legal protection options are also not a replacement for predictability of punishments imposed in the case of offences. Even ignoring the fact that a decision must comply with laws even in the first instance, quite a number of inmates might lack the required knowledge or intellectual skills to launch a founded appeal. In addition, the AOB has noticed that there are significant regional differences with regard to whether and to what extent decisions in the first instance are confirmed.

As a first step towards improvement, the AOB as NPM recommends analysing the rulings of enforcement courts or senates competent from 1 January 2014. The penalties imposed for crimes should then be published for inmates in a format accessible at any time and updated periodically. This then also creates transparent benchmarks used to make decisions on appeals. It remains to be seen whether the implementation of this recommendation is sufficient. If necessary, the AOB will reiterate the demand for more precision and a typification of behaviour incurring punishments.

Individual case: VA-BD-J/0036-B/1/2013; BMJ-Pr10000/0054-Pr3/2013

### Lack of complaint management

Complaints must be recorded and assessed systematically in order to identify enforcement deficits and to respond by taking suitable measures as quickly as possible.

Lack of complaint register

A visit to the Klagenfurt prison gave cause for a system check. There, the commission identified that neither a complaints book nor a complaints register is available. Complaints are only recorded in the electronic prison administration module, if at all. However, they cannot be evaluated systematically. The other commissions had similar findings. As a result, it is currently not possible - neither inside the institution nor externally - to access meaningful data showing in which areas (e.g. insufficient work, quality of foods, spare time activities etc.) a potential for conflict might be building up, and where quick responses may be required. Given recent events regarding violence among inmates, this is particularly regrettable.

Ministry is checking „development options“

According to the Federal Ministry of Justice's view, there is currently no technical way to carry out evaluations because complaints are not recorded systematically, comprehensively and in a structured way anywhere. It states that a "complaints book", similar to an appeal book, cannot be maintained sensibly because

complaints are made in very different ways (verbally and in writing, internally and externally) and are often presented repeatedly. However, the Federal Ministry of Justice has acknowledged the importance of complaint management as a source of information for deficits and improvement options. It was announced that “development options” would be sought together with prison administration. As a first step, the NPM recommended to include the agenda item “complaints” in regular talks at the institution and to include a presentation of complaints made in order to obtain a comprehensible overview of the complaints situation (topics/frequency). It was promised that this recommendation would be implemented immediately.

Individual case: VA-BD-J/0036-B/1/2013; BMJ-Pr10000/0054-Pr3/2013

### Need to make correctional facilities suitable for persons with disabilities

Out of 40 prisons and their branches, only 16 currently have one or several cells for people with disabilities. The Federal Ministry of Justice refers to a list of priorities, based on which renovations and adaptations are performed.

The AOB as NPM collected data across Austria on the situation of inmates with chronic and at times age-related physical problems as well as of mentally impaired individuals.

This was triggered by the situation of a paraplegic inmate at Graz-Jakomini, who was not able to go outside for 14 days because the cell and outdoors premises were not barrier-free. The conditions in the cell corresponded neither to the medical nor to the care needs of the paraplegic man; he depended on the support of another inmate. At the commission’s urgent request, the man was moved. Moreover, the commissions’ report showed that several prisons do not achieve accessibility or only do so within limits.

The Federal Ministry of Justice was unable to provide a list showing how many people with disabilities are currently being held because the prison authorities have so far not collected information on the physical and mental disabilities of the prisoners. However, only those people for whom adequate care and infrastructure is provided remain in the prison. If individuals are identified as unfit for custody, the prison sentence is no longer enforced. Around 40 to 50 people are released each year for this reason.

Lack of data

Possibilities of adequate care for inmates with disabilities range from the provision of therapeutic measures by purchasing special equipment, such as height-adjustable sinks or shower seats, to accommodation in special facilities inside or outside the prison. Particularly the special hospitals in Stein and Vienna-Josefstadt serve the purpose of housing physically impaired inmates. Specially trained care staff is also

available there. In individual cases, a transfer to a public hospital may be required. In terms of age-related diseases, individual checks are performed to find out how best possible care can be ensured during the prison sentence.

The state's warranty  
obligation

In this context, the AOB refers to Article 14 (2) of the Convention on the Rights of Persons with Disabilities (CRPD). According to this, persons with disabilities, who are deprived of their liberty through any process, are on an equal basis with others entitled to guarantees in accordance with international human rights laws. This must be ensured by "providing suitable measures". Court rulings of the European Court of Human Rights must also be taken into account (D.G./Poland, 12 May 2013 or 45705/07), according to which convicts are entitled to an accessible cell and, if necessary, to sufficient medical aids. At the same time, the European Court of Human Rights classes it as demeaning treatment and a violation of Article 3 ECHR if a physically impaired person is held in a cell, which he/she cannot leave without help (Judgement Vincent/France, 24 October 2006, or 6253/03).

As the NPM noticed, especially the Southern part of the country must catch up with its backlog, whereas the metropolitan area of the country's capital is already more advanced in terms of facilities. Out of 40 prisons (including branches), only 16 currently have one or several cells for people with disabilities. Especially with regard to new buildings and renovations, the AOB refers to the "National Action Plan - Disability 2012-2020", according to which the Federal Government decided on 24 July 2012 that representatives of disability organizations would be involved in all major building projects.

Furthermore, in assessing the "personal circumstances" of inmates for classification by prison administration, more focus will have to be put on which institution meets the relevant requirements. The AOB will continue monitoring the progress of adaptations and the quality of a possible new building next year.

Ministry issues list  
of priorities

The Federal Ministry of Justice is aware of the need for adjustments. New or renovated buildings are designed in a barrier-free manner. In terms of existing buildings, a list was created based on which renovations and adaptations are performed. Top priorities are accessibility, the retrofitting of lifts, the installation of mobile ramps and the adaptation of sanitary facilities. The implementation of accessibility as required according to Federal Act on the Equal Treatment of Persons with Disabilities (*Bundesbehindertengleichstellungsgesetz*) by 2016 certainly depends on the budget funds available.

Individual case: VA-BD-J/0037-B/1/2013; BMJ-Pr10000/0044-Pr3/2013

### Inconsistent process when implementing urine tests

A register in which urine tests are recorded would ensure that testings ordered on a random basis are traceable. Monitoring of urine tests constitutes a severe breach of the inmate's private sphere. A shift to saliva tests would eliminate concerns in this matter.

As a result of numerous complaints from inmates, and based on the commissions' observations, suspicions were raised that ordering and carrying out urine tests can result in abuse. When accessing files of penalty proceedings at the Feldkirch and Innsbruck prisons, Commission 1, for instance, noticed that urine tests merely documented with comments such as "suspected abuse" or inmate "behaviour" - without a closer description of the behaviour or symptoms.

Insufficient documentation for urine tests

The question remains whether urine tests during prison sentences are actually carried out uniformly across Austria.

The Federal Ministry of Justice states in this context that the Prison Act (*Strafvollzugsgesetz*) alternately mentions the elements "sample checks" and "on suspicion". Whereas "sample check" implies a randomness and hence a lack of reasons, the second term presupposes "suspicion". It is simply in the nature of such checks that they would be repeated for individuals where addiction problems are known or who have tested as positive once or several times before (more likely "on suspicion" than as a "sample check"). It remains unclear which criteria are used for sample checks.

The NPM considers a description of the process to determine suspicion to be required because this can prevent accusations of abusive ordering of checks. The criteria used for sample checks are still not clear. It may be correct that the term "sample check" implies randomness. But the law does not specify how samples are to be chosen (e.g. random selection or chance) and when, how often and how many inmates are to be subject to a sample check. As a result, it is possible for one inmate to be subject to more than just "sample" urine tests. It would therefore make sense to keep a "register of sample checks" in order to prevent bullying of inmates.

Register of sample checks

In order to prevent inmates from adding third-party urine or other substances to their urine during testing, and from thereby falsifying the result, it is indispensable for the test subjects to be monitored during urination. In this context, the commission found out that at Feldkirch prison, those affected must undress completely and are subject to a visual check.

Monitoring urination

This process is not only in contradiction of Article 3 ECHR. It is also contrary to the decree dated 23 May 2002, according to which inmates must be given the option of "avoiding an indirect observation (using mirrors) of urination through a prior body search". Affected persons are to be able to choose themselves whether they

prefer indirect observation or a prior body search, which relates to the core area of personal intimacy.

Replacing urine tests with saliva tests

Both being observed directly or indirectly during urination, and a prior search involving bodily exposure, are severe invasions of the private sphere of inmates, so that prison administration is aiming at replacing urine tests with saliva tests across the country. This might also result in a reduction in attempts to manipulate and deceive because immediate monitoring is easy and not invasive.

The prisons Vienna-Simmering, Vienna-Favoriten and Hirtenberg were selected for a three-month test phase. The aim is to receive sufficient usable test results in order to be able to decide on a change to saliva tests and rearrange the area by decree in the first quarter of 2014, ideally involving a (total) replacement of urine tests.

It was recommended that the new decree would in any case also stipulate a detailed documentation of the process of ordering tests including individual reasons and exceed the suggested "register of sample checks" in terms of content.

Individual case: VA-BD-J/0040-B/1/2013; BMJ-Pr10000/0050-Pr3/2013

### Constructional defects result in invasion of inmate sphere

Video surveillance in showers violates human dignity. In cells occupied by several people, structurally separate toilets must be constructed by 2017.

Already during their initial visit to the Wels-Forensik prison, the commission noticed that not only all cells are monitored with infrared cameras, but all showers are also equipped with video surveillance. The delegation objected stating that this violates the private sphere of inmates. They were told that the showers on the screens are only "monitored very briefly" and that no video recordings are made.

Human dignity is inviolable

Article 8 ECHR as well as Article 7 of the EU Charter of Fundamental Rights grants everyone a comprehensive and general right to respect for their private sphere. A protection of fundamental rights particularly includes a protection of the intimate sphere. Article 8 ECHR may mention a material and formal reservation to interference. An interference by a public authority with the exercise of this right is only permissible if it is stipulated by law and necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

Cameras dismantled

As a result, a recent amendment of the Prison Act provides that interference with the right to privacy must be proportionate when video surveillance is used, particularly if technical measures are used to record images. The Federal Ministry of Justice took into consideration the NPM's concerns and initiated the removal of



video surveillance systems in all shared sanitary facilities. No further action was thus required.

During their visits to the correctional institutions in Favoriten, Ried and Suben, the commissions identified that visual covers for toilets in cells for multiple inmates or individual cells shared by several inmates were insufficient. Whenever technically possible, the installation of screens protecting the inmates' privacy was promised.

Screens for toilets

In light of the Prison Act requirement to build structurally separate toilets in cells for multiple inmates by 2017, an installation of missing visual covers alone (without adding ventilation) is insufficient to warrant humane prison conditions. As a result, the NPM recommends checking again whether the promised adaptation measures are purposeful, also with regard to economic aspects. The NPM points out that - if the required structural separation is not possible - these cells can only be used as single cells (at the latest from 2017).

Individual cases: VA-BD-J/0003-B/1/2013; BMJ-Pr10000/0002-Pr3/2013, VA-BD-J/0248-B/1/2013; BMJ-Pr10000/0031-Pr3/2013, VA-BD-J/0338-B/1/2013; BMJ-Pr10000/0080-Pr3/2013

#### Violation of the separation requirement

Pre-trial detainees should not be held together with convicts. It would be better for inmates in drug substitution programmes to be accommodated in suitable treatment facilities.

As was reported to the NPM, 140 individuals are in drug substitution treatment at the Stein prison; but not all of them can be accommodated on the medical ward. There is also an acute lack of space on the so-called "substitution ward". Similarly alarming circumstances exist at the special hospital and the ward for treatment of mentally disordered offenders. At times, pre-trial detainees are even held together with convicts.

Therefore, the NPM decided to carry out a systemic examination of the occupancy situation in Austrian prisons. As the Federal Ministry of Justice pointed out, a mandatory separation of inmates in substitution treatments and other prisoners is not stipulated by law. Such wards for addicts would also be detrimental to integration and re-socialization efforts for such individuals. But if the intention is truly to create basic conditions which make treatment easier and improve the condition of those affected, the NPM believes that appropriate rooms must also be available.

Rooms for people with special needs

As concerns the allocation of pre-trial detainees, the Austrian Code of Criminal Procedure (*Strafprozessordnung*) does not stipulate that pre-trial detainees and must necessarily be kept separate from convicts in all cases. Nevertheless, this does not mean that the legislative authority approves of defendants being held

Separation of pre-trial detainees and convicts

together with convicts. A best possible implementation of separate detention must therefore be the aim. The NPM considers this to be especially advisable in the area of adolescent defendants.

Individual case: VA-BD-J/0035-B/1/2013; BMJ-Pr10000/0070-Pr3/2013

#### Information only available in German

Access to information not only means that information must be provided. It must also be available in a language understood by the inmate, so that it is "comprehensible".

At Ried prison, the commission noticed that the Code of Conduct is only available in German. At Sonnberg prison, the same was true of information sheets, e.g. regarding applications for conditional release. It was also criticized that access talks are held either in English or translated by inmates.

High proportion of foreigners

The Federal Ministry of Justice pointed out that the 27 prisons currently hold individuals from more than 125 nations. The Federal Ministry of Justice conceded that this problem needs a country-wide regulation. It is currently being investigated what information should be available in what languages. It must also be clarified in what instances an interpreter must necessarily be consulted. A draft guideline including standardized information sheets is in the pipeline.

Limits to assisting fellow inmates

It was also stated that it is unavoidable given the diversity of languages that suitable other inmates are used for translation support. Preferentially, this should however only be used for everyday matters. Exclusively certified interpreters should be consulted to translate sensitive, highly personal matters, which in any case include consultations with physicians and/or discussions of results. As a result, a corresponding decree by prison administration ensuring a consistent process across the country is currently in the making.

Pilot project in hospitals

The NPM welcomes the efforts to create a consistent process and recommended to the Federal Ministry of Justice to look at the empirical data collected in four selected hospitals from early October 2013 as part of a pilot project for a video interpreting service. The results will show to what extent this system can also be used in prison contexts.

Individual case: VA-BD-J/0390-B/1/2013; BMJ-Pr10000/0041-Pr3/2013

## Use of PCs and internet access - blanket ban not permissible

The use of PCs not only makes everyday prison life easier, but can also qualify inmates for work after their prison sentences. Therefore, improvements in EDP use should be an aim.

After its visit to the Vienna-Mittersteig prison, Commission 4 reported problems in the use of PCs. It was stated that a ban on use proved to be “unavoidable” after abuse. The AOB determined that no own devices are permitted in Eisenstadt, Vienna-Favoriten, Feldkirch, Göllersdorf, Vienna-Josefstadt, Klagenfurt, Leoben, Linz, Vienna-Mittersteig, Salzburg, Wels and Vienna Neustadt.

General ban is unfounded

The AOB - in its role as NPM - is critical of a blanket ban. Based on the rulings of the Administrative Court of Austria alone, it fails to be apparent why the use of the internet would in any case be contrary to a prison sentence and be prohibited without exceptions. In addition, each restriction must be viewed against the background of the right to maintain a private and family life and to correspondence, as well as to freedom to receive and send messages or ideas, so that restrictions to a “necessary use” must be questioned. The AOB also points out that the Austrian Code of Criminal Procedure does not contain a general ban on PCs and that the lack of granting such permissions must always be justified in individual cases.

The NPM also recommends extending the (electro-technical) infrastructure. Prison administration does not offer a general access to the internet - other than for educational measures and in two institutions with specific partial solutions.

Internet access

At the Oberfucha branch of the Stein prison, inmates with relaxed sentences can use the internet under supervision. In addition, inmates at Graz-Karlau have access to a PC for internet phone calls (Skype). An extension to two Skype PC sites is planned after the visitor centre has been completed. The NPM welcomes that inmates have the option to use the internet under supervision, and also considers internet calls to be a technical option to maintain social connections.

However, in light of the rulings of the Administrative Court, it makes sense to create standards for use, which could e.g. consist in an approval of specific sites (white list) and/or in use under supervision of a prison guard as it is already practised to a limited extent.

Standard for use required

Individual case: VA-BD-J/0066-B/1/2013; BMJ-Pr10000/0084-Pr3/2013

## Individual cases

### Special examination due to severe grievances - Josefstadt Prison

Structural weaknesses foster violent acts and abuse. This is the conclusion that the commission reached as early as April 2013, several weeks before the abuses occurred which attracted such public attention in the early summer.

Special examination	Commission 4 visited the Josefstadt prison on several days in April 2013. Their impressions and findings from previous visits were so grave that the AOB decided to carry out a special examination. Due to the report of the rape and severe abuse of a 14-year-old pre-trial detainee by three cell mates, the scope of the examination was extended further at the beginning of July 2013. At the same time as the AOB's examination, a working group was set up in the Federal Ministry of Justice, with the aim of developing suggestions for improving the penal system for adolescents.
Follow-up visit confirms improvements	In early September, the commission followed-up on conditions at the Josefstadt prison. Encouragingly, the delegation was able to identify positive changes in many respects. For example, prison conditions have improved significantly, as also confirmed by the inmates when asked. In addition to the accommodation in two-person cells almost throughout the institution, there are now significantly more activities available, more conversations with the wardens, who react better to the inmates and who act as intermediary in the event of possible breaches and do not impose punishments immediately. The atmosphere was also improved: The rooms were repainted, new floors were laid and new furniture ordered (lockers for the inmates).
Structural adaptations proving difficult	A concept for a step-by-step renovation of the rooms was developed. In the first renovation year (from 2014), all urgently required updates are to be tackled in order to subsequently deal with individual sections or wings each year (until 2020). Total net building costs of EUR 40.9 million (for landlord and tenant) are estimated.
Department for adolescents takes precedence	As a first measure, the cells in the department for adolescents will be renovated immediately, and their fixtures and fittings will be overhauled (furniture, provision of adequate reading materials, etc.). Extra beds and unused equipment were removed and all mattresses no longer meeting acceptable hygiene standards were replaced.  Every cell at the Vienna-Josefstadt prison is equipped with a sink. If possible in terms of staffing, the inmates are also given the option of taking a shower daily. Inmates working in the institution's businesses can shower daily without exception, as can all inmates after sports activities.
Reduction in beds	In terms of accommodation for adolescents, a normal occupancy rate is defined as two places per cell. Exceptions to the principle of two-person occupancy only

relate to admissions during night duty; for this purpose, the cells suited to this on the basis of their size must be made available for a short-term commitment of one further adolescent. The two-person accommodation rule must then be implemented immediately during the next day duty (where Saturdays, Sundays and bank holidays are also not an exception) by arranging for one of these adolescents to be moved elsewhere. It is only possible to depart from the required two-person occupancy rule in specifically justified cases. Before each allocation to a cell, the section team (Director of the Department for Adolescents, specialist services, prison officers) in consultation with the Director of Prison Services and Court Assistance for Adolescents clarify whether the adolescent's development stage is appropriate for his/her age.

The largest cell in the section for adolescents was re-designated as an "activity and group room". The main aim is to use this room to meaningfully occupy inmates not taking part (or who cannot take part) in any given education or training. During afternoons, Sundays and bank holidays, the room can also be used for various group activities. In particular, its purpose is to provide the option of supervised activity for adolescents who cannot be placed in a workshop and who are not attending any given training or education. This extended daily offer is made possible through staffing the adolescent section with three prison officers.

Meaningful occupation

Special focus is placed on avoiding and preventing attacks. An analysis of recurring patterns of violent acts targeted at enabling preventive measures can be achieved by discussing and documenting the cases as part of daily, multi-professional talks. Adolescents have the option of attending anti-aggression training. This training is held together with employees of a counselling centre for men (*Männerberatung*) and the Vienna Juvenile Court Representatives (*Wiener Jugendgerichtshilfe*).

Individual case: VA-BD-J/0449-B/1/2013; BMJ-Pr10000/0091-Pr3/2013

### Teaching and German lessons - Korneuburg Prison

Prisons must ensure that inmates lacking primary school knowledge receive necessary teaching at primary school level. Lessons are to be offered in any event if a larger number of those detained require this teaching.

During its visit to the Korneuburg prison in January 2013 Commission 6 found that adolescents of compulsory school age were not offered schooling or German lessons.

According to the statement by the Federal Ministry of Justice, a total of only ten adolescents of compulsory school age were held in the past nine years. If a compulsory school diploma education needed to be made possible, the adolescents were transferred to the Vienna-Josefstadt prison because a compulsory school

Transfer to prisons of compulsory school age to the Vienna Josefstadt prison

with the relevant infrastructure has been set up there, which offers the curricula for secondary modern and special education school-leaving diplomas as well as for polytechnic school degrees. The additional creation of a comparable infrastructure at the Korneuburg prison was considered neither appropriate nor economic.

In the context of the lack of German lessons offered, it was communicated that the transfers and related redesign of the institutional concept - due to the new construction of the Korneuburg prison - meant that German lessons were not yet offered but were in the pipeline at the time of the commission's visit. Now compulsory courses are offered regularly.

Subjective, public right  
of all inmates to  
receive teaching

From the NPM's perspective, it may be the case that the principle of economy, cost-effectiveness and appropriateness only allows lessons to be offered where a larger number of people require the lessons regularly. However, according to the Prison Act all inmates - and not just adolescents of compulsory school age - are entitled to receive the required teaching (at primary school level). For inmates whose first language is not German, this also includes learning basic terms in German.

The practice of transferring all adolescents of compulsory school age to the Josefstadt prison need not be criticized. Since (school) training forms part of achieving the general purpose of prison sentences of socialization, it must be ensured that such lessons are provided at primary school level, if a larger number of inmates (five to ten people) require such teaching, especially because it need not necessarily be held by teachers.

It must be stressed as a positive fact that the offer of German lessons, which has now been set up, means that the legal requirement is now met.

Individual case: VA-BD-J/0208-B/1/2013; BMJ-Pr10000/0069-Pr 3/2013

#### **Right to food appropriate to religious belief - Rottenstein Prison**

When providing food, inmates' religious beliefs should be taken into account to the extent possible and depending on the institution's infrastructure.

During their visit to the Rottenstein prison, the commission criticized the lack of variety in the food on offer and the lack of consideration for religious dietary laws.

The Federal Ministry of Justice then carried out a survey among the inmates and, in a further step, is now attempting to incorporate the results into the design of the food provision. A working group involving the inmates is to further improve the food situation.

With regard to the dietary laws of different religious groups, the competent economic director has been instructed to check the menus compiled one month in advance. In addition, the prison now offers two different nutritional options (normal and ritual) in order to meet legal requirements.

Introduction of a second nutritional option

Individual case: VA-BD-J/0300-B/1/2013; BMJ-Pr10000/0043-Pr3/2013

### Inappropriate modes of interaction - Flordsdorf Prison

Condescending expressions ranging from using an inappropriate form of address to derogatory remarks are an expression of an imbalance of power. Such discriminations must be stopped.

Inmates complained both to the competent commission and to the AOB that the use of the familiar German "*Du*" address was used too often (instead of the more formal and polite "*Sie*").

The AOB as NPM acknowledges that the use of the "*Du*" address can be suitable to create a more comfortable atmosphere. But this is only acceptable if its use is mutual. Addressing someone with the informal "*Du*" without mutuality is to be avoided.

Regrettably, the commission learnt from one inmate that several prison officers, whose names were given, repeatedly made racist remarks. Discriminating and disparaging comments were also made about individuals' sexual orientation and about people with disabilities.

Offensive remarks

This accusation was immediately forwarded to the Federal Ministry of Justice. Consequently, the directors of the institution expressly indicated to all officers that prisoners and inmates should be treated with respect for their sense of honour and human dignity. They must be addressed with the formal "*Sie*" and, if an individual prisoner wishes to be addressed with his or her surname, then "Mr" or "Ms" plus surname must be used.

In addition, the Director of Prison Services personally instructed the mentioned officers that the use of racist, discriminating and/or derogatory expressions is unacceptable and will have legal consequences in all cases. Responsible competent (line) managers were also urged to meet their professional and specialist supervisory duties.

Prompt response

The AOB as NPM thus acknowledges that the initially necessary steps have been taken. It remains to be seen if they will have the desired effect. In any case, the commission has been requested to keep an eye on this area.

Individual case: VA-BD-J/0492-B/1/2013; BMJ-Pr10000/0067-Pr3/2013

### 3.5.6 Police stations, police detention centres and barracks

#### General

89 visits to police institutions

During the reporting year, the NPM commissions carried out 89 visits to police institutions: 62 of these visits were to police stations, 25 were visits to police detention centres and two were visits to the accommodation facilities for families at Zinnergasse, Vienna. In several cases, the commissions saw no cause for complaint from a human rights perspective. However, they frequently identified room for improvements in the examined areas.

The responses of the Federal Ministry of the Interior to the recommendations made by the AOB and its commissions acting as NPM vary greatly. Whereas less severe problems were often rectified quickly, structural deficits are more difficult to resolve. In part, the implementation of the NPM's recommendations also failed due to a lack of finances and staff resources at the responsible authorities.

Four visits to barracks

The commissions made a total of four visits to barracks, with observations primarily restricted to the general situation at these institutions (visits to common rooms and quarters).

#### Monitoring priorities and overall findings

##### Better living and accommodation conditions at police detention centres

In the past reporting year 2012, the AOB had already initiated investigative proceedings regarding the detention conditions at police detention centres. Despite a lively exchange between the AOB and the Federal Ministry of the Interior, the procedure has not yet been concluded. This is due to the fact that a new detention centre opened in Vordernberg (Styria) in January 2014. The Federal Ministry of the Interior is hoping that this will defuse the problems at the other detention centres.

In the annual report of 2012 the NPM reported the structural defects of the living and accommodation conditions during stays at police detention centres. Based on the commissions' findings, the AOB initiated extensive investigative proceedings, by making numerous recommendations to the Federal Ministry of the Interior on how to improve the situation.

Open detention

From the NPM's perspective, the observation period for detainees in return procedures must be kept as short as possible until they are transferred to an open location. The Federal Ministry of the Interior announced that it would evaluate the criteria for access to open locations at police detention centres and check whether these can be made consistent.



Furthermore, the NPM recommended that options for improving the activity and leisure situation of detainees developed by the former Human Rights Advisory Board of the Federal Ministry of the Interior should be implemented as quickly as possible. In this context the Federal Ministry of the Interior stated that it would make already developed activity concepts available to those responsible so that they can be included in future budget planning.

Activity and leisure situation

The NPM considered the lack of specialist training of officers working at police detention centres to be a serious structural drawback. The Federal Ministry of the Interior initially assumed that employees at police detention centres already receive sufficiently specialized training in the course of periodic further training events. However, during a meeting with the AOB, the Federal Ministry of the Interior announced that two new training elements will be added to basic training for employees at police detention centres.

Staff training

Due to repeated criticisms from the commissions, the NPM recommended a fundamental examination of the approach of holding individuals under the influence of alcohol or drugs, as well as people with apparent mental difficulties or at risk of self-harm, in separate, specially secured cells. The Federal Ministry of the Interior responded by announcing that it would develop a process that adequately takes into account the necessary healthcare for such individuals.

The NPM also identified possible areas of improvement with regard to the detention regulation (*Anhalteordnung*), which sets out the detention conditions at police detention centres. The Federal Ministry of the Interior confirmed that it would review the detention regulation taking account of the aspects mentioned by the AOB. Upon recommendation by the AOB, the Federal Ministry of the Interior agreed to review information sheets for detainees with a view to improving their content and make them more comprehensible.

In terms of rules for visits to the centres, the AOB as NPM advocated the removal of glass screens planned for the visitor areas of all police detention centres. In the NPM's opinion, the Federal Ministry of the Interior should make visits at tables - currently only permitted by exception - possible generally. The Federal Ministry of the Interior initially rejected this due to security concerns. Subsequently, the Federal Ministry of the Interior however stated its intention to relax rules for visits in newly constructed detention centres for the first time.

Rules for visits

The Federal Ministry of the Interior has reported that it would open a new detention centre in Vordernberg in 2014. The aim of the Federal Ministry of the Interior with the Vordernberg detention centre, which is designed for 200 detainees, is to enable reformed conditions for detainees in return procedures based on the most recent standards and findings. In the future, the other police detention centres are to be used primarily for short-term detention pending removal and for holding short-term police detainees and inmates subject to administrative proceedings.

Construction of a new detention centre

Ministry invitation to join working group

Most recently, the Federal Ministry of the Interior announced that it would employ a working group from the start of 2014. Together with the AOB, the Federal Ministry of the Interior wants to deal with selected topics, for which no satisfactory solution has so far been found. It is planned to set out consistent criteria for the admission of detainees in return procedures at open police detention centre locations. Additional topics planned for the working group include: improving work and activity offers for detainees, creating alternative rules for visits (more visits at tables), and generally expanding visiting hours at police detention centres.

Individual case: VA-BD-I/0510-C/1/2012, BMI-LR1600/01118-III/10/2013

### Commission access to medical records of detainees

During their visits to police detention centres, several commissions were not allowed to access or were granted only limited access to the medical documents of detainees by the management of the detention centre. After the Human Rights Advisory Council became involved, a solution was found, ensuring extensive commission access to the medical documents.

Data relating to activities as public health officers and curative treatment

As the AOB reported in its annual report 2012, the commissions were frequently confronted with problems when requesting to view the medical documents of detainees during their visits to police detention centres. The department initially took the approach that the commissions should only be granted access to medical documents relating to the activities of police physicians as public health officers. Although police physicians collect medical data in the context of treating detainees, the commissions were told that they had no right to inspect this data.

Human Rights Advisory Council's opinion

The AOB then asked the Human Rights Advisory Council to give its opinion regarding this legal question. A working group of the Human Rights Advisory Council had prepared legal expertise in advance. The working group included representatives of the Federal Ministry of the Interior, the Federal Ministry of Health and the AOB. Based on the working group's findings, the Human Rights Advisory Council released a statement at its meeting on 6 June 2013. According to this, the commissions should be granted extensive access to the medical data of detainees at police detention centres. This also applies if the data does not relate to the question of the detainees' ability to be held but to pure „medical treatment“ for detainees. The Human Rights Advisory Council based this opinion on the Austrian Ombudsman Act 1982 which entitles commissions to access medical documents of persons deprived of their liberty regardless of the type of medical data.

Ministry implements results

The Federal Ministry of the Interior welcomed the acquired legal certainty and initiated immediate implementation in the way of a decree. The NPM commissions will therefore be able to examine the activities of police physicians at police

detention centres comprehensively in the future. This is to prevent insufficient health treatment and impermissible medication-based restrictions to freedom.

Individual case: VA-BD-I/0501-C/1/2012, BMI-LR1600/0089-III/10/a/2013

### Visits of police stations

During its monitoring and control activities at police stations, the AOB was able to directly apply the work of the former Human Rights Advisory Board at the Federal Ministry of the Interior (1999-2012). The AOB and its commissions can turn to numerous results and recommendations. In addition, there has been a routine of unannounced control visits to police stations for many years.

Together with the Federal Ministry of the Interior, it was possible to establish a graduated approach for remedying the shortcomings noted. Generally, the subsidiary principle applies, i.e. shortcomings should be rectified at the lowest possible level. A solution e.g. for hygienic shortcomings must be found during the concluding meeting directly between the visiting delegation and the director in charge. In case of minor structural or technical defects, it must be solved between the commission and the police department of the competent *Land*. It is only if no solution can be found in this way, e.g. because of insufficient staff resources, that the AOB approaches the Federal Ministry of the Interior.

Like all public institutions, police stations should be barrier-free in line with the Federal Act on the Equal Treatment of Persons with Disabilities (*Bundesbehindertengleichstellungsgesetz*). The schedule published by the Federal Ministry of the Interior specifies implementation in stages. During numerous visits, the commissions identified insufficient implementation of this step-by-step plan. The Federal Ministry of the Interior is aware of problems, but implementation often fails due to insufficient budgetary means. Immediate adjustments in order to ensure that at least entrances to police stations are barrier-free are promised regularly.

Accessibility

As stated for police detention centres, information sheets are also not sufficiently clear in the area of police stations. Substantive, comprehensible information for those affected regarding their rights is of key importance, especially immediately after an arrest and at the start of a prison sentence. The AOB has recommended that these forms should be supplemented and revised. The Federal Ministry of the Interior has assured that such a revision will take place.

Information sheets

In the context of examining a person's fitness to undergo detention and transfers to psychiatric wards, it was found that multiple times an insufficient number of police physicians were available. According to the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*) transfers to psychiatric wards without an examination

Police physicians

by a police physician are only permitted in cases of imminent danger. The AOB has launched a systematic, own-motion examination.

**Staff resources** It is especially important in prison services to ensure that employees are able to meet all demands. In dangerous situations, immediate measures must be taken, for which accountability must be accepted. In this context, compliance with human rights standards must be ensured, and excessive strain e.g. caused by overtime must be avoided. Nevertheless, especially at smaller sites, absences due to sickness, leave or shift allocations must regularly be compensated for with additional time commitment. Balancing measures and the distribution of staff resources are being structurally reviewed within several test proceedings.

### Documentation of arrest and detention at police stations

A deprivation of freedom is one of the most severe invasions of basic and human rights. To ensure legal protection and monitoring, documentation is of key importance. As a result, all deprivations of freedom must be documented in detail in a detention log

At several police institutions, the NPM identified shortcomings in the documentation of deprivation of freedom. These range from contradictory specifications for time spent in the cell and for the duration of detention via insufficient documentation when security measures are imposed and interpreters are consulted, to a lack of clarity as to whether information sheets were actually handed out.

**Documentation of arrest and detention** Detention logs are central documents, which must comprehensively contain all the relevant information regarding the arrest and subsequent detention.

As recommended by the AOB as NPM, the Federal Ministry of the Interior carried out several surveys regarding standards internal to the institutions (decrees, internal instructions, etc.). After reviewing technical support and actual handling, the result revealed that standards and technical options are sufficient for ensuring exact and clear documentation.

**Pure „form completion errors“** According to the Federal Ministry of the Interior, the errors found by the NPM were “form completion errors”. The Federal Ministry of the Interior prompted sensitization for the relevant officers. In addition, training and further education will focus more strongly on ensuring clear, exact and complete documentation of detentions.

**Remedying directly on site** Any shortcomings in documentation found can by now be clarified at the final meeting with the relevant managers, on site. During follow-up visits the commissions check whether such shortcomings are remedied on a sustainable basis.

Individual cases: VA-BD-I/0190-C/1/2013, I/0582-C/1/2012, I/0277-C/1/2013, I/0386-C/1/2013, I/0018-C/1/2013, I/0016-C/1/2013, I/0385-C/1/2013, BMI-LR1600/0116-III/10/2013

## Individual cases

### Correction of defects at Bludenz police detention centre fails due to building deficits

A visit to the Bludenz police detention centre brought about an improvement of the detention conditions. However, the Federal Ministry of the Interior was unable to implement all recommendations issued by the AOB. This particularly related to defects, where a rectification would require adaptations to the building.

During its visit to the Bludenz police detention centre, the commission noticed several defects in the sanitary facilities. For example, the commission criticized the fact that the sinks in two multiple-occupancy cells were not suitable for washing intimate body parts due to a lack of visual protection. Defective mirror film was attached to the mirrors, so that these were almost unusable. The commission also considered the separations between individual shower areas in the common shower room to be insufficient.

Whereas the Federal Ministry of Interior immediately installed new mirror film in the cells, the construction of screens for visual protection between the sinks and more spacious shower areas failed due to the structure of the building.

Improvement of sanitary facilities could not be implemented

The commission recommended that a screen should be set up in the toilet section of small cells, which are under video surveillance, in order to protect the inmates' intimate sphere. The commission identified a security risk in the cable conduits that lead to the intercom system for the small cells. At the time of the visit, these could be reached from the cell through the bars. As a result, the commission is concerned that inmates might tear out the cable and use it for a suicide attempt. The Federal Ministry of the Interior quickly ensured that a screen was installed for the toilets in the two small cells and that the cable conduits were covered.

Protection of privacy

In the course of the examination by the AOB, the Federal Ministry of the Interior admitted that the building in which Bludenz police detention centre is based suffers from deficits. A possible structural adaptation of Bludenz police detention centre will be the focus of further discussions between the NPM and the Federal Ministry of the Interior.

Individual case: VA-BD-I/0011-C/1/2013, BMI-LR1600/0051-Büro MRB/2013

### Criticism of medical documentation - Innsbruck police detention centre

The commission visited Innsbruck police detention centre due to the use of a Taser gun. The commission's findings prompted the Federal Ministry of the Interior to perform a systematic check of the medical documentation on site.

The use of a Taser against a detainee at Innsbruck police detention centre triggered the commission's visit to the institution. The aim of the visit was to examine the proportionality of the use of the Taser, the exhaustion of de-escalation measures before it was used and the relevant documentation and medical treatment for the affected inmate.

From the commission's perspective, the Taser was used both in line with national provisions and with the relevant CPT standards. However, the commission considered the medical documentation at Innsbruck police detention centre to be insufficient. In particular, it criticized the at times scarce and contradictory notes, which made it difficult for outsiders to comprehend the police physician's assessment.

On-site check by the  
Ministry

At the NPM's recommendation, the Federal Ministry of the Interior carried out a systematic check of the medical documentation at Innsbruck police detention centre. During this inspection by specialists, the department found that detainees at Innsbruck police detention centre are well looked after. The physician consulted by the Federal Ministry of the Interior even called the medical documentation "seamless".

Unfortunately, the commission was not able to attend this inspection by specialists in order to confirm the result of the inspection. Additional commission visits to Innsbruck police detention centre will show whether the medical documents are actually free of defects.

In terms of medical care for the detainee affected by the use of the Taser, the NPM was unable to comprehend several aspects. The Federal Ministry of the Interior admitted that in this case, the medical documents were not optimal. In this context, the NPM emphasized that a physician's findings which are the basis for medical measures or conclusions must always be included in the medical records.

Individual case: VA-BD-I/0202-C/1/2013, BMI-LR1600/0109-III/10/2013

## Treatment of detained minors or detainees on hunger strike - Hernalser Gürtel police detention centre

During several visits to the Hernalser Gürtel police detention centre, the commission criticized the detention conditions for detained minors and the health care for detainees on hunger strike. In this respect, the NPM has already noticed first positive developments.

Based on a specific case criticized by the commission, the AOB as NPM recommended the Federal Ministry of the Interior to evaluate the accommodation of detained minors at the police detention centre.

Adolescents in custody  
pending deportation

The Federal Ministry of the Interior reported on measures to structurally improve the detention conditions for detained minors. In this regard, the department listed a greater offer of leisure activities, extensive medical supply and close psychosocial support for adolescents in return procedures. The Federal Ministry of the Interior stressed that adolescents are always held in the centre's open section even without a prior observation period. Finally, the Federal Ministry of the Interior also arranged for age-appropriate furnishings for the cells of adolescents.

The detainees on hunger strike repeatedly complained about the medical check-ups. Some detainees stated that they were merely weighed. Urine, blood pressure and blood checks were rarely performed. Employees at the police detention centre reported that the quality of medical care strongly depends on the physician on duty.

Detainees on  
hunger strike

As a response to this criticism, the Federal Ministry of the Interior first of all reminded police physicians of applicable decrees. Moreover, a delegation of the Federal Ministry of the Interior performed on-site checks of medical documents and supply for detainees on hunger strike. The delegation of the ministry found that the documents are recorded in full and that appropriate medical care was provided.

During a follow-up visit, the commission was able to confirm that detainees on hunger strike criticized medical care less.

Individual cases: VA-BD-I/0024-C/1/2013, I/0060-C/1/2013, BMI LR1600/0050-Büro MRB/2013

### The future use of Leoben police detention centre is unclear

After its visit to the Leoben police detention centre, the commission criticized the amount of smoke in the common room, the rules for visits and the lack of video surveillance in the security cells. However, the emphasis of these problems strongly depends on the future use of the Leoben police detention centre.

Commission makes recommendation

During its visit to the police detention centre the commission criticized, inter alia, that - despite a ventilation system - the common room was exposed to a high level of smoke. The delegation recommended setting up a smoking area in an available space from 1 January 2014 in order to keep the remaining Leoben police detention centre free of smoke in the future.

The commission also considered the rules for visits to be unsatisfactory. According to this, visitors had to sit in the hallways and were separated from the detainees in the common room by a pane of glass. Communication was made more difficult by the loud ventilation system and the other detainees' conversation. The commission therefore considers it sensible to hold visits in other, more suitable rooms in the future. The commission again criticized the lack of video surveillance in the basement security cells as this constitutes a major security risk.

Ministry sees no need for action

During the examination by the AOB, the Federal Ministry of the Interior stated its intention to only use Leoben police detention centre as a "custody centre" for short-term detention from 1 January 2014. The cells currently used as security would then be used only as regular cells. In light of the future use of Leoben police detention centre, the department refused to implement the commission's recommendations.

Future of Leoben police detention centre is unclear

At the time of compiling this report, it was not yet clear whether Leoben police detention centre would indeed be used only for short-term stays not exceeding duration of 48 hours, after 1 January 2014. The NPM had previously assumed that Leoben police detention centre would continue to be used for detentions relating to administration proceeds for up to six weeks and for custody pending removal for up to seven days. In such a case, however, the Federal Ministry of the Interior should follow up in more detail on the commission's recommendations.

Individual case: VA-BD-I/0290-C/1/2013, BMI-LR1600/0130-III/10/2013



## Criticism of detention conditions - Schwechat police detention centre

At Schwechat police detention centre, the commission found dirt and unsatisfactory hygiene conditions. In addition, the commission pointed out the lack of toilets in the cells and the method used to dispense medication to the detainees.

When visiting Schwechat police detention centre, the commission negatively stressed the inadequate sanitary and hygiene standards. The cells and sanitary areas, as well as the common room and hallways were dirty. The commission also considered the condition of the mattresses and blankets in the cells to be unacceptable. In response to this criticism, the police department of Lower Austria launched an extensive basic cleaning of Schwechat police detention centre.

Inadequate hygiene conditions

Additionally, the commission found that the cells did not have toilets. As a result, detainees had to ring a bell during the night if they wished to use the toilet. This means that detainees had to wait in their cells until an employee arrived and accompanied them to the toilet. The Federal Ministry of the Interior reported that a structural renovation of the Schwechat police detention centre is not currently planned. However, it is ensured that employees allow detainees to leave their cells to visit the toilet without unnecessary delays.

Cells without toilets

Given that the detainees are largely self-determined, a toilet in each cell would certainly be the ideal situation. The requirement of unhindered access to toilet is, however, also met if - as the Federal Ministry of the Interior assured the detainees can use a toilet at any time without unnecessary delays.

The commission also viewed it as problematic that medications prescribed by doctors are dispensed by insufficiently trained service officers at Schwechat police detention centre. The Federal Ministry of the Interior has stated that medication at the police detention centre is issued under the supervision of the police physician on duty in accordance with the "four-eyes principle". Individually prepared and dispensed medication prescribed by a physician for self-administration is then issued by laypersons.

Issue of medication

The NPM welcomed the change to the dispensation practice for medication as this means that greater importance is paid to the responsibility of the police physicians regarding the individual allocation and preparation of medicines.

Individual case: VA-BD-I/0232-C/1/2013, BMI-LR1600/0048-Büro MRB/2013

### Video surveillance of toilets - St. Pölten police detention centre

During their visit to the Pölten police detention centre, the commission criticized that detainees in return procedures were not accommodated in an open section. In addition, the commission negatively highlighted the limited visiting hours and criticized that there was no suitable room for employees to rest. The commission also considered the video surveillance of toilets in the security cells to be problematic.

Detention pending removal can generally take place in open sections, where the cells, common rooms and exercise rooms are located in a separate unit and those held can move about freely (open area). If it is not possible to set up open sections for detainees in return procedures due to structural or staff reasons other improvements of the detention conditions must be aimed for.

Detention pending removal - no open detention area

In response to the commission's criticism of the lack of an open area for detention pending removal, the Federal Ministry of the Interior stated that an open detention area at St. Pölten cannot be implemented. The necessary adaptations would be too extensive. It was also stated that other improvements to the detention conditions, such as open cell doors, easier access to common rooms and so on, would not be possible at St. Pölten police detention centre due to its structure. In order to nevertheless improve the conditions for the detainees, the Federal Ministry of the Interior reports that it is aiming at preferentially keeping detainees in return procedures in cells equipped with TV sets. Finally, the Federal Ministry of the Interior stated that detention pending removal would no longer take place at St. Pölten police detention centre after 1 January 2014.

In other areas, the Federal Ministry of the Interior has already been able to implement the commission's recommendations for improvements. For instance, it must be highlighted positively that the Federal Ministry of the Interior has taken first steps towards creating a suitable room where the employees at the St. Pölten police detention centre can rest.

Extension of visiting hours

Another aspect criticized by the commission related to visiting hours at St. Pölten police detention centre. The commission recommended increasing the right of detainees to receive visits from half an hour per week to at least two visits per week. The AOB also thinks that it is necessary to make the frequency and duration of visits as generous as possible - particularly for detainees in return procedures.

In this context, the Federal Ministry of the Interior stated that those held are in any case allowed a second visit if capacities are available. As NPM, the AOB welcomes the efforts made by the Federal Ministry of the Interior. However, since visiting rules at police detention centres are currently not consistent, the AOB identified the strong need for a general and binding specification of current minimum standards for the frequency of visits permitted at police detention centres.

In terms of the security cells located in the basement, the commission stated that the camera angle to the toilet area should be as oblique as possible. The AOB also believes that video surveillance in toilet areas should be prevented in light of the related intense invasion of the privacy of those affected.

Video surveillance  
in toilets

The Federal Ministry of the Interior stressed that the department aims at keeping any invasions of the privacy of inmates as low as possible in accordance with the principle of proportionality while not jeopardizing the required monitoring duty. However, with regard to security considerations, the Federal Ministry of the Interior does not wish to implement the recommendation made by the AOB regarding a restriction of video surveillance in toilets at police detention centres.

From the perspective of the NPM, the Federal Ministry of the Interior should make efforts to sufficiently account for both security and protection of detainees' privacy. As a result, a technical or mechanical solution must be sought, which matches these requirements. At the time of compiling this report, no solution regarding a restriction of video surveillance in toilets at police detention centres has been found.

NPM continues to  
urge a for solution

Individual case: VA-BD-I/0222-C/1/2013, BMI-LR1600/0103-III/10/2013

#### Detention rooms in basement - Traun and Wels police stations

During its visits to the Wels and Traun police stations, the commission found defects at both sites. After the AOB intervened, the Federal Ministry of the Interior arranged for the defects to be remedied, or stated to do so in 2014.

The commission criticized that the cells were located in the basement at both police stations. They were fitted with a bell, but did not have an intercom. As a result, inmates were not able to contact the police officers immediately. Further criticisms related to the lack of accessibility at Wels police station, the entrance area, which was not in line with decrees and constituted a risk for the officers working there, and the lack of separate sanitary facilities for male and female officers.

In a statement the Federal Ministry of the Interior announced that the two cells located in the basement at Wels police station have been closed. The cell at Traun police station will be moved to the ground floor during the next structural adaptation. Access to Wels Police station would be made barrier-free by adding a stair lift. An intercom with induction loop as well as by adaptations of the entrance door were promised. The entrance area was secured as required by installing safety doors and video surveillance (safety lock). Finally, the Federal Ministry of the Interior emphasized that the changing rooms for female officers would be adapted in the near future.

Closure of cells

Individual cases: VA-BD-I/0097-C/1/2013 I/0167-C/1/2013, BMI-LR1600/0057-Büro MRB/2013

### Special transit and rejection zone - Vienna Schwechat Airport

During its visit to Vienna-Schwechat airport, the commission identified insufficient room ventilation. In addition, the commission criticized that there was no separate area for women in the entire special transfer area. The commission also made positive observations, however.

During its visits, the commission reported that those held were satisfied with how officers treated them. The commission also noticed positively that officers working there now wear civil clothes.

Poor ventilation and no separate area for women

By contrast, the lack of appropriate ventilation in the rejection zone and special transit rooms were a cause for criticism. The officers working there confirmed these findings. In addition, the commission criticized that there was no separate area for women in the special transit area. Women are entitled to separate rooms. These were, however, located in the same area as the rooms for men.

The Federal Ministry of the Interior immediately arranged for the ventilation system to be serviced. Three ventilators were replaced during the maintenance work. In terms of building a separate area for women, the Federal Ministry of the Interior stated that a room with separate bathroom/toilet was available for use by women on the ground floor of the special transit area. This creates a separate area for women.

Individual case: VA-BD-I/0097-C/1/2013, BMI-LR1600/0101-III/10/2013

### Shortcomings at Grieskirchen police station

During its visit to the Grieskirchen police station, the commission found shortcomings. These shortcomings were rectified in consultation with the NPM. The lack of medical officers is still an unsolved problem.

Cells in basement

The commission noticed that the cells at Grieskirchen police station were located in the building's basement. As a result, prisoners were not able to contact the officers immediately as these rooms had bells but no intercom system. In addition, skylights meant that the cells received hardly any daylight and it was not possible to air them.

No barrier-free access

The commission further queried the fact that the police station is only barrier-free through the rear entrance, and only during the office hours of the District Authority or the Tax Office which are situated in the same building. In addition, the safety of officers working there could not be ensured because the rear entrance did not have a security detector. However, according to relevant decrees such locks are to be

installed. Finally, the commission pointed at the problem that there are insufficient medical officers in the district of Perg region who carry out work for the police (e.g. examining a person's fitness to undergo detention).

The Federal Ministry of the Interior responded to these criticisms promptly. The department closed the criticized cells and created barrier-free access. In terms of installing the security detector as required by decree, the police department of Upper Austria state government has already arranged a planning and cost estimate. However, implementation will depend on budget availability.

The Federal Ministry of the Interior laments the lack of medical officers in the region. The Upper Austrian Medical Chamber has sent out a manual to all practising doctors. While there is no obligation to carry out examinations for the police (e.g. examination to determine fitness to undergo detention, Section 8 of the Hospitalization of Mentally Ill Persons Act. The Medical Chamber recommends such services by physicians as a result of a request by the police department of Upper Austria.

Individual case: VA-BD-I/0082-C/1/2013, BMI-LR1600/0066-Büro MRB/2013

### 3.5.7 Coercive acts

#### General

In the reporting year, the commissions observed the behaviour of executive bodies and officers of administrative authorities authorized to issue direct orders or carry out coercive measures in 65 cases. These included (forced) returns, demonstrations, football matches, raids and large events. As was the case in 2012, the commissions again found that there was no cause for complaints from a human rights perspective during football games. The police organized observation of the fans of the football clubs well, and handled potentially delicate situations well.

By contrast, the commissions frequently criticized the process during (forced) returns. The reaction by the Federal Ministry of the Interior to the recommendations made by the AOB and its commissions was positive. The Federal Ministry of the Interior implemented many of the recommendations quickly. Officers involved received sensitization and other relevant training, or applicable decrees were pointed out to them.

#### Monitoring priorities and overall findings

##### (Forced) returns in Upper Austria

The commission responsible for the Land Salzburg and Upper Austria monitored a total of six return procedures during a very short time period. It criticized the performance of these returns. The AOB initiated an own-motion investigation as a result of these findings.

**Interpreters** The commission observed that the officers left the implementation of the official act to the interpreters. In other instances, the interpreters failed to interpret conversations with the affected parties, and instead at times had independent conversations. There were hardly any instructions issued on the part of the officers.

**Voluntary return to home country or forced return** Compliance with voluntary departure requests also constituted an important aspect for the commissions. A request to return to the home country voluntarily must basically take priority. An invasion of the constitutional right to liberty may only happen if absolutely necessary. The Federal Ministry of the Interior responded by stating that the families affected had not seriously wished to voluntarily return to their home country. Instead, their aim was to gain more time, e.g. in order to allow transfer deadlines to expire. The AOB recommended the Federal Ministry of the Interior to define generally applicable guidelines for individuals wishing to return to their home country voluntarily as guidance for the affected persons.

In one case, the commission criticized that a vehicle used to transport prisoners, which was entirely unsuitable for security reasons, was used for return procedures of a family. According to the Federal Ministry of the Interior, this was an exceptional case. Usually, those responsible would not use vehicles designed to transport prisoners.

The procedure of removing a woman who was eight months pregnant was also met with criticism. Contrary to the Federal Ministry of the Interior's view, the mere fact that no health problems had occurred during the return procedure does not mean that a removal should be effected in any event. The AOB therefore recommended that in the future, the Federal Ministry of the Interior should consider the provisions of Article 3 ECHR and the rulings of the Austrian Asylum Court more closely. According to the court a return procedure should be suspended approximately eight weeks before as well as after the child's due date.

(Forced) return of pregnant women

According to the commissions other critical issues related to carrying of weapons and/or uniform belts in a visible manner during the return procedure of a family; addressing those affected with the familiar "Du" singular; insufficient supply of food and drinks to the individuals facing and insufficient provision of travel bags.

Carrying weapons or uniform belts during the return procedure of a family is contrary to a decree issued by the Federal Ministry of the Interior, according to which officers must generally carry out family returns in civil clothing and keep weapons and other such materials hidden. The informal use of "Du" by the official bodies of the security service is contrary to Section 5 (2) of the Directive regarding Interventions by Members of the Public Security Services (Richtlinienverordnung). In all such cases, the Federal Ministry of the Interior took the AOB's criticisms seriously and stated that the relevant officers have already been sensitized to these matters.

Wearing uniforms and carrying weapons

In another case examined by the AOB, the Federal Ministry of the Interior assured that it would take precautions to enable mothers to breastfeed during the return procedures.

Breastfeeding during return procedures

Individual cases: VA-BD-I/0079-C/1/2013, BMI-LR1600/0106-III/10/2012 or VA-BD-I/0214-C/1/2013, BMI-LR1600/0065-BüroMRB/2013

#### Commission received only poor information about police operations

In several cases, commissions reported that they were told about police operations only very late or not at all. The Federal Ministry of the Interior and the AOB will develop a solution together.

At the end of July 2013, several asylum seekers were returned to Pakistan. In order to assemble a delegation, the commissions must be informed in a timely manner of the contact meeting before the removal, as well as of the removal itself.

However, at times the commission were only informed hours before the contact meeting or the removal. Nevertheless, it was possible in most cases to quickly assemble a delegation and to observe the official acts.

**Factual obstacles?** In its statement, the Federal Ministry of the Interior denied any intention to hinder the commissions from exercising their mandate. The ministry pointed out that the police were only able to inform the commissions of the contact meetings at very short notice because the arrests had only taken place shortly before. In terms of the dates of collecting detainees in return procedures from the Rossauer Lände police detention centre, the Federal Ministry of the Interior stated that expected demonstrations against the official acts made organisational processes more difficult. As a result, the dates for collections and (forced) returns had to be rearranged and changed each hour depending on the situation.

In the case of the evacuation of Votive Church at the end of September 2013, the competent commission was informed only ten minutes before the evacuation. The commission was thus only able to observe the last moments of the evacuation. According to the commission these took place quietly and correctly.

**Working group is to find a solution** In order to ensure a timely notification in the future, the Federal Ministry of the Interior invited the AOB to co-operate in reviewing the decree which specifies the conditions on when and whether commissions must be informed of police operations. The AOB accepted this invitation.

Individual cases: BD-I/0464-C/1/2013, I/0476-C/1/2013, I/0477-C/1/2013, I/0478-C/1/2013, I/0479-C/1/2013, I/0480-C/1/2013, I/0589-C/1/2013, BMI-LR1600/0114-III/10/2013

## Individual cases

### NPM's access to aeroplanes

The AOB already dealt with this question during the 2012 reporting year, after a task force had refused a commission to enter an aeroplane when observing a return procedure. Eventually, the Federal Ministry of the Interior agreed with the AOB's legal opinion.

The AOB already reported in the annual report 2012 that access to an aeroplane during a return procedure had been refused to the delegation. Since this opened up the question of the scope of the National Prevention Mechanism's mandate, the AOB initiated investigative proceedings.

**Access to aeroplanes must be granted** The AOB stressed that the aeroplane was standing on an airfield in Austria and its doors were not yet closed. As a result, Austrian law applies based on the



territoriality principle. In addition, the performance of a return procedure is related to the exercise of direct administrative power and compulsion by administrative bodies. The Austrian Constitution entrusts the AOB's commissions with monitoring the conduct of authorities that are empowered to exercise direct administrative power and coercive measures and to observe these acts concomitantly. Finally, the AOB pointed out that a place of detention according to OPCAT comprises not only a state's territory, but also extends to aeroplanes registered in the relevant state. This opinion appears to be prevailing.

The Federal Ministry of the Interior agreed with the AOB's legal opinion. In addition, the Federal Ministry of the Interior informed the AOB that the relevant bodies of the public security service responsible for such return procedures had already been instructed accordingly. Finally, the Federal Ministry of the Interior stated that a commission delegation observing a further deportation at the end of January 2013 had already been given access to the aeroplane.

Ministry instructs police

Individual case: VA-BD-I/0571-C/1/2012, BMI-LR2240/0099-II/1/c/2013

#### Commission access to federal support facility east (Traiskirchen)

A commission was refused access to the Federal Support Office East in Traiskirchen. According to the Federal Ministry of the Interior, only the police station and initial reception centre are potential places of detention. After the Human Rights Advisory Council became involved, a solution was found.

As remarked already in the annual report of 2012, the AOB in this case dealt with the question of the scope of the National Preventive Mechanism's mandate. It was undisputed that the police station and initial reception centre in the area of the former refugee camp Traiskirchen are potential places of detention. As a result, the AOB's commission was allowed to visit them at any time. What remained unclear was whether the commission is allowed to visit the other sections of the Federal Support Facility. The Federal Ministry of the Interior contested this.

The AOB asked the Human Rights Advisory Council for advice regarding this legal question and based on the results of a working group the Council passed a statement in its October 2013 meeting which was adopted by the AOB.

Statement by Human  
Advisory Council

The statement by the Human Rights Advisory Council clarified that based on their mandate; the commissions may enter buildings where unaccompanied minors are held. This is within the scope of the mandate. The commissions only have access to the other parts of the Federal Support Facility if they decide to visit them on the AOB'S request when problems are suspected, i.e. as part of investigative proceedings carried out by the AOB as an ex-post control.

No restriction to AOB's  
mandate if problems  
are suspected

Individual case: VA-BD-I/0574-C/1/2012, BMI-LR1600/0040-Büro MRB/2013

### 3.6 Activities of the Human Rights Advisory Council

Due to submissions by the AOB, the Human Rights Advisory Council was able to take up its advisory role in full in the reporting year. In this context, the Human Rights Advisory Council agreed unanimously that AOB submissions and requests for advice would first be developed in working groups and then examined/voted on at plenary meetings of the Human Rights Advisory Council. Overall, Human Rights Advisory Council's members and substitute members were highly involved and met at five ordinary and one emergency meeting.

#### Focus and expert statements

Firstly, the areas of focus for the AOB's preventive mandate were discussed with AOB representatives and the commissions, and specified for 2013. Moreover, the Human Rights Advisory Council provided expert statements for the following questions submitted by the AOB: "Commission access to the Traiskirchen Federal Support Facility", "Commission access to medical records of detainees", "Limits to the authority of private security service in psychiatric institutions", "Setting of standards", "Punishments for offences in prisons", "Use of cage beds v. protection of human dignity", "Health care and care by physicians in prisons", "Procedures regarding urine tests", "People with disabilities in prisons - Backlog", "Federal Institute for the Education of the Blind in line with UN Convention on the Rights of Persons with Disabilities?". Due to the general importance of accessing medical data, Human Rights Advisory Council's statement is also available on the AOB website.

#### Measures to ensure consistent monitoring practice

A working group also is dealing with the question of "setting standards". Its focus is on national and international standards so as to ensure consistent practice. This is not a one-off task for Human Rights Advisory Council but an ongoing compilation process, which takes account of the recommendations of CPT, the Subcommittee on Prevention of Torture (SPT) and above all of the legislation of the Constitutional Court and the European Court of Human Rights.

At the start of December, the members of the Human Rights Advisory Council convened an extraordinary meeting regarding the centre for detention pending (forced) returns in Vordernberg. An Human Rights Advisory Council working group dealt with questions of special human rights requirements for operations, and conditions during the stay of individuals in detention pending removal. These have already been sent to the AOB and in particular are to offer guidelines for topics determining the commissions' control activities.

At this point, the members of the AOB would like to thank the members and substitute members of the Human Rights Advisory Council for their commitment. Without the expertise of the representatives of the NGOs and the Federal Ministries, the Human Rights Advisory Council would not have been able to carry out its advisory work to this extent. Special thanks go to the Deputy Chair Univ.-Prof. Dr. Gabriele Kucsko-Stadlmayer, who resigns from the position at the end of 2013 for professional reasons. Univ.-Prof. Dr. Andreas Hauer was appointed to replace her as the new Deputy Chair.

## 3.7 Further activities in the reporting period

### 3.7.1 International co-operations

In October 2013, the Austrian NPM joined the “South-East Europe NPM Network” (SEE NPM Network) aiming at closer cooperation between the National Preventive Mechanisms of Albania, Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Slovenia, particularly by organizing themed workshops.

SEE NPM Network

For 2014, the AOB as NPM intends to intensify the dialogue with the preventive mechanisms of the Federal Republic of Germany and Switzerland.

Co-operation with the international bodies based on the Convention on the Rights of Persons with Disabilities is of key importance to the AOB. In its role as National Human Rights Institution and National Preventive Mechanism it thus also contributed to the country review under the UN Convention by submitting a statement to the UN Committee on the Rights of Persons with Disabilities.

### 3.7.2 Co-operations with NGOs

Organisationally, the civil society organizations are represented on the Human Rights Advisory Council through its representatives. Since the role of the Human Rights Advisory Council particularly consists in advising the AOB in determining focal points, the experiences and findings of the NGOs significantly influence the AOB’s and its commissions’ control activities.

A first so-called “NGO forum” at the AOB took place in April 2013 in order to intensify the dialogue with civil society. In addition to information regarding the AOB’s activities as the National Preventive Mechanism, Dr. Silvia Casale, who has been President of the European Committee for the Prevention of Torture (CPT) for many years, also provided an external view in respect of Austria’s performance in implementing the UN Human Rights Conventions.

NGO Forum

Co-operation with specialised NGOs, such as Vertretungsnetz, was also established. A mutual exchange of information can reveal “hot spots” which require prioritised control activities by the commissions, either by theme or site.

### 3.7.3 Public relations

As announced in the 2012 annual report, the AOB further expanded its obligation to inform the general public, by actively contributing to the improvement of access to justice.

**AOB publication** The Federal Ministry for Education, Arts and Culture made the publication “Young people and their rights” (“Junge Menschen und ihre Rechte”), by the Ombudswoman Gertrude Brinek, available to schools to foster political education. As the members of the AOB state in the preface, the AOB aims to show that “it intends to protect and support the rights of all citizens, young or old, and especially to inform young people of their rights directly.” For 2014 the AOB plans a campaign with the aim to allow young people (including students) to become familiar with the AOB’s work both as an ex-post control body as well as an human rights institution, and for them to be bolstered in their awareness of their rights. As a result, the AOB actively meets its legal obligations to educate on human rights and to co-operate with educational institutions.

The AOB accepted all invitations by specialist interest groups for presentations regarding the processes and results of its activities as the National Preventive Mechanism. The AOB continually demonstrated in expert contributions and scientific publications that it is a competence centre for general and specialised (public) law and human rights questions.

### **3.7.4 Training and further education**

In order to achieve highly uniform and consistent procedures close communication between the AOB and the commissions on the one hand and among the regional commissions themselves on the other hand is necessary.

**Exchange of experience** Two events in March and November 2013 offered opportunities for personal contact. The exchange of experiences focused on: determining areas of focus, control methods and evaluation standards.

## 4. Recommendations for the Legislator

### Federal Ministry of Labour, Social Affairs and Consumer Protection

Legislative recommendation	Department response
Uniform performance standards for retirement and nursing homes across the country – recommendation for federal and <i>Laender</i> administration.	
Development of a uniform law across the country for personal assistance for persons with disabilities – recommendation for federal and <i>Laender</i> administration.	

### Federal Ministry of Family and Youth

Legislative recommendation	Department response
Uniform minimum standards across the country in respect of social education shared accommodation – recommendation for federal and <i>Laender</i> administration.	

### Federal Ministry of Justice

Legislative recommendation	Department response
Clarification by the legislator that excessive or non-age-appropriate restrictions to freedom for minors, which do not serve educational purposes, are covered by the scope of Nursing and Residential Homes Residence Act and must be reported.	

## Federal Ministry for Health

Legislative recommendation	Department response
<p>Enhancement of medication safety (avoidance of potentially inappropriate medication and polypharmacy) for geriatric patients.</p>	<p>The Ministry announced that it would initiate recommendations for the use of psychotropic substances in long-term care settings for older people.</p>
<p>Obligation of physicians to inform other health professionals in retirement and nursing homes to the extent required for treatment, care and to implement the Nursing and Residential Homes Residence Act.</p>	<p>The Ministry has confirmed that it would compile a letter to the Laender for the institutions' information. A subsequent clarification in the Act on the Medical Profession is possible.</p>
<p>Prohibition of the use of net beds in psychiatric institutions and nursing homes by decree or law while simultaneously ensuring that this will not lead to a more frequent use of medication-based or mechanical restrictions.</p>	<p>The Ministry is currently in talks with the NPM.</p>
<p>Clarification by the legislator that excessive or non-age-appropriate restrictions to freedom for minors, which do not serve educational purposes, are covered by the scope of the Nursing and Residential Homes Residence Act and must be reported.</p>	



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